PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

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

Eighth Sitting

Thursday 18 June 2020

(Afternoon)

CONTENTS

New clauses considered.
Bill to be reported, without amendment.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 22 June 2020

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

Thursday 18 June 2020

(Afternoon)

[Graham Stringer *in the Chair*]

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

New Clause 41

Children in care and children entitled to care leaving support: Entitlement to remain

'(1) Any child who has their right of free movement removed by the provisions contained in this Act, and who are in the care of a local authority, or entitled to care leaving support, shall, by virtue of this provision, be deemed to have and be granted automatic Indefinite Leave to Remain within the United Kingdom under the EU Settlement Scheme.

(2) The Secretary of State must, for purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Norther Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.

(3) Before issuing guidance under this section the Secretary of State must consult—

(a) the relevant Scottish Minister;

(b) the relevant Welsh Minister; and

(c) the relevant Northern Ireland Minister

(4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose and no further immigration control purpose.

(5) Any child subject to subsection (1) who is identified and granted status after the deadline of EU Settlement Scheme ("the Scheme") will be deemed to have had such status and all rights associated with the status from the time of the Scheme deadline.

(6) This section comes into force upon the commencement of this Act and remains in effect for 5 years after the deadline of the EU Settlement Scheme.

(7) For purposes of this section, "children in the care of the local authority" are defined as children receiving care under any of the following—

(a) section 20 of the Children Act 1989 (Provision of accommodation for children: general);

(b) section 31 of the Children Act 1989 (Care and Supervision);

(c) section 75 Social Services and Well-being (Wales) Act 2014 (General duty of local authority to secure sufficient accommodation for looked after children);

(d) section 25 of the Children (Scotland) Act 1995 (Provision of accommodation for children);

(e) Article 25 of the Children (Northern Ireland) Order 1995 (Interpretation); and

(f) Article 50 Children of the (Northern Ireland) Order 1995 (Care orders and supervision orders).

(8) For the purposes of this section, "children entitled to care leaving support" means a child receiving support under any of the following—

(a) paragraph 19B of Schedule 2 Children Act 1989 (Preparation for ceasing to be looked after);

(b) s.23A(2) Children Act 1989 (The responsible authority and relevant children);

(c) s.23C(1) Children Act 1989 (Continuing functions in respect of former relevant children);

(d) section 104 of the Social Services and Well-being (Wales) Act 2014 (Young people entitled to support under sections 105 to 115);

(e) sections 29-30 Children (Scotland) Act 1995 (Advice and assistance for young persons formerly looked after by local authorities) as amended by s.66 Children and Young People (Scotland) Act 2014 (Provision of aftercare to young people); and

(f) Article 35(2) Children (Northern Ireland) Order 1995 (Persons qualifying for advice and assistance.).'—*(Dame Diana Johnson.)*

This new clause aims to ensure that the children of EEA and Swiss nationals who are in care, and those who are entitled to care leaving support, are granted automatic Indefinite Leave to Remain under the EU Settlement Scheme to ensure they do not become undocumented.

Brought up, read the First time, and Question proposed (this day), That the clause be read a Second time.

2 pm

Question again proposed.

The Chair: I remind the Committee that with this we are considering new clause 58—*Settled status: children in care*—

'(1) Any child who has their right of free movement removed by the provisions contained in this Act has the right of settled status in the United Kingdom if that child is in care, is subject to the public law outline process via a declaratory system, undertaken on the child's behalf by the Local Authority whose care they are under, or is entitled to care leaving support.

(2) For the purposes of this section, "a child in care" means a child who is under 18 and is—

(a) living with foster parents;

(b) living in a residential children's home; or

(c) living in a residential setting like a school or secure unit."

(3) For the purposes of this section, "public law outline process" is as set out under Family Court practice direction 12A of 2004.

(4) For the purposes of this section, "children entitled to care leaving support" means a child receiving support under any of the following—

(a) paragraph 19B of Schedule 2 Children Act 1989 (Preparation for ceasing to be looked after);

(b) s.23A(2) Children Act 1989 (The responsible authority and relevant children);

(c) s.23C(1) Children Act 1989 (Continuing functions in respect of former relevant children);

(d) section 104 of the Social Services and Well-being (Wales) Act 2014 (Young people entitled to support under sections 105 to 115);

(e) sections 29-30 Children (Scotland) Act 1995 (Advice and assistance for young persons formerly looked after by local authorities) as amended by s.66 Children and Young People (Scotland) Act 2014 (Provision of aftercare to young people); and

(f) Article 35(2) Children (Northern Ireland) Order 1995 (Persons qualifying for advice and assistance).'

This new clause would seek to provide automatic settled status for all looked after children in the care of local authorities and for children entitled to care leaving support, removing the requirement on the local authority to make an application to the EU Settlement Scheme on that child's behalf.

Holly Lynch (Halifax) (Lab): Thank you very much and welcome back, Mr Stringer; it is a pleasure to serve under your chairmanship once again. It is a pleasure to follow my hon. Friend the Member for Kingston upon Hull North, who made a powerful and persuasive contribution earlier to reinforce the merits of new clause 41.

I rise to speak in favour of new clause 58, about which we feel strongly and which is not dissimilar to new clause 41. As things stand, it is currently the responsibility of local authorities to make an application to the European Union settlement scheme for children under 18 who will be eligible to apply but who are currently in the care of the local authority. The Committee heard evidence on that from the Children's Society, and I noted the Minister's scepticism about aspects of that approach. I will seek, with genuine sincerity, to persuade him of the merits of taking an alternative approach.

Children are taken into care only if they have had the worst possible start in life. The cohort of children who would be affected by the new clause have the fateful combination of absent parents and precarious migration status. If we do any good with the Bill, it should be by giving those kids some stability on just one those fronts, in the hope that they can go on to a much brighter future.

In answer to a written parliamentary question, the Home Office said that it estimates—as we have already heard—that around 5,000 looked-after children and 4,000 care leavers in the UK would need to apply to the EU settlement scheme, but the exact numbers are unknown. Any further investigations undertaken by the Home Office to better understand those numbers have not been published, so, like my hon. Friend the Member for Kingston upon Hull North, I wonder whether the Minister is in a position to update the Committee on those estimates.

My hon. Friend referred to the incredibly informative survey work of the Children's Society on this matter, in the absence of any further official data. It conducted its own research, sending freedom of information requests to every local authority or children's services provider in the UK. That totalled 211 providers, 153 of which responded to the FOI requests by January this year. Those local authorities identified just 3,612 European economic area or Swiss looked-after children and care leavers, which is only 40% of Home Office estimates. Of those 3,612 children and young people, only 730 had so far applied to the EU settlement scheme. Of those, only 404 were in receipt of status—282 had settled status and 122 had pre-settled status—meaning that, of those identified by local authorities, only 20% have applied and only 11% have been granted status. Although the data represents 73% of local authorities or service providers, and as such is not fully representative, it offers a strong indication that there are serious and urgent concerns about identifying and settling the migration status of vulnerable children whose status and future will be significantly affected by the Bill.

The Minister might argue that as those figures relate to data gathered in January of this year, progress may since have been made. However, considering that we started to enter lockdown in mid-March, I suspect that not a great deal of progress has been made in the intervening weeks. The Minister might argue that because only 153 local authorities responded and 58 councils did not contribute data, the stats might actually be better than that sample suggests, but a number of those councils said they did not have that information and could not provide it to the Children's Society. In fact, 32 local authorities said that they were unable to provide the data or that they did not hold the information in a reportable format.

Whether through the Government's proposed approach, which means going through the full application, or through the streamlined alternative proposed in the new clause 58, for those children the local authority has responsibility for securing their status either way. If those very councils are saying that they do not know how many children in their care are eligible, we all ought to be incredibly concerned.

The Government have produced non-statutory guidance to local authorities on the EUSS regarding their roles and responsibilities in making or supporting applications for looked-after children and care leavers. However, in its oral evidence last week, the Children's Society said that it had engaged with several councils that were still unaware of the existence of the guidance or their responsibilities as set out within it. Although the Children's Society has attempted to address that by providing councillors with resources aimed at helping them in their accountability, overview and scrutiny roles, we clearly still have a number of barriers to overcome.

Even where local authorities are aware of their responsibilities, the young people in their care often have extremely complex cases that require considerable support and legal advice. Many require nationality advice, others have complex family arrangements, and most simply do not have the required documentation. Social workers are consequently spending months navigating advice and acquiring the necessary documents from European embassies. Social workers are by no means specialists in that area of work, and do we really want them to be acting as immigration caseworkers when we know the incredible case loads that they face?

All those factors were in play before they were compounded by the coronavirus. Local authorities are in the fight of their lives to keep communities going. The resources are, and will continue to be, spread incredibly thinly, diverting efforts to the frontline of fighting the virus for the foreseeable future. We have vulnerable children at home without day-to-day interaction with services. Although those children can still attend school we know that, disappointingly and worryingly, numbers are still low.

The challenges presented for children's services are enormous. Identifying and assisting children in care to apply for an immigration status that is seemingly non-urgent has inevitably been de-prioritised. The most recent EUSS statistics show that applications fell by 46% in April this year, and anecdotal evidence from practitioners indicates that the number of applications and referrals of EU children in care or care leavers has been low, as we would expect during this time.

Even when applications have been made, the Children's Society research found that in its sample only 404 EU national children in care or care leavers were in receipt of status through the EUSS, out of an estimated 9,000. In just over a nine-month period, only 11% of the vulnerable children identified through the survey, which is just 4% of the Home Office estimate of 9,000, were able to settle their status, compared with 79% of the overall official estimate of 3.4 million EEA citizens over the same nine-month period.

[Holly Lynch]

If those trends continue, thousands of European children either currently in the care system or who have recently left care will fall through the gaps, becoming undocumented and left without immigration status—rubbing salt into the wounds of what has already been a troubled start in life. The Home Office previously stated in answer to a written question that children who

"do not apply because their parent or guardian did not submit an application on their behalf can submit a late application. This includes children in care and care leavers."

That is welcome, but both local and national Government must work to ensure that no child in the care of the state becomes undocumented, and we can do that with the new clause.

Having discussed some of the practicalities on the matter at length with my local director of children's services, Julie Jenkins, for whose assistance I put my gratitude on the record, we propose that local authorities, on a declaratory basis, provide a list of names to the Home Office of the children and young people who would be eligible. In responding to reservations raised by the Minister at last week's evidence session, the Home Office would then grant those young people settled status, as they would for a person who had made an application.

The Minister asked the Children's Society how these young people prove their status. To answer his question: in the same way any other person with settled status would. We have been unable, sadly, to convince the Minister of the merits of physical proof, so they would have confirmation through an e-visa. On the issue of pre-settled and settled status, of the 404 children in the sample that we are talking about who are in receipt of status, 282 were granted settled status and 122 were granted pre-settled status.

Given everything that those kids have been through, why are we giving them pre-settled status? Let us just give them settled status. Let us not simply sign them up for yet more years of paperwork and burdens of proof; let us just take all that uncertainty off the table for them in this instance by giving them both settled status and proof of it.

Mr Robert Goodwill (Scarborough and Whitby) (Con): On burden of proof, is it not the case that the Government have made it clear that alternative types of documentation might be available for children who cannot get access to birth certificates or other documents because they are estranged from their parents?

Holly Lynch: I would welcome that in the event that there is no alternative and that some of the more regular items of documentation are not available. In taking that route, however, we are still asking children to go away and gather a potentially enormous amount of information and documentation. When we know that such children are eligible, why can we not just deal with this issue in a streamlined way through local authorities and the Home Office?

I hope I have satisfied the Minister's reservations about this approach. We are talking about a cohort of children and young people who are our responsibility; we the state are acting as their legal guardians. Let us do the best we can for them and at least give them confidence in their immigration status, in the hope that they can go on to overcome all their challenges and build happy lives here in the UK.

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): It is a pleasure to serve under your chairmanship, Mr Stringer. I will speak to the two new clauses that have been moved. I appreciate the intentions behind them, and the concerns and genuine points that have been raised. That is why, from the outset, there have been arrangements in place to ensure that the EU settlement scheme is accessible to all, including looked-after children and care leavers. Prior to the full launch of the scheme in March 2019, agreements were reached and plans put in place with local authorities to ensure that relevant children and care leavers receive the support they need in securing their UK immigration status under the scheme.

Local authorities in Great Britain, and health and social care trusts in Northern Ireland, are responsible for making an application under the EU settlement scheme on behalf of an eligible looked-after child for whom they have parental responsibility by way of a court order. Their responsibilities to signpost the scheme and support applications in other cases have also been agreed. They concern children for whom there is no court order but where the local authority has a clear interest in supporting the best interests of the child—for example, children accommodated by the local authority, children in need and care leavers.

The Home Office has implemented a range of support services to ensure that local authorities and health and social care trusts can access help and advice when they need to. We have engaged extensively with relevant stakeholders, such as the Department for Education, the Local Government Association, the Ministry of Justice, the Association of Directors of Children's Services and equivalents in the devolved Administrations, to understand and address the needs of looked-after children and care leavers, and to ensure they are all supported. Guidance has also been issued to all local authorities on their role and responsibilities for making or supporting applications under the EU settlement scheme for looked-after children and care leavers. The Home Office is holding regular teleconferences specifically for local authority staff who are responsible for making relevant applications, in order to support them and provide a direct point of contact for them within the Home Office.

A new burdens assessment has been conducted, and funding has been issued to local authorities that have responsibilities for carrying out specific duties in relation to looked-after children and care leavers, to ensure they are adequately funded to do such work. Along with the Minister for Children and Families in the Department for Education, I have written to lead council members to underline the importance of the work that their local authorities are undertaking to ensure that eligible looked-after children and care leavers make applications to the EU settlement scheme, and to highlight the support available. Home Office caseworkers are directly working with local authority staff who are responsible for making applications, as well as with organisations that specialise in working with children, such as the Children's Society and Coram.

Additionally, the Home Office has provided £9 million of grant funding to 57 voluntary organisations across the UK in order to support vulnerable citizens in applying to the EU settlement scheme. They include several organisations specialising in support for vulnerable children and young people. We have now committed a further £8 million for such work, allowing charities and local authorities to bid for grant funding to provide support to vulnerable people and help ensure that no one is left behind. To reassure the Committee, we are continuing the existing arrangements until new arrangements and a new bidding process are completed.

Dame Diana Johnson (Kingston upon Hull North) (Lab): I am listening carefully to all the steps that the Home Office is taking, but is the Minister now in a position to publish the information about the number of children affected by needing to apply for the EU settlement scheme? I understand that his Department has already undertaken that work.

2.15 pm

Kevin Foster: It is probably worth saying that, as of today, we cannot publish a final list of all who will be eligible under the EU settlement scheme because the transition period extends to 31 December this year. Therefore, people may yet arrive in the country who would be eligible to apply under the scheme. As part of the quarterly statistics publication—not the monthly one—we publish the number of applications from children. A large amount of work is going on, but it would be impossible today to have a definitive number of all who will finally be eligible, because eligibility, along with freedom-of-movement rights, runs up to 31 December.

Mr Goodwill: Is it not also the case that there may be children claiming to be EEA citizens who may turn out to be, for example, from Albania, so publishing a figure based on what people claim would not be the true figure?

Kevin Foster: I thank my right hon. Friend for that intervention. Yes, there is always that possibility. For example, one of the reasons why we will not look to accept EEA identity cards in the long term at the border and internally for certain right-to-work checks is that some EEA identity cards are very prone to abuse, unlike secure passports. There are always going to be such claims, but certainly there is strong work going on. However, as we touched on, the core reason is that we cannot produce today a final list of who will be eligible, but we are working closely with local councils. Of course, each day children come into care, sadly, so again, snapshots do not reflect the work that needs to be done.

Kate Green (Stretford and Urmston) (Lab): I do think that a running total—albeit one that would be changing from quarter to quarter—would give us a sense of the scale of the challenge, especially as we are now within six months of the end of the transition period and a year from the end of the extended period in which applications can be made. This point was raised, I think, a year ago in a debate in Westminster Hall when the Government first gave the undertaking to collect the data, and to do so through local authorities, which ought to give us a bit more confidence about its validity than if children or their families were simply providing it themselves. I say to the Minister that it would reassure Parliament if such information as is available were made public as soon as possible, although we understand that it is a bit of a moving feast.

The Chair: I remind hon. Members that interventions should be brief and to the point.

Kevin Foster: I have outlined the work that we are doing with local authorities to identify who is eligible. As the hon. Lady said, it is a moving feast, and we particularly want to make sure that those responsible for making these applications are aware of how to apply and who qualifies, and that they then proceed to do so.

I understand the concerns expressed by hon. Members about looked-after children and care leavers, and we must ensure that their corporate parents secure the best possible outcomes for them.

Dehenna Davison (Bishop Auckland) (Con): Does the Minister agree that the best way that we can support looked-after children is by ensuring that they can take full advantage of the EU settlement scheme through local authorities, rather than having a two-tier system?

Kevin Foster: Absolutely. Once someone has their status under the European settlement scheme, they join another—why, we have had over 3 million decisions taken on granting status. That will be part of how our border system will operate in future. One of the lessons learned from the past is this—status was granted under an Act of Parliament, but then in several decades' time it has to be explained to someone how their status was under a different approach from how status is granted to those who are in the same cohort, in terms of nationality and citizenship. That is not helpful to anyone. That is one of the lessons learned, of course, from the experience of the Windrush generation. That Act of Parliament was in 1971. The status was granted on 1 January 1973 and the issues then started to be encountered 30 years later, and not just since 2010— the first case mentioned on the front of Windrush lessons learned review is from 2009. Again, it is about how those issues are created.

A declaratory scheme as proposed in new clauses 41 and 58, under which those covered automatically acquire UK immigration status, would cause confusion and potential difficulties for these vulnerable young people in future years, with their having no solid evidence of their lawful status here. They will need evidence of their status when they come to seek employment, or access to benefits and services to which they are entitled. A declaratory system would leave them without that evidence, struggling to prove their rights and entitlements over decades to come.

I listened carefully to the comments made by the hon. Member for Kingston upon Hull North, in which she outlined the process local authorities could go through to list the children and send those lists to the Home Office. I thought, "If local authorities are going to go through all this, then the logical thing for them to do is make the applications that are required under the EU

[Kevin Foster]

settlement scheme, and ensure the children they are listing have the status they need." It is hard to see what the benefit to councils would be if we introduced a different process that did not produce a better outcome. If that is what we are going to ask people to do—arrange a working identifier—the next stage is to ask them to make quite a simple application to the European settlement scheme to get the status that child deserves.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): The Minister must accept that a declaratory system does not leave people without a means of proving their status. They have every incentive to apply to the settlement scheme to get the document they need to access the services the Minister has referred to, and would have the facility to do so.

Kevin Foster: Again—here we go—this would mean that someone who had a status could not be distinguished from someone who did not have a status, and would then have to make an application. We have been clear that we cannot allow people to have a status without going through the process, but that we have some generous provisions in place. Similarly, physical documents that are decades old, that date from when someone is a child, are unlikely to be particularly convincing proof in many instances. That is why we need to move towards a digital system that is a permanent record, and if the children are being identified—as Opposition Members are suggesting—the next stage is to make that application, make it simple, and get their status secured. That means the children are then secure for the rest of their life, which is a better outcome.

Fundamentally, changing a system that is working well overall would have the exact opposite effect to that which the new clauses appear intended to achieve, leading to confusion and uncertainty. We have also made it clear that where a person eligible for status under the scheme has reasonable grounds for missing the deadline—for example, if their council did not apply to the EU settlement scheme on their behalf—they will be given a further opportunity to apply. We will ensure that individuals who have missed the deadline through no fault of their own can still obtain lawful status in the UK, which I suggest is a far better response to the concerns expressed by Opposition Members than the new clauses they are proposing. That is why the Government will not accept them.

Dame Diana Johnson: I am disappointed by the Minister's response to new clause 41. It is also disappointing that the Minister is not able to update the Committee with some information, recognising that that information about numbers may be changing over time. This is a matter that will not go away, and rather than test the opinion of the Committee today, I may wish to return to it on Report. I therefore beg leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 45

IMMIGRATION: NO RECOURSE TO PUBLIC FUNDS

"Section 3(1)(c)(i) and (ii) of the Immigration Act 1971 cannot be applied to persons who have lost rights because of section (1) and Schedule 1 of this Act, until such time as may be specified in a resolution passed by each House of Parliament."—*(Stuart C. McDonald.)*

This new clause seeks to delay application of No Recourse to Public Funds rules during the current pandemic and until such time as Parliament decides.

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 56—*Recourse to public funds*—

"(1) For the purpose of this section, a person ("P") is defined as any person who, immediately before the commencement of Schedule 1, was—

(a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or

(c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the EU Withdrawal Act 2018, to be recognised and available in domestic law after exit day.

(2) Regulations under section 4(1) may not be made until the Government has brought forward legislative measures to ensure that P can access social security benefits, where P is habitually resident, including repealing or amending the following provisions insofar as they relate to P—

(a) section 3(1)(c)(ii) of the Immigration Act 1971;

(b) section 115 of the Immigration and Asylum Act 1999;

(c) any provision in subordinate legislation, which imposes a "no recourse to public funds" condition on grants of limited leave to enter or remain; and

(d) any other enactment or power exercised under any other enactment, which makes immigration status a condition to access social security benefits."

This new clause seeks to restrict measures prohibiting recourse to public funds.

New clause 59—*Analysis of exemption from no recourse to public funds condition*—

"(1) The Secretary State must produce a report on the impact of no recourse to public funds conditions for those who meet the criteria in subsection (2).

(2) The report under subsection (1) must include the impact on EEA and Swiss nationals—

(a) with children;

(b) with pre-settled status; and

(c) who are victims of domestic abuse.

(3) For the purposes of this section, a public fund is defined as any of the following:

(a) attendance allowance;

(b) carer's allowance;

(c) child benefit;

(d) child tax credit;

(e) council tax benefit;

(f) council tax reduction;

(g) disability living allowance;

(h) discretionary support payments by local authorities or the devolved administrations in Scotland and Northern Ireland which replace the discretionary social fund;

(i) housing and homelessness assistance;

(j) housing benefit;

(k) income-based jobseeker's allowance;

(l) income related employment and support allowance (ESA);

(m) income support;

(n) personal independence payment;

(o) severe disablement allowance;

(p) social fund payment;

(q) state pension credit;

(r) universal credit;

(s) working tax credit; and

(t) Immigration Health Surcharge (IHS).

(4) For the purposes of this section—

"domestic abuse" has the same meaning as in section 1 of the Domestic Abuse Act 2020;

"victim" includes the dependent child of a person who is a victim of domestic abuse."

This new clause will require the Government to consider the impact of no recourse to public funds exemption.

New clause 62—*Recourse to public funds: EEA and Swiss nationals with dependants—*

"(1) EEA and Swiss nationals with dependants under the age of 18 must be exempt from any no recourse to public funds condition that would otherwise be placed on them under Immigration Rules.

(2) For the purposes of this section, a public fund is defined as any of the following—

(a) attendance allowance;

(b) carer's allowance;

(c) child benefit;

(d) child tax credit;

(e) council tax benefit;

(f) council tax reduction;

(g) disability living allowance;

(h) discretionary support payments by local authorities or the devolved administrations in Scotland and Northern Ireland which replace the discretionary social fund;

(i) housing and homelessness assistance;

(j) housing benefit;

(k) income-based jobseeker's allowance;

(l) income related employment and support allowance (ESA);

(m) income support;

(n) personal independence payment;

(o) severe disablement allowance;

(p) social fund payment;

(q) state pension credit;

(r) universal credit;

(s) working tax credit; or

(t) Immigration Health Surcharge (IHS)."

This new clause would allow EEA nationals and Swiss nationals with children under the age of 18 to access public funds.

Stuart C. McDonald: It is a pleasure to serve under your chairmanship, Mr Stringer. In tabling new clauses 45 and 56, my party wants to set out our opposition to how the no recourse to public funds regime is working, both in general and specifically during the current covid crisis. We think it is having some drastic effects, and therefore refuse to extend it to EEA nationals during the current public health crisis, or indeed more generally. Of course, we urge the Government to go further by also disapplying NRPF rules in relation to other migrants. Because of this Bill, any EEA migrants coming to the UK under the new system will face the same problems as those coming from outside the EEA. They will be prohibited from accessing public funds until they are granted permanent residence, something that will take five years for some migrants and 10 for others, if it is granted at all. No recourse to public funds conditions will be applied to the family members of UK citizens and settled persons, as well as those to whom we have extended an invitation to come on a work visa. That means that individuals, families and children are prevented from accessing most in-work and out-of-work benefits, including child benefit, tax credits, universal credit, income-related employment support allowance, income support, local welfare assistance schemes, housing benefit and social security.

Mr Goodwill: Does the hon. Gentleman agree that the term "no recourse to public funds" is slightly misleading, because there are a number of benefits that people are entitled to, including the furlough scheme, should they be entitled to that?

Stuart C. McDonald: It is welcome that the furlough scheme is extended to these individuals, but it is nowhere near enough. I will come to specific problems in relation to covid later in my short speech.

In short, if these new clauses are not agreed, many thousands more people who are here because they are family members or because they are wanted for their work will be put at risk of poverty and insecurity.

Those who come here with limited leave visas certainly do not expect to have to rely on public funds, but as we have seen all too well in recent months, unforeseeable events that are completely beyond their control can have a dramatic impact on their capacity to sustain themselves and their family. I am talking about coronavirus, but the ability of individuals to support themselves can be affected for reasons that are many and varied. It could be economics, illness within the family, relationship breakdown, accidents or the death of a loved one.

We have allowed and welcomed people who come to work here or to join their families. There is no reason or justification for denying them the safety net and security that we regard as essential for everybody else.

Included in those impacted by the NRPF rules are parents who are working hard in roles that are absolutely crucial at this time, including care workers, NHS staff, cleaners and people involved in food preparation. Some are working extraordinarily long hours but still cannot access even limited top-up benefits to help them meet the needs of their children.

Thanks to the Children's Society, we know that many of the families detrimentally impacted by the rules are headed by single mothers, often from black, Asian and minority ethnic backgrounds. There are also significant numbers of families that include children with special educational needs who require additional help from supporting agencies.

It is also important to note that many of the children who will be victims of the NRPF rules will have been born and brought up here. I link back to my amendment on fees for registering British citizens; some of these children would be entitled to British citizenship, but cannot access it, either because they are not aware of it

[Stuart C. McDonald]

or because they are priced out of it. There will even be British citizens among those children, who are being punished because their parents' immigration status prevents them from accessing support.

The disastrous impacts of all the rules are well established. People who are prohibited from accessing public funds are clearly at risk of destitution, with no access to the social safety net. The impact on children can be particularly devastating, in so far as deprivation is clearly detrimental to their long-term growth and development. As the Children's Society points out, living in poverty even for short periods of time has significant detrimental effects on children's outcomes, both in childhood and in later life, affecting their school attainment, cognitive and behavioural development, and physical and mental health.

Recently, the High Court found no recourse to public funds policies to be unlawful, holding that the relevant immigration rules and casework instructions did not adequately account for human rights obligations. That case was brought by an eight-year-old boy whose mother was subject to NRPF conditions and on the 10-year route to settlement. She was a carer for mentally disabled clients, before the imposition of the NRPF conditions led her and her son to experience periods of destitution. They moved house repeatedly, with the boy having been moved five times before the age of eight, and at one point they were street homeless. The court found that the Home Secretary must not impose or should lift NRPF conditions when it is clear that a person is at risk of imminent destitution in the absence of public funds, rather than waiting for that destitution to take place. As legislators, we should be doing better than that; we should avoid families being at risk of destitution at all. We invite families and individuals to come to undertake vital work here, and we should extend the safety net that we enjoy ourselves.

As in other areas, the Home Office sometimes attempts to pass the buck to local authorities and argues that support under legislation relating to children should mean a safety net of sorts is provided, but the number able to access such support is extremely limited, and the support is also incredibly restricted—sometimes as little as £3 per day per child. As I understand it, children are not even allowed to access free school meals.

The Home Office will also point out that, on application, NRPF conditions can be lifted, but those on the frontline say that such applications are incredibly difficult to have success with and have to be repeated multiple times. Those who apply who are currently on five-year routes to settlement will instead be placed on a 10-year route to settlement, with none of their residence to date being counted towards that target. The price of access to that safety net is insecurity.

Mr Goodwill: Does the hon. Gentleman not accept that benefits that people are entitled to by virtue of their paying national insurance contributions are able to be paid, including important ones such as contribution-based jobseeker's allowance, incapacity benefit and, of course, retirement pension?

2.30 pm

Stuart C. McDonald: I do not think I have denied that certain benefits are still available to people, but none of that explains or resolves all the challenges that I outlined. For all these reasons, we believe that the no recourse to public funds rule should be got rid of altogether.

That is all the more urgent in relation to the covid-19 crisis, for which the implications of these policies are absolutely counterproductive. People who are prohibited from accessing public funds will feel compelled to continue to work, even when doing so is not safe for them or their families. As I said, their inclusion in the furlough scheme is welcome, but someone who is subject to NRPF and is dismissed from their job will obviously not have access to the furlough scheme, and nor can they claim universal credit. They are at real risk of destitution.

We all watched the Prime Minister at the Liaison Committee recently. He was questioned, quite memorably, by the Chair of the Work and Pensions Committee, who provided an example to the Prime Minister of parents who had lived in the UK for at least 15 years and who had two children, aged 11 and 13. They found themselves facing destitution for reasons entirely beyond their control. It was telling that the Prime Minister could not explain why the family was not able to access support. Of course, they should be able to access support, and these new clauses would allow that to happen.

Kate Green: It is a pleasure to serve under your chairmanship, Mr Stringer. I rise to speak to new clause 59, tabled in my name and those of my hon. Friends. The new clause would require the Secretary of State to produce an analysis of the impact of the no recourse to public funds condition on EEA and Swiss nationals, including those with children, those with pre-settled status and those who are victims of domestic abuse.

As we heard from the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, no recourse to public funds conditions can prevent access to some welfare benefits, to free school meals and to other support for working families who may have been paying tax. That may include families with children, including British-born children, and other vulnerable people. As we heard, application can be made to lift the condition, but it is necessary to reapply at each visa renewal, and the condition can be reinstated.

The impact of no recourse to public funds conditions on the poorest households has been magnified, as the hon. Gentleman said, by the covid crisis. The Greater Manchester Immigration Aid Unit reports that applications to lift the condition are subject to considerable delay; that the process for applying is overcomplicated, and that is exacerbated for those who struggle to make digital applications; that the evidential requirements are high and unnecessarily onerous; and, as a result, that decisions are still awaited weeks after applications have been submitted.

This makes it harder for those subject to the condition to achieve social distancing or to self-isolate if they need to. They are more likely to be living in overcrowded accommodation, with many building up rent arrears. Even though they may, as the Minister rightly says, be eligible for the Government's furlough scheme, they are under considerable pressure to keep working in many cases. Often, their children are not in school and they cannot access free childcare, forcing them to rely on

friends and family to provide that care, meaning that children are moving between households, further increasing the covid risk.

Meanwhile, Safety4Sisters tells me that local authority housing services in Greater Manchester have been turning women subject to no recourse to public funds conditions away from the emergency homeless accommodation set up during the crisis, even though that should not happen. This has resulted in at least one vulnerable woman becoming street homeless in Manchester in recent weeks, until she was found by the police and taken to safety.

Given these shocking circumstances, Labour has called for the no recourse to public funds condition to be suspended during the covid emergency. As we heard, new clause 45, proposed by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, would give effect to such a suspension, while ensuring that, if Parliament wishes to reinstate the regime as soon as the crisis ends, it can do so. Suspension of the condition now would not only provide vital relief to families who have had their livelihoods catastrophically affected by covid, but would give the Government the opportunity to give full consideration to the impact of the no recourse to public funds condition more broadly and to future policy.

As we know, and as we have just heard, the Prime Minister was apparently surprised to hear about the effects of the condition during his recent session with the Liaison Committee, and he was right to say that

"people who have worked hard for this country, who live and work here, should have support".

Sadly, just a week later, on 3 June, in his response in Prime Minister's questions to my hon. Friend the Member for Sheffield Central (Paul Blomfield), he appeared to backtrack on his commitment to see what could be done to help them.

It is, of course, welcome that the Government have now issued guidance to give effect to the judgment in the case described by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, but this still leaves many potentially vulnerable people at risk of being subject to the condition. That includes those EU nationals who are here now but are able to secure only pre-settled status. They will not meet the habitual residence test and will be ineligible for non-contributory benefits; that includes disabled people, who will not be able to claim universal credit. I am sure my hon. Friend the Member for Kingston upon Hull North will speak to her new clause 62 and the damaging effect the condition could have on EEA and Swiss national families with children.

Given the potential impact on vulnerable groups, I hope the Minister will accept the suggestion of an analysis of the impact of the no recourse to public funds condition in the constructive spirit in which it is offered. If the Prime Minister's commitment to review the application still holds, and if, as is reported, the Government intend to bring forward a further immigration Bill in the near future, they could take that opportunity to legislate to make any changes Parliament then deems necessary. The evidence base that such a review could supply would also be a useful prerequisite for a decision on the broader proposals set out in new clause 56 by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, were the Government minded to consider them. I commend our new clause to the Committee.

Dame Diana Johnson: It is a pleasure to serve under you this afternoon, Mr Stringer. I wish to speak to new clause 62, on the no recourse to public funds policy and to support new clause 59, tabled by my hon. Friends.

New clause 62 would exempt EU, EEA and Swiss nationals with dependants under the age of 18 from being subject to any NRPF condition that would otherwise be placed on them under the immigration rules. Many believe that these protections should apply to all families, regardless of their nationality, but for the purposes of the Government's tightly drawn Bill, the new clause is limited in the way I have described.

Many find it astonishing that this condition is applied to children at all. Having NRPF means that the life chances of thousands of children are dictated by their parents' inability to access support from the social security system because of their immigration status, even though the children themselves might be British.

I know that the Minister will use his concluding remarks to say that limiting access to public funds for these children and families is in the public interest and that they should be paying in to the system before they benefit from it. He will know that many of the families affected are those of key workers, who are at the frontline at this very moment in the fight against coronavirus. We are talking about NHS hospital cleaners, and about people who work in food preparation or social care, but they are being denied the same access to the safety net that they are working within. These families are paying income tax, council tax, immigration application fees and the health surcharge. It is calculated that if a family started their 10-year settlement journey in 2012, assuming they were not successful in getting fee waivers, and fees did not increase again, a single mum with two children would be expected to pay more than £23,000 for the family to settle in 10 years. A family of five—a couple with three children—would be expected to pay more than £39,000 to settle in the UK.

The NRPF does the opposite of making work pay, because families may end up forced into destitution if parents try to work but cannot access benefits. Working parents, single mums, mothers fleeing domestic violence, parents who have children born in the UK and children with British citizenship currently cannot access benefits to which they should be entitled. For children and families, that includes not being able to access benefits to support children's upbringing and families' wellbeing, to ensure that children have the same life chances as their peers.

As we have already heard, in May 2020, the Unity Project and Project 17 supported an eight-year-old British boy in taking the Government to court over the policy. The court ruled that the NRPF policy breached article 3 of the European convention on human rights, which prohibits inhumane and degrading treatment.

Applicants can apply to have their NRPF condition removed if they are likely to become destitute, but the process is time-consuming and requires specialist advice, which is difficult to obtain, especially during the current pandemic. NRPF families may be able to access support under section 17 of the Children Act 1989, which is often the only safety net available. That is payable, as we all know, through local authorities, but the pressure of austerity and cuts to local council budgets have left councils largely unable to offer much support.

[Dame Diana Johnson]

Section 17 is often referred to by the Government as the basic safety net for migrant families with NRPF, but there is little support—sometimes as little as £3 per child per day—which makes it nearly impossible to meet the basic needs of a child, let alone support them to have a healthy, happy childhood. We have to acknowledge that that, again, puts an unnecessary strain on stretched local authority budgets.

Most, if not all, services that support migrant families with NRPF state that having no recourse to public funds increases the risk of families becoming trapped in a cycle of extreme poverty, vulnerability and abuse. Many children in NRPF families go without things that other children get to enjoy and that are important for their development, including, for example, days out as a family or school trips. One example that the Children's Society gave me was of Hamid, who said that if his son's classmates were going on a school trip, he would not take his son to school that day, because he did not want him to see his friends going while he stayed behind because they just could not afford it.

Other Government Departments are beginning to recognise the consequences of NRPF. The Department for Education has temporarily allowed children with NRPF to access free school meals, and the Ministry of Housing, Communities and Local Government has instructed local authorities to house homeless people with NRPF. In the longer term, the solution lies with the Home Office, so I ask the Minister to give an assurance to the Committee that safeguards will be put in place to ensure that more families will not be forced into destitution as a result of a condition placed on their leave to remain.

The Government have made it clear that they want to wrap their arms around everyone during this time of crisis. Vulnerable children are at the heart of the Government's agenda, so the new clause will ensure that that can happen. I commend it to the Committee.

Kevin Foster: After the end of the transition period, EEA citizens coming to the UK will be subject to the same requirements as non-EEA citizens and the same conditions restricting access to public funds under our new global immigration system. The new clauses would maintain a system in which EEA citizens, including those arriving in future, continued to enjoy preferential treatment over non-EEA citizens in relation to their access to benefits. That is not the Government's intention, nor would it be fair, and it is not something that the British people would support, given the mandate that they have given to the Government.

New clause 45 would delay the introduction of the no recourse to public funds condition to EEA citizens until Parliament had decided on the matter in the light of the current pandemic. However, as has been touched on by some Opposition Members, to their credit, the Government have already made provision to support people through the pandemic, including those subject to no recourse to public funds, and are keeping the situation under review.

It should also be noted that the no recourse to public funds condition does not bar access to all benefits, as pointed out by my right hon. Friend the Member for Scarborough and Whitby. People covered by it may still, for example, access contribution-based benefits and statutory sick pay. Exceptions are also made for vulnerable migrants, such as refugees and those granted humanitarian protection. Those granted leave on the basis of their family life under article 8 of the European convention on human rights can apply to have the conditions lifted if they would otherwise be destitute.

2.45 pm

New clause 56 would enable EU citizens already resident to continue to access public funds in the future on the same basis as they currently can. I understand the sentiment behind the proposal from the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, but I cannot agree to it, as we have now left the European Union. The Government have given clear and firm commitments to protect the entitlements of EEA citizens resident in the UK before the end of the transition period. We have delivered those protections through the European Union (Withdrawal Agreement) Act 2020, and by establishing the EU settlement scheme, about which we have talked regularly in Committee.

Mr Goodwill: Does my hon. Friend know whether any other EU countries have extended to UK citizens living in the European Union the type of benefits proposed by the new clauses?

Kevin Foster: It is probably worth saying that many European welfare schemes are based on slightly different premises—for example, social insurance schemes. As we reflected on when we talked about healthcare costs, people accessing healthcare services in other European countries may be required to pay for things that the NHS provides free at the point of need to UK nationals. It is hard to give different examples, but there are protections in the withdrawal agreement for UK citizens living in the EU before the end of the transition period. To be fair, many countries have been good in wanting proactively to support UK citizens living in their nation. I cannot give a list of each countries' individual migration system off the top of my head, but it is probably safe to say that it is relatively common around the world for those who have newly arrived in a country to be unlikely to be able to access and qualify for a range of welfare provisions.

EEA citizens who apply under the EU settlement scheme secure their rights in UK law, so they can access benefits and services on at least the same basis as before they were granted that status. The Government have provided guidance for local authorities to enable them to support vulnerable EEA citizens in making an application under the scheme. The Government have also made available to local authorities and charities a further £8 million, in addition to the £9 million announced last year, to help them to assist vulnerable EEA citizens in making applications.

New clause 56 would risk impacting the Government's ability to make regulations under the power in clause 4, the importance of which I have set out previously in Committee: to ensure that our laws operate coherently once free movement ends; to align the immigration treatment of newly arriving EEA citizens and non-EEA citizens from 1 January 2021; and to make relevant savings and transitional provisions for resident EEA citizens that cannot be made under powers in the 2020 Act.

New clause 59 would require the Government to publish a report on the impact of the no recourse to public funds condition on certain groups of EEA nationals. This is not necessary; the Government are already required to consider the impact of policies on all those to whom they apply, not just certain groups.

On new clause 62, I share the interest of the hon. Member for Kingston upon Hull North in ensuring the wellbeing of children, but I do not believe the new clause is necessary. Immigration law already provides that local authorities may intervene where required, regardless of the immigration status or nationality of the child or parent. The safeguards in place for the vulnerable will be retained, but it is only right that the future immigration system continues to play a part in ensuring that taxpayers' funds are protected for the residents of the UK, whose money it is, and in assuring them that immigration continues to benefit the country as a whole and is not based on creating new costs and burdens for public resources.

I understand and appreciate the intentions behind new clause 62, but it would provide EEA citizens with greater access to benefits in the UK than they currently have under UK law. Generally speaking, under EU free movement law, EEA citizens may currently access benefits when they exercise a qualifying EU treaty right—for example, through employment or self-employment, or when they have become permanent residents. The new clause would remove that qualification and provide that any EEA citizen in this country with a child, for whatever period and in whatever capacity, may qualify for welfare benefits.

We believe that a general qualifying threshold of five years for access to benefits in immigration procedures is the right one, as it reflects the strength of a person's connection to the United Kingdom and the principle that people should come to the UK to contribute, rather than to take advantage of, and place pressures on, taxpayer-funded services and welfare payments. Non-EEA migrants who come to live in the UK are currently expected to provide for any children they have without recourse to public funds. There can be no reasonable justification for adopting a different principle for EEA citizens arriving in the UK when the new immigration system is introduced, given that we have now left the European Union.

Finally, new clauses 59 and 62 incorrectly reference the immigration health surcharge. The immigration health surcharge is not a public fund. It is a contribution made by temporary migrants towards the costs of the NHS services they can access from day one. These new clauses would undermine the intention to establish a unified immigration system that builds public confidence in its operation, and therefore the Government cannot accept them.

Stuart C. McDonald: People do not come to this country to take advantage of the social security system; they come here to work or because they are family members of British citizens or settled persons. Having asked them to come to work or join family members here, I regard it as unfair that we do not extend the same social safety net to them. We are not arguing for a discriminatory system.

As the Minister knows, we are limited by the scope of the Bill. I feel that we have not got to the fundamental principle of why we can ask people to contribute on the one hand and yet not provide them with the same safety net. This is particularly urgent in relation to the coronavirus, and we need fast action. The Minister referred to this matter being under review, but we are several months into the crisis and we will have to revisit this issue on Report. In the meantime, I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 46

FAMILY REUNION AND RESETTLEMENT

"(1) The Secretary of State must make provision to ensure that an unaccompanied child, spouse or vulnerable or dependant adult who has a family member who is legally present in the United Kingdom has the same rights to be reunited in the United Kingdom with that family member as they would have had under Commission Regulation (EU) No. 604/2013.

(2) The Secretary of State must, within a period of six months beginning with the day on which this Act is passed—

(a) make regulations amending the Immigration Rules in order to preserve the effect in the United Kingdom of Commission Regulation (EU) No. 604/2013 for the family reunion of unaccompanied minors, spouses and vulnerable or dependant adults; and

(b) lay before both Houses of Parliament a strategy for ensuring the continued opportunity for relocation to the UK of unaccompanied children present in the territory of the EEA, if it is in the child's best interests.

(3) For the purposes of this section, "family member"—

(a) has the same meaning as in Article 2(g) of Commission Regulation (EU) No. 604/2013;

(b) also has the same meaning as "relative" as defined in Article 2(h) of Commission Regulation (EU) No. 604/2013;

(c) also includes the family members referred to in Article 16 (1) and 16 (2) of Commission Regulation (EU) No. 604/2013.

(4) Until such time as Regulations in subsection (2) come into force, the effect of Commission Regulation (EU) No 604/2013 for the family reunion of unaccompanied minors, spouses and vulnerable or dependent adults with their family members in the UK shall be preserved."—*(Stuart C. McDonald.)*

This new clause would have the effect of continuing existing arrangements for unaccompanied asylum-seeking children, spouses and vulnerable adults to have access to family reunion with close relatives in the UK.

Brought up, and read the First time.

Stuart C. McDonald: I beg to move, That the clause be read a Second time.

It is a pleasure to address new clause 46, this time with a cross-party hat on, rather than my usual SNP hat. I am grateful to the Chair of the Home Affairs Committee, the hon. Member for Kingston upon Hull North and others for co-ordinating on this new clause.

As Members will know, the European Union has in place a fairly mature—it is certainly not perfect, but it is long standing—system of deciding which member state should appropriately consider a claim for asylum. For example, if an unaccompanied child is found on one of the Greek islands seeking asylum and it is known that they have family members in another EU country, few of us here would argue against the notion that the child should be reunited with their family and the claim considered in that member state.

[Stuart C. McDonald]

In January this year, Parliament passed section 37 of the European Union (Withdrawal Agreement) Act 2020, which regrettably abolished the previous requirement on the Government to seek to negotiate an alternative to replace the family reunion provisions in the EU's Dublin regulation. At the time, the Government were full of assurances that this did not represent a downgrading of their ambitions and said that they would protect family reunion for unaccompanied children in the Brexit negotiations, but in its current form, the UK's proposal to the EU rows back on those assurances and would leave hundreds of children stranded.

There are numerous problems with what the Government propose. Most fundamentally, the proposed text removes all mandatory requirements on the Government to facilitate family reunions and would make a child's right to join their relatives entirely discretionary. The text also intentionally avoids providing rights to children. It does not provide for appeals and attempts to put these issues beyond the reach of UK courts. Other categories of vulnerable refugees, including accompanied children and adults, would lose access to family reunion altogether. A series of other key safeguards are removed, including strict deadlines for responses and the responsibility for gathering information being on the state rather than the child.

This issue is hugely important. Between 2009 and 2014, before mandatory provisions were introduced by Dublin III, family reunions to the UK were carried out at an average rate of 11 people annually. Between 2016 and 2018, after the mandatory provisions were introduced by Dublin III, family reunions to the UK were carried out at an average rate of 547 people annually. The Government were not straight with Parliament when they proposed clause 37 of the withdrawal Bill earlier this year, and I think they have behaved in a rather upsetting manner, if I can put it like that.

We now have a situation where there are unaccompanied child refugees and refugees more generally living in appalling conditions in Greece and France. Of course those countries are under an obligation to do more to support and assist them, but many of those kids have family here, and I cannot see how any reasonable person can argue against the logic, the sense and the simple compassionate idea that that child should be reunited with their family in this country and have their asylum claim decided here.

The Government should stop messing about, stop trying to water down their previous commitments and revert to the obligation that Parliament previously placed upon it, which is to negotiate a full and proper replacement of the Dublin regulations, including an obligation to allow children to be reunited with their families in the United Kingdom.

Holly Lynch: It is a pleasure to follow the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, the SNP spokesperson, who used his experience to make a very convincing contribution.

Labour will support new clause 46, which was tabled by the Chair of the Home Affairs Committee with the support of a number of its members, as well as the Chairs of the Joint Committee on Human Rights and the Housing, Communities and Local Government Committee.

As we have heard, as a member of the EU, the UK has participated in the Dublin III regulation, which has allowed people seeking asylum in Europe to be transferred to the UK on the basis of family unity and to have their asylum claims considered in the UK. The Dublin III mechanism generally affects a small number of children, but it has a transformative effect on their lives. It has become an increasingly important family reunion route, with more than 1,600 people having been reunited through it since the start of 2018.

However, this route will end once the transition period comes to an end on 31 December 2020. While the Government have committed to seeking an arrangement through the UK-EU negotiations that would maintain a family reunion element of the Dublin system for separated children, we would very much like assurances that the Government are firmly committed to this.

We are concerned that, unlike Dublin III, the current proposals would not be mandatory and would take us back to the days when child refugees were reunited with family only at the discretion of the national Government. That would require the transferred person to make an asylum claim and only secure family unity pending a decision on that claim. Labour, along with the Families Together coalition, supports new clause 46. We want to see a system that retains the family reunion route under the Dublin III regulation for all families.

This is Refugee Week, and family reunion has been a long-standing feature of the UK's immigration system. The United Nations High Commissioner for Refugees has said that

"there is a direct link between family reunification, mental health and successful integration."

By diminishing children's chances of reaching their relatives legally, restrictive rules sadly only drive people to take more and more perilous alternatives, putting lives at risk and empowering people smugglers.

Labour joins Safe Passage, Amnesty International, the British Red Cross, Oxfam, the Refugee Council, the UNHCR and so many others who make up the Families Together coalition to urge the Government to prioritise family reunion, so that children, spouses and vulnerable adults can reunite with their family and close relatives, by maintaining safe and legal routes for people to come to the UK.

At a time when we are all feeling the effects of separation from our families due to the pandemic, the Government must recognise the need to protect all child refugees adequately and provide a legal and safe means for the reunification of families.

Dame Diana Johnson: In speaking to new clause 46, I want to be clear that this is not about placing additional burdens on the Home Office or Government; it is about asking the Government not to water down their obligations to child refugees, but instead to carry on doing what they already do.

As we have heard, new clause 46 is intended to ensure that the safe and legal routes to the UK for refugees with relatives here and for unaccompanied children without family are protected in domestic legislation. I gently say to the Minister that he may well talk about the Dubs scheme—I know that all the places on the

Dubs scheme have been filled—but I do not think that that discharges us of our moral duty to help children on the continent.

Indeed, Lord Dubs says that some of the conditions that he has seen in camps in Europe are worse than those in the region, because of the utter lack of hope of those living in those camps. We can give them hope by adopting the new clause and showing that we are not turning our back on child refugees just a few hundred miles away. In all his campaigning on these issues, Lord Dubs has always maintained that he believes that public opinion is behind him when it comes to child refugees. It is heartening to know that recent Ipsos MORI polling suggests Lord Dubs is entirely right in his assessment of British feeling on this. Some 79% of people polled said that children should be able to reunite with parents, and over half said children should be able to reunite with siblings, grandparents, aunts and uncles. The British public supports refugee family reunion and I hope the Minister will do the same.

3 pm

Kevin Foster: The Government are committed to the principle of family reunion and supporting vulnerable children. We recognise that families can become separated because of the nature of conflicts and persecution, and the speed and manner in which people are often forced to flee their country.

We will continue to provide safe and legal routes for families to reunite in the UK. We have a proud record of providing protection to those who need it, including children, and of reuniting families under the existing immigration rules. The new clause fails to take into account our negotiations with the EU, which I will come to later.

The UK continues to be one of the world's leading refugee resettlement states. We resettle more refugees than any other country in Europe and are in the top five countries worldwide. Since September 2015, we have resettled more than 25,000 vulnerable refugees in need of protection through our refugee resettlement schemes, with around half being children. We can be proud as a country of our ambitious commitments and achievements. The Government are delighted that their overall approach was endorsed in the general election in December by the British public.

Furthermore, the UK already has a wide range of provisions in existing immigration rules that allow UK-based family members to sponsor children and other relatives to enter the UK for family reunion purposes. Those rules apply to a sponsor who is a refugee, a settled person or a British citizen. All those rules are unaffected by the UK leaving the EU and they will continue to be available after the transition period ends.

Our refugee family reunion policy is intended to allow those granted refugee status or humanitarian protection in the UK to sponsor pre-flight, immediate family members to join them here. Where appropriate, our policy includes scope to allow other family members to reunite with refugees in the UK. This may be on an exceptional basis or simply under a different route.

The new clause fails to distinguish between the very different circumstances of sponsors who are refugees and those who are asylum seekers—those seeking refugee status. It is important that the sponsor already has refugee or humanitarian leave in the UK before they are able to sponsor family members to join them. Allowing individuals to sponsor family members to join them in the UK before a decision on their asylum claim is made creates greater uncertainty for families, who may be unable to remain in the UK.

Very careful consideration is required before we extend family reunion provisions, to guard against significantly increasing the number of people who could qualify for family reunion, but who do not necessarily need protection themselves and who may be making unfounded claims of our protection systems for economic migration purposes. That could reduce our capacity to assist the most vulnerable refugees.

In the year ending March 2020, over 7,400 refugee family reunion visas were issued to partners and children of those previously granted asylum or humanitarian protection in the UK, which—hon. Members may be interested to know—is 37% more than in the previous year. There are further provisions in the immigration rules that allow those with refugee leave or humanitarian protection to sponsor adult dependant relatives living overseas to join them. This is where, as a result of age, illness or disability, a person requires long-term personal care, which can only be provided by their relative in the UK, without recourse to public funds. The same approach is applied to British citizens who wish to sponsor such relatives.

Furthermore, under part 8 of the immigration rules, children with relatives in the UK with refugee status or humanitarian protection are able to apply to join them in the UK, where there are serious and compelling family or other considerations that make exclusion of the child undesirable and where suitable arrangements have been made for the child's care. In addition, appendix FM of the immigration rules already provides routes for British and settled sponsors, and those with protection-based leave, to sponsor family members to join them in the UK. We are aware that financial and other requirements are in place in those rules, which have been upheld as lawful by the Supreme Court. It is appropriate that all those who seek to sponsor a family member under these routes can meet a consistent set of requirements.

The new clause proposed by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is based on the Dublin regulation, which is an EU provision. The UK is no longer an EU member state. As a sovereign country, we already have our own routes for adults and families to be reunited in the UK, which are substantial, as I have just set out. As a sovereign state, it is important that we do not seek to recreate EU laws unilaterally, without considering what we want the UK's migration and humanitarian protection system to look like. Importantly, we have been very clear that, while we are no longer in the EU, the UK and the EU have a long history of working together and we have recognised that it is in our best interests to continue to do so. That is why we are pursuing, through formal negotiations, new reciprocal arrangements with the EU for the family reunion of unaccompanied asylum-seeking children in either the UK or the EU with specified family members in the EU or the UK, where it is in the child's best interests.

We published our draft legal text as a constructive contribution to the negotiations. A negotiated agreement for a state-to-state referral and transfer system would

[Kevin Foster]

provide clear and consistent processes between the UK and EU member states, ensuring appropriate support for the child and guaranteeing reciprocity, yet these guarantees cannot be provided for in domestic UK provisions alone because they are inherently reciprocal. In addition, subsection (2)(a) of the new clause would require immigration rules to be made by regulations. That is not how immigration rules are made; they are made under the procedures set out in the Immigration Act 1971.

Finally, the new clause would require the Government to lay before Parliament a strategy on the relocation of unaccompanied children. The scope of this strategy is ambiguous. It is unclear whether it relates only to family reunion or whether it covers asylum-seeking children. The explanatory note accompanying the new clause suggests that it is solely about family reunion, but that is not reflected in the drafting. Therefore, for the reasons that I have outlined, the Government are not able to accept the new clause.

Stuart C. McDonald: I am grateful to the Minister for his response. I welcome the fact that the Government are committed to the principle of family unity. Indeed, the Minister was right to point out some of the good work that has been done in recent years, particularly in terms of resettlement. Currently, some of that tends to be forced upon the Home Office, rather than being designed and promoted within it, but nevertheless it is welcome and that has been a success.

In other senses, I fundamentally disagree with the Minister. He cited some rules that had been deemed lawful by the Supreme Court. That is not exactly a ringing endorsement, but, nevertheless, it is clear that some of the rules he was referring to and the financial requirements are absolutely impossible—so impossible that the rules are almost worthless.

The SNP wants the UK to go further on family unity. My hon. Friend the Member for Na h-Eileanan an Iar (Angus Brendan MacNeil) had the endorsement of Parliament to expand the family reunion rules and, of course, the Government managed to use the system to ignore that vote. Given what we have heard today and in previous weeks, including the publication of that text, I fear that we are in danger of going backwards, and not just in terms of Dublin. We urgently need to hear what the future of resettlement will be, so we will be watching carefully.

In the meantime, Mr Stringer, we will revisit this matter on Report. Meanwhile, I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 51

Immigration Detention: Removal from Association

"(1) Section 153 of the Immigration and Asylum Act 1999 is amended as follows.

(2) After subsection (2) insert—

'(3) Rules made under this section must prohibit the involuntary removal from association of any affected person detained in a removal centre save for where that is—

(i) reasonably necessary to protect that person or another person from immediate harm; and

(ii) for no longer than is necessary for this purpose and for no longer than maximum 24 hours.

(4) For the purposes of this section—

"affected person" means any person whose rights are affected by repeal of legislation by or under Schedule 1 of the Immigration and Social Security Co-ordination Act 2020 or by regulations made under section 4 of that Act.

"removal from association" means any restriction on a person associating with others that is not common to all persons then detained at the same removal centre.'" .—*(Stuart C. McDonald.)*

This new clause seeks to prohibit removal from association with others in detention save for removal where that is necessary.

Brought up, and read the First time.

Stuart C. McDonald: I beg to move, That the clause be read a Second time.

I had originally anticipated that this would be part of a much wider debate on immigration detention, but it looks like we will be having that on Report instead of in Committee. I am grateful to Medical Justice for flagging up the continued use of segregation in immigration removal centres, which we believe risks causing severe and permanent damage to detainees. In the past decade, at least two deaths in IRCs have been directly linked to the use of segregation. Segregation has played a role in four High Court cases in which a detainee's detention or conditions of detention were found to amount to inhuman and degrading treatment in breach of article 3 of the European convention on human rights. Countless more detainees have suffered the negative impacts of segregation on their mental and physical health.

What we are really talking about is the practice of keeping a detainee separate from the rest of the IRC population. It is usually done by placing the detainee in a special unit at the centre, either alone or with other detainees being held under similar conditions. Segregated detainees can be locked in their cells for up to 23 hours a day, with severe restrictions placed on their activities and interactions with others.

In short, segregation is one of the most severe and draconian measures used in any detainment setting. Detainees can be held for an initial period of 24 hours, but that can be extended to seven days and 14 days with the authorisation of the Secretary of State. It can then be subsequently renewed, if required.

The effects of segregation on physical and mental health can be devastating. It has been found to lead to increased rates of anxiety, social withdrawal, hallucinations and suicidal thoughts. Even after relatively short periods of time, the damage done to a person's health can be long-lasting and in some cases permanent. Research has shown that segregation can have a negative effect on the health of anyone who experiences it, and the risk for those with pre-existing mental health conditions or other vulnerabilities is particularly high. People who have been held in similar conditions in the past as part of torture, for example, may find the experience extremely re-traumatising.

The stated justification for the use of segregation in IRCs is the interests of safety and security or for refractory or violent detainees. However, a report from Medical Justice in 2015 showed that segregation is being used as

a form of punishment and to house individuals with mental health issues that cannot be adequately managed in detention, including to manage detainees at risk of self-harm.

Inspection reports from independent monitoring boards and Her Majesty's inspectorate of prisons continue to raise concerns about the use of segregation in IRCs. Examples of such practices include detainees inappropriately segregated for months and years, with one detainee being segregated more or less continuously for 22 months. Another detainee was only transferred to psychiatric hospital following 80 days in segregation, and yet another was segregated more than eight times during her 800 days in detention. The issues are ongoing. Segregation is not helping people, but is, on the contrary, making things much worse.

The key point is the availability of segregation, which perpetuates the inappropriate detention of those who often end up subject to it. It allows for problem individuals or vulnerable individuals who cannot be managed in detention to nevertheless still be detained. Despite their detention being inappropriate, the Home Office knows that there is always a possibility of placing them in segregation, should their condition deteriorate or their behaviour grow increasingly difficult to manage. Once these vulnerable detainees end up being segregated, they are housed in an environment that is totally unsuited to their needs. They are placed in forced isolation, removing them from the support of their peers, as well as limiting their visibility and access to organisations that could provide help.

If the use of segregation was not an option, proper attention would need to be paid to whether it was appropriate for the individual to be in detention at all, whether they can be managed safely in an IRC or whether an alternative approach should be sought with more appropriate support in the community. That is why the safeguards and protections in place under rule 40 and rule 42 can never be adequate. We need to abolish the practice altogether.

The new clause would still allow and make provision for crisis intervention where there is an imminent risk of harm to the individual or other individuals in the IRC, but that should be the purpose of those interventions, and that should be it. Too often, that intervention is being used and abused by the Home Office. People who belong either in police custody if they have breached the criminal law, or in a mental health institution should not be detained in IRCs in inappropriate conditions for days on end. I hope the Minister will address those points and seriously look at the issue I have flagged up, because the situation cannot be allowed to continue.

Kevin Foster: I thank the hon. Member for the opportunity to debate this topic. As he will be aware, in recent years the numbers in detention overall, excluding the current period, have been declining, but a process obviously still needs to be in place to manage the detentions, the detention centres and the detention estate, as we still have it.

3.15 pm

The arrangements for removing immigration individuals from association with their fellow detainees are set out in rule 40 of the detention centre rules 2001. The day-to-day operation of rule 40 is, in turn, governed and supported by the published Home Office detention services order—DSO—of February 2017, which Home Office and contractor staff working in immigration removal centres are obliged to follow. Any decision to remove a detainee from associating with other detainees should not be taken lightly.

A decision to separate an individual from their fellow detainees and place them in rule 40 accommodation must be taken on a case-by-case basis, for the minimum amount of time necessary and only as a last resort when other options have been tried, but failed, as an effective response to the safety and security risk presented by the individual detainee. The DSO makes it clear that other options should be considered before a detainee is relocated under rule 40, based on their individual circumstances. Other options might include transfer to another residential unit within the centre, transfer to a different centre or closer supervision in the normal location. The focus throughout is on positive engagement with the detainee who has been removed from association to ensure they are able to return to the normal regime as soon as possible.

The welfare of immigration detainees is extremely important. To ensure this, immigration removal centres need to operate in as safe and secure a fashion as possible. Rule 40 is intended as a measure to support that objective. The amendment would, however, require individuals who benefit from it to be returned to association with others after an absolute maximum of 24 hours, regardless of any continuing risk the individual concerned may still pose to his or her fellow detainees.

For example, an individual detainee who has been removed from association following an assault on another detainee has to remain removed from association until such time as they can be interviewed by the police, or an arrangement is made for transfer to another centre. In such cases, removal from association is necessary not only to prevent further assault by the individual but to protect that person from possible retaliation.

If an EEA citizen poses a risk to the safe and orderly running of an immigration removal centre, it cannot be right that options for managing this risk should be constrained, as compared with the options for managing risks posed by a detainee who does not benefit from the provisions of the new clause. To do so could endanger the safety and security of detainees in a centre generally including, paradoxically, other EEA citizens. I accept that the wording is probably to get the new clause in scope to be able to have the debate about the rule more widely.

Given the reasons I have set out and given the need to ensure safety and security within detention centres, I hope the hon. Gentleman will accept the reasoning put forward for why the Government cannot accept this new clause.

Stuart C. McDonald: I am grateful to the Minister for his explanation of what should happen, but I suspect that the theory of the rules does not match the practice. The view of Medical Justice is that what the Minister has just described does not reflect what is actually happening in detention centres. I am sure this is something that we will revisit, but in the meantime I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 53

PRIVATE LIFE

'(1) This section applies when a court or tribunal is required to determine whether a decision made under the Immigration Acts in respect of a relevant person—

(a) breaches a person's right to respect for private and family life under Article 8; and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In subsection (1) a "relevant person" is any person who, immediately before the commencement of Schedule 1, was—

(a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(b) residing in the United Kingdom in accordance with a right conferred by or under any of the other amendments which is repealed by Schedule 1; or

(a) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, or immediately before the commencement of Schedule 1 continued, by virtue of section 4 of the European Union (Withdrawal) Act 2018 to be recognised and available in the United Kingdom.

(3) In a case to which this section applies, section 117C of the Nationality, Immigration and Asylum Act 2002 shall be read subject to the following modifications.

(4) Section 117C(5) shall be read as if the words "and the effect of C's deportation on the partner or child would be unduly harsh" were replaced with "and either

(a) the effect of C's deportation on the partner would be unduly harsh; or

(b) it would be unreasonable for the child to leave the UK or to remain in the UK without C."

(5) Section 117C(6) shall be read as if—

(a) the word "("C")" were inserted after "foreign criminal"; and

(b) the words "there are very compelling circumstances, over and above those described in Exceptions 1 and 2" were replaced with "either

(c) C has a genuine and subsisting parental relationship with a qualifying child and it would be unreasonable for the child to leave the UK or to remain in the UK without C; or there are very compelling circumstances, over and above those described in Exceptions 1 and 2.'—*(Stuart C. McDonald.)*

This new clause modifies the threshold for deportation of EEA nationals and family members who are parents of "qualifying children" – children who are British or have lived in the UK for 7 years or more.

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

New clause 54—*Family life*—

'(1) This section applies when a court or tribunal is required to determine whether a decision made under the Immigration Acts in respect of a relevant person—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In subsection (1) a "relevant person" is any person who, immediately before the commencement of Schedule 1, was—

(a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(b) residing in the United Kingdom in accordance with a right conferred by or under any of the other amendments which is repealed by Schedule 1; or

(c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, or immediately before the commencement of Schedule 1 continued, by virtue of section 4 of the European Union (Withdrawal) Act 2018 to be recognised and available in the United Kingdom.

(3) In a case to which this section applies, section 117C of the Nationality, Immigration and Asylum Act 2002 shall be read subject to the following modifications.

(4) Subsection (4)(a) shall be read as if the words "C has been lawfully resident in the United Kingdom for most of C's life" were omitted and replaced with "one of criteria (a) to (c) in subsection (4A) is satisfied".

(5) Section 117C shall be read as if after subsection (4) there were inserted the following words—

"(4A) The criteria in this subsection are—

(a) that C has been lawfully resident in the United Kingdom for most of C's life,

(b) that C was born in the UK, or

(c) that C arrived in the UK aged under 18 and has lived in the United Kingdom for a continuous period of seven years or more.

(4B) If the criterion in subsection (4A)(b) or the criterion in subsection (4A)(c) is satisfied, it shall be presumed that C is socially and culturally integrated in the UK for the purposes of subsection (4)(b).

(4C) A presumption under subsection (4B) is rebuttable.'

This new clause modifies the criteria for the deportation of third country nationals with very significant connections to the UK who are impacted by this Act.

Stuart C. McDonald: I am optimistically—and perhaps naively—attempting to spark a sensible, measured and constructive debate on laws relating to deportation, and the balance and interaction with family and private life. It is my fault, but I think the headings on the new clauses should probably be the other way around. The one relating to family is more closely linked to private life and vice versa.

Of course, there are people who commit serious crimes and have no connection with the UK, and they must be deported without any real hesitation. However, there are also many other cases where the impact of any such decision has such serious consequences—not just for the individual, but for the family member—that deportation is not appropriate in the minds of most reasonable people. Once a person has completed the punishment provided for by our criminal laws, they resume their life in this country.

There is also a second category of case, where to all intents and purposes the Home Office is not deporting foreign national offenders. In reality, it is deporting British people—people who have lived pretty much all their lives here and have no connection with the place to which they are being deported, other than the passports that they have never used or used only once when they were toddlers. From time to time, we need to be brave enough to confront the question of where we draw the line. I make the case that the line has been drawn in the wrong place, and that powers of deportation are now used too often and in inappropriate circumstances. That is a challenge to MPs on both sides of the House, because much of our deportation legislation has been in place under Labour Administrations as well as Conservative Administrations.

I turn first to new clause 53, where other family members are affected. As hon. Members will be aware, those from EEA countries and Swiss nationals and their family members cannot generally be deported, except on grounds of public policy, public security and public health, and where their conduct poses a genuine, present and sufficiently serious threat to one of the fundamental interests of our society—a forward-looking assessment that allows for consideration of competing family life considerations. By contrast, people from outside the EEA are subject to automatic deportation if sentenced to imprisonment of 12 months or more. No consideration is given to whether a person continues to pose a risk, and those sentenced to less than 12 months can also be deported if the Secretary of State believes it to be conducive to the public good.

Consideration of matters relating to family has been seriously restricted. There are only two very narrow circumstances in which issues of family will trump deportation. A person must show that they have either a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and they must show that the experience of deportation for the partner or child would be unduly harsh. The test is even higher where there has been a sentence of four years or more, but where very compelling circumstances must be shown.

The new clause concerns children, and we argue that the test set out just now is unduly restrictive and not in the best interests of children. Instead of requiring unduly harsh circumstances, the new clause would stop deportation where it would be unreasonable for a child to leave the UK or to remain in the UK without the parent. It is important to appreciate just how demanding the current test is. Home Office policy states that the words "unduly harsh" must be given their ordinary meanings. It notes that the Oxford English Dictionary defines "unduly" as "excessively", and "harsh" as "severe" or "cruel". In short, Parliament has put in place a regime that allows for child cruelty; only where that child cruelty becomes excessive do we think again.

It is little wonder that judges have sometimes expressed great sympathy with appellants and surprise at the effect of the legislation that this place has enacted, but their hands are tied. As Lord Justice Baker remarked in the case of KF Nigeria:

> "For those lawyers, like my Lord and myself, who have spent many years practising in the family jurisdiction, this is not a comfortable interpretation to apply. But that is what Parliament has decided."

Two tribunals had found that KF should not be deported because of the significant impact it would have on his son, despite a three-year sentence for burglary and robbery. Being a parent does not exempt someone from facing the criminal justice system if they break the law, but deportation goes further; it can effectively and summarily end a child's family life for at least the duration of their childhood. There are well-documented long-term negative impacts on a child's upbringing, education and social behaviour, with repercussions for their communities. There are also, of course, implications for a partner left behind in the United Kingdom, who is now responsible for bringing up the child alone.

I am not submitting that parents can never be deported; I am submitting that we need to be much more careful and sensitive about the circumstances in which it happens. This is not about people escaping justice, because they will still face the criminal justice system; it is about protecting innocent children. Deportations would still be possible, even where a child was involved, but only where a court assesses that it would be reasonable for the child to leave the UK along with the parent, or for the child to remain in the UK without the parent.

I turn to new clause 54, which challenges the Government on the criteria used to decide on the deportation of people who have significant connections with the United Kingdom. The issue was summarised by the former prisons and probation ombudsman, Stephen Shaw, in his 2018 review of treatment of vulnerable adults in immigration detention, which was commissioned by the then Home Secretary, the right hon. Member for Maidenhead (Mrs May). He reported that, time and again, those he met who were being held under immigration powers after serving custodial sentences were long-term British residents who had often been brought to the UK as young children and who were, to all intents and purposes, British.

To quote Stephen Shaw's review:

> "I find the policy of removing individuals brought up here from infancy to be deeply troubling. For low-risk offenders, it seems entirely disproportionate to tear them away from their lives, families and friends in the UK, and send them to countries where they may not speak the language or have any ties. For those who have committed serious crimes, there is also a further question of whether it is right to send high-risk offenders to another country when their offending follows an upbringing in the UK."

It bears remembering that some of those individuals would have been entitled to British citizenship had they been aware, or not been priced out of it by the Home Office, to reference my earlier amendment on that subject.

I agree absolutely with Stephen Shaw, and I have personal experience of representing, very occasionally, clients who faced deportation. I remember in particular one Glaswegian lad—and he was Glaswegian—who was 18 years old and had been in this country since the age of four. He had been essentially abandoned, and passed from pillar to post around the care system. Persistent fairly low-level offending resulted in custody. In those circumstances, it was outrageous to deport him.

Some of the people on the charter flights to Jamaica in February 2020 were in that cohort, including young men whose offending involved belonging to county lines operations, which we all know are closely associated with coercion and modern-day slavery. Some were deported for offences committed a long time ago, with no account taken of rehabilitation.

A terrible example of that type of case is the ongoing saga of Osime Brown, a 21- year-old who is severely autistic. He arrived in the UK at the age of four from a country to which the Home Office now wants to deport him. I urge Members to have a look online at the facts and circumstances of the case and to say, hand on heart, that they have no problem with what the Home Office is up to.

The new clause changes the exceptions so that greater consideration is given to people established here at a young age and the reality that they are usually, to all intents and purposes, British, even if they do not hold that passport. It adds exceptions for people who were born in the UK, or who arrived in the UK under the age of 18 and have lived here for seven years or more. It also

[Stuart C. McDonald]

establishes a presumption that if a person was born in the UK, or arrived in the UK aged under 18 and has lived in the UK for a continuous period of seven years or more, they are considered socially and culturally integrated into the UK—albeit that that presumption would be rebuttable. The person would still have to show that there are very significant obstacles to reintegration.

The 33rd recommendation of Stephen Shaw's review was:

"The Home Office should no longer routinely seek to remove those who were born in the UK or have been brought up here from an early age."

Instead of commissioning reviews, it is time for the Government to start implementing the reviews that they have already heard from. For those reasons, I urge the Committee to look favourably on the new clauses.

Kevin Foster: The new clauses concern the principles that a court or tribunal is required to take into account when assessing what is in the public interest for the purposes of determining whether a foreign national offender's deportation breaches article 8 of the European convention on human rights. The article 8 ECHR right to respect for private and family life is a qualified right, which can be circumcised—*[Interruption.]* I will have to ensure I write that one out again next time. It can be circumscribed where lawful, necessary and proportionate, in the interest of a number of factors including national security, public safety, the prevention of disorder or crime, and the protection of the rights and freedoms of others.

Section 117C of the Nationality, Immigration and Asylum Act 2002 provides that, when assessing whether deportation breaches article 8 of the ECHR, the deportation of a foreign national offender is in the public interest unless certain exceptions apply. The new clauses seek to alter those exceptions and therefore undermine Parliament's clear position on what the public interest requires in such cases.

New clause 53 would amend the exception at section 117C regarding foreign national offenders who have been sentenced to less than four years' imprisonment, and who have a genuine and subsisting relationship with a qualifying partner or child, meaning that deportation would not be in the public interest if it would be unreasonable for the child to leave the UK, or to remain in the UK without the foreign national offender. That would be in addition to the existing exception that applies when the effect of the deportation on the partner or child would be unduly harsh.

3.30 pm

When assessing whether the effect on a child of deporting a foreign criminal is unduly harsh, consideration may already be given to whether it is reasonable to expect the child to leave the UK, taking into account the child's nationality and length of residence in the United Kingdom, as well as whether it is reasonable to expect the child to remain in the UK separated from one parent. That is a higher threshold than in non-criminal cases, because of the greater public interest in deporting serious or persistent foreign criminals.

Parliament has expressly required a particularly high threshold when assessing whether the deportation of those sentenced to at least four years' imprisonment is in the public interest. That reflects Parliament's view—and, I would say, that of the wider public—that the more serious the offence committed by a foreign criminal, the greater the public interest in their deportation, as is explicitly set out in the 2002 Act. The best interests of any child affected by the foreign criminal's deportation, the nationalities and immigration status of family members, as well as the nature and strength of the foreign criminal's family relationships, are all factors relevant to the article 8 proportionality assessment, when determining whether there are compelling circumstances for such action. Section 117C already strikes the right balance between protecting affected partners and children, and the clear public interest in removing serious or persistent foreign national offenders.

New clause 54 would amend the exception at section 117(4) for foreign national offenders who have been sentenced to less than four years' imprisonment, so that deportation would not be in the public interest if, as an alternative to someone having been lawfully resident in the UK for most of their life, they were born in the UK, or arrived here under the age of 18, and lived here for a continuous period of seven years or more. The exception currently requires the foreign national offender to be socially and culturally integrated in the UK, and for there to be significant obstacles with their integration into the country to which it is proposed they will be deported. The new clause would add a rebuttable presumption that if someone was born in the UK, or arrived here under the age of 18 and has lived here for a certain period, they are socially and culturally integrated into the United Kingdom.

Mere presence in the UK, or being born in the UK, is not an indication of integration. The assessment of whether a serious or persistent foreign criminal is socially or culturally integrated into the UK balances positive and negative factors, taking into account the foreign criminal's length of residence in the UK, their financial independence, their ability to speak English and their criminal offending. It is right and proper that such an assessment is undertaken on a case-by-case basis.

The courts have upheld the lawfulness of the family and private life considerations that must be taken into account in relation to deportation, and agreed that they are consistent with the requirements of article 8. In both cases, the new clauses would not apply to all foreign national offenders, but only to those residing under EU free movement rights, immediately before they were revoked. That would mean applying section 117C differently to EEA citizens and their family members, than to non-EEA citizens.

It is important and right that, as far as possible, parity is created for all foreign nationals in the UK, no matter where they come from, particularly in relation to judging their criminal conduct. Where conduct is committed after the end of the transition period, an EEA citizen protected by the withdrawal agreement, or by the UK's domestic implementation of those agreements, will be considered for deportation according to the same rules and thresholds that currently apply to third-country nationals. That creates a fair immigration system that does not privilege some foreign nationals over others.

I suggest that many members of the public would consider it right for the Home Office to take a clear view, based on legislation passed by a previous Government, about the conduct of those who have committed serious criminal offences or been persistent criminals, and seek to protect the public from them. For those reasons, the Government will not accept the new clauses.

Stuart C. McDonald: I am grateful to the Minister for his response. We need to look at this issue much more closely, as we have only skimmed over the issues today. The Government must start collating data on the number of kids who end up being separated from a parent because of deportation, including a number of British citizens. We will ask questions and revisit the issue, but for now I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

The Chair: We now come to new clause 57.

Stuart C. McDonald: I would like to speak to new clause 55, Mr Stringer. I did not speak to it because new clause 47, with which it is grouped, was not moved.

The Chair: Sorry. My script is completely wrong. I call the hon. Member to move new clause 55.

New Clause 55

HOSTILE ENVIRONMENT

"(1) For the purpose of this section, a person ("P") is defined as any person who, immediately before the commencement of Schedule 1, was—

(a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or

(c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the EU Withdrawal Act 2018, to be recognised and available in domestic law after exit day.

(2) Regulations under section 4(1) may not be made until the Government has brought forward legislative measures to ensure that hostile environment measures do not apply to P, specifically—

(a) sections 20-43 and 46-47 of the Immigration Act 2014;

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

(c) schedule 2, paragraph 4 of the Data Protection Act 2018." —*(Stuart C. McDonald.)*

This new clause seeks to limit the application of the hostile environment.

Brought up, and read the First time.

Stuart C. McDonald: I beg to move, That the clause be read a Second time.

It used to be that the Home Office enforced immigration rules by good old-fashioned intelligence-led investigation and action, but under political pressure and the influence of austerity, increasingly the Home Office has decided to rely on essentially outsourced immigration control, hoping that if they made life tougher for unauthorised migrants, they would leave of their own accord. This is of course the hostile environment, and it has been ramped extensively in the last two Immigration Acts, such that little landladies and landlords, as well as bank staff and Driver and Vehicle Licensing Agency workers, all have to work as immigration officers now. All sorts of Government Departments are tasked with helping the Home Office with its work by sharing information, which makes people wary of accessing public services.

When these measures were introduced, Opposition MPs warned that there would be all sorts of negative consequences and that errors would be made, meaning that people would be denied housing or would have their bank accounts closed when they should not have been. We warned that there was little to suggest that attempts at enforcing destitution and desperation would persuade people to leave, that its impact would lead to all sorts of injustices, and that it could actually make immigration enforcement harder, not easier, as undocumented migrants are forced into the hands of unscrupulous landlords and employers and made ever more difficult to trace.

Four and six years on from the relevant Immigration Acts, the Bill would see that same hostile environment impacting on many more people. We should not allow that to happen without first assessing whether the Government have achieved what they set out to achieve with the hostile environment measures, or whether the warnings from Opposition MPs have been proven correct. Has the hostile environment achieved anything, or has it caused relentless problems, as was forecast?

It appears that the Home Office cannot tell us what the impact of the hostile environment has been in contributing to its policy goals. As the National Audit Office said only yesterday, it is currently unable to assess whether these measures have had any meaningful impact on the likelihood that an individual will leave the UK voluntarily. In fact, the number of voluntary departures has reduced significantly since 2015—in 2015 there were an average of 1,200 such voluntary departures each month, and by 2019 that was down to 460.

That echoes previous findings by the chief inspector of borders and immigration in relation to the right to rent, which is probably the most dangerous of the hostile measures, in that it leaves private citizens with the job of doing immigration checks. He concluded that the scheme had yet to demonstrate its worth as a tool for encouraging immigration compliance, with the Home Office failing to co-ordinate, maximise or even measure effectively its use, while doing little to address stakeholder concerns.

I want to emphasise those concerns. Time and again, the Home Office has been warned about the discrimination in the housing market caused by the right to rent scheme. These warnings came from the Joint Council for the Welfare of Immigrants and from the Residential Landlords Association. It is not difficult to understand how this comes about. Let us imagine a close relative who happens to let properties. How easy would it be for them to assess immigration status? How easy would it be for them not to be influenced by the fact that if they made a mistake in that assessment they would face criminal prosecution, a fine and even imprisonment? It is blindingly obvious that there is a huge danger of discrimination. Repeated surveys and assessment by organisations such as JCWI and the Residential Landlords Association have shown that to be the case.

[Stuart C. McDonald]

We now have a court case proceeding to the Supreme Court. Both in the High Court and in the Court of Appeal, the finding of fact was made that this scheme has in fact resulted in discrimination. The Home Office had success at the Court of Appeal stage, on the basis that on paper and in theory the scheme could be operated in a way that did not lead to discrimination, but that is not anything to celebrate. The scheme has been ruled lawful, but it has been found to operate in a discriminatory way.

This is a time when we really must have a thoughtful and comprehensive analysis of what has happened to immigration policy and the functioning of the hostile environment. That is exactly what Wendy Williams suggested in her Windrush lessons learned review, yet today we have been asked to extend the scope of that hostile environment without such a review taking place, and without any evidence being provided by the Home Office that the scheme is having an impact or contributing towards any of its policy goals.

Right to rent is the most scandalous of these problems, but it is causing all sorts of problems in other areas as well. For example, the independent chief inspector of borders and immigration found that something like 10% of the bank accounts that have been closed as part of the scheme related to people who had every right to be here. That is a huge number of people who have been caused problems by this way of doing things, and they are not only migrants; of course, several million UK citizens do not have a passport and therefore struggle sometimes to prove their right to access services and housing, and to go about their lawful business.

We need to know from the Minister what work is being done to assess the impact of the hostile environment. Rather than celebrating the finding that, in theory, the right to rent scheme could operate without discrimination, what work has been done to make sure that it operates without discrimination? If no such work has been done, or if it cannot be guaranteed that the scheme will operate without discrimination, when will it be repealed?

Holly Lynch: I support new clause 55 and I would have supported new clause 47 had it been moved. Both new clauses seek to safeguard EEA and Swiss nationals from the reality of the Home Office's hostile environment policy.

We have cited examples of potential problems relating to the hostile environment throughout the sittings of this Bill Committee, but the Windrush lessons learned review highlighted the structural flaws that permeate the hostile environment approach. Instead of increasing the effectiveness of the Home Office machine, that approach has instead led to the hounding of those unable to prove their status, while simultaneously disregarding the legitimacy of independent cases.

Throughout the sittings of this Committee, we have been at pains to articulate our concerns that unless the European Union settlement scheme is 100% successful, we will never be in a position to know whether it has been or not. People will suddenly find themselves subject to the hostile environment.

Of the Windrush generation, it has been said:

> "Paulette Wilson was detained in an immigration removal centre and warned that she faced removal after living in the UK for 50 years. She spent decades contributing to the UK—working for a time in this very House—yet she was treated like a second-class citizen.
>
> Junior Green had been in the UK for more than 60 years, raising children and grandchildren here, but after a holiday to Jamaica he was refused re-entry despite holding a passport confirming his right to be in the UK. The injustice he suffered was compounded when, because of this action, he missed his mother's funeral.
>
> Lives were ruined and families were torn apart."—[*Official Report*, 19 March 2020; Vol. 673, c. 1154.]

Those words, setting out those examples, are an extract from the Home Secretary's statement to the House on presenting the Williams review in March. Yet we are still waiting for the necessary structural reforms to be made at the Home Office to give us any confidence that those who missed the EUSS deadline, because of reasons that should be looked upon favourably, will not be refused by one of the same decision makers who made misguided judgment calls on Windrush cases in the pursuit of Home Office targets.

In trying to mitigate the impact of the Windrush scandal, the Government launched a number of initiatives to go into communities and undertake almost a tidying-up exercise, to ensure that people had the paperwork they needed to protect them from such encounters with the Home Office in future. The Commonwealth citizens taskforce and the vulnerable persons team have delivered that work in communities, but we know that comparable preventive initiatives seeking to support those most at risk of not applying to the EUSS on time have had to stop work, due to the coronavirus. I hope the Minister might be able to update us on how those activities will be super-charged to make up for lost time, once it is safe for them to continue.

3.45 pm

On late applications, the Minister has said that he will provide a list of the reasons that would allow for a late application still to be considered, but we all accept and appreciate that he will never be able to foresee every set of circumstances. However, if the same decision makers and procedures that oversaw the really bad calls made for the Windrush generation are in place, we simply cannot consent to any extension of the hostile environment to this cohort and we will support new clause 55.

Kevin Foster: I would like to start by reassuring Opposition Members. We are making plans for what will be a major restart of engagement and promotion of the European settlement scheme in a face-to-face way. Work is still being done online. The latest statistics have been published and we always use those as an opportunity to promote the scheme and make it clear to people what their entitlement is. We still have a good flow of applications coming in even during the lockdown, which partly reflects the fact that the vast majority of people are applying by using an app on their phones. So strong work is being done there.

On the list of reasons for late applications being accepted, as I said on Tuesday it will be a non-exhaustive list because, as the hon. Member for Halifax rightly says, we cannot predict every single circumstance that would be a reasonable reason for being late. A common reason would be a child in care where the council did not apply, but the list will be non-exhaustive because no

one could write all the reasons that we as individuals might find reasonable. So far, the scheme has operated by being flexible and pragmatic in working with those applying. That is why the grants of status are in the millions and the refusals in the hundreds.

I am grateful to hon. Members for their contributions. I share their desire to ensure that EEA citizens and their family members who are currently in the UK lawfully are not denied access to work, healthcare or anything to which they are currently entitled.

Gary Sambrook (Birmingham, Northfield) (Con): Does the Minister share my frustration when Opposition Members talk about the hostile environment? It was in fact a former Labour Immigration Minister, the right hon. Member for Birmingham, Hodge Hill (Liam Byrne), who, in May 2007, introduced the new immigration regulations that created a hostile environment in this country.

Kevin Foster: I thank my hon. Friend for highlighting that point. Many of the enforcement mechanisms that we use originate from before 2010. There is a little amnesia among some of the people who were here and voted for them. It is right that there are protections in place around public welfare benefits and suchlike. That has not been particularly controversial for parties of all colours over the past 10 to 20 years. We need to consider carefully the lessons learned review. In the Wendy Williams report there is a 2009 case of someone who was unable to return to the United Kingdom, even though they had a status granted under the Immigration Act 1971 as someone who had been settled in the UK before 1 January 1973.

As with many of the amendments that we have debated, the new clause is at odds with our commitment to the British people to introduce a single global migration system. New clause 55 is unnecessary, unworkable, and risks being detrimental to the cohort in question. As we have been clear before, free movement is ending, and from 1 January 2021 EEA and non-EEA citizens will be treated equally. Under the new system, everyone will be required to obtain the correct immigration status, and we will clearly distinguish between those who are here lawfully and those who are not, regardless of their nationality. Allowing EEA citizens to rent accommodation or exempting them from other measures, even if they do not have lawful immigration status, would contradict the Government's stated position. It would in practice result in different rules applying, depending on a person's nationality. This would be inherently discriminatory, given that there would be no justifiable reason for them after the end of the transition period.

New clause 55 would also weaken the UK's new points-based immigration system. The measures in question are designed to encourage individuals to comply with UK laws and rules, and they have all been approved by Parliament. In the future, once free movement has ended, it is right that these measures will apply on the basis of whether or not someone has lawful status, rather than on the basis of their nationality, although I appreciate that the wording would probably be done to bring this within the scope of the Bill.

EEA citizens are already subject to the universal eligibility checks carried out by employers, landlords and the NHS, as these checks apply to everyone regardless of nationality, including British citizens. I had to show my own passport recently, when renting a flat. Disapplying the measures for a certain group would increase the scope for illegal migration and place taxpayer-funded services at risk of abuse.

It is not clear how new clause 55 would actually work. To exempt an EEA citizen from an eligibility check, it would first be necessary to establish that they are part of the exempt cohort. It would not be possible for those carrying out the checks, including employers and landlords, to do this without checking everyone, as they do now, to establish eligibility. Alternatively, they would have to second-guess who was in a particular cohort, which brings the obvious risks of leading to potential discrimination and unfair treatment.

I recognise that the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Halifax wish to ensure that EEA citizens and their family members who are currently resident in the UK are not adversely impacted by such measures. This is why we have set up the EU settlement scheme, making it free and easy to get UK immigration status and to enjoy the same rights as now. That is why I believe it would be unhelpful to accept the new clause, and the Government will not do so.

Stuart C. McDonald: I am grateful to the Minister for his response, but I feel he rather skirted around getting to the heart of the issue, and he knows full well that the new clause is as it is because of issues of scope. When he talked about how this would not work because there would have to be checks on whether an EU national was seeking to take advantage of this new clause, he spoke about the dangers of guessing whether an individual may or may not be an EU national. That is exactly the problem with the right to rent scheme at the moment, in that some landlords and landladies are guessing people's nationality when they are approached with inquiries about accommodation. I am glad that he has recognised that there are dangers in the scheme that causes such judgments to be made. Yes, there are problems with the wording of the new clause because of scope, but I shall drop it for now and think about this again in advance of Report. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 57

Data protection

"(1) For the purpose of this section, a person ("P") is defined as any person who, immediately before the commencement of Schedule 1, was—

(a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or

(c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the EU Withdrawal Act 2018, to be recognised and available in domestic law after exit day.

(2) Regulations under section 4(1) may not be made until the Government has made provision to ensure that P has safe and confidential access to essential public services by ensuring the

Secretary of State, or any other individual or body on his behalf, must not process personal data, by any means, for the purposes of immigration control or enforcement, where that personal data has been collected in the course of the data subject accessing or attempting to access the public services identified in subsection (3).

(3) For the purposes of subsection (2), the relevant public services are—

(a) primary and secondary healthcare services;

(b) primary and secondary education; and

(c) the reporting of a crime by P, where P is a witness to, or the victim of, the crime, any investigation or prosecution of it.

(4) The prohibitions contained in subsections (2) and (3) do not apply where the data subject has given his or her explicit and informed consent to the disclosure of the personal data, for the purposes of immigration enforcement."—*(Stuart C. McDonald.)*

This new clause seeks to limit use of data gathered by key public services for immigration enforcement control or enforcement.

Brought up, and read the First time.

Stuart C. McDonald: I beg to move, That the clause be read a Second time.

I am pleased to speak to new clause 57, which brings us to another discrete example of the broader hostile environment and the ever-expanding powers of the Home Office to gather information and require information to be shared with it. The new clause requires that the Government take measures to prevent the sharing of data for immigration purposes where that data has been collected or provided in the course of a person accessing healthcare and education or reporting a crime.

The fear of information being shared with the Home Office can have a pernicious effect on people's willingness to seek help or to access vital public services, and of course it can also lead to injustice, as we saw in the Windrush fiasco. This is about supporting the survivors of serious crimes—such as domestic abuse, human trafficking and other forms of exploitation—to report them to the police, seek healthcare and escape to safety.

Essentially, the new clause challenges us about our priorities. Is our priority to ensure that people can feel safe when reporting crimes, and that they do not have to be anxious when sending their children for education and do not have to be in two minds about seeking healthcare when that is required, or is our priority to provide the Home Office with endless additional powers to snoop and gather information on the off-chance that it might be able to detain and remove another few individuals, even if that comes at an incredibly hefty price, including injustices such as Windrush? I say absolutely clearly that my priority is protecting safe access to vital public services, and that is why I am moving new clause 57.

Kevin Foster: I thank the hon. Gentleman for his contribution. I do understand his concern that those who come to this country should have safe and confidential access to essential public services. However, new clause 57 would restrict the ability of the immigration authorities to use data that has been collected in particular circumstances for immigration enforcement purposes, as far as those who now benefit from freedom of movement are concerned. In so doing, it would maintain the status quo for those cohorts as far as the use of such data collection is concerned. However, the crucial difference is that they would now be subject to the same measures of immigration control as people from the rest of the world subject to the same restrictions.

The new clause would severely restrict the ability of the immigration authorities to take enforcement action against that cohort. It would thereby result in differential treatment in respect of a migrant whose data would be collected in the same way, but which would continue to be used for immigration enforcement purposes when deemed appropriate, as it is now. It would also weaken the effect of the immigration system, as we are concerned to encourage compliance with immigration laws as approved by Parliament. We welcome the contribution made to the United Kingdom by those who are lawfully present, but it must be in accordance with the laws and rules that have been set out and agreed. No cohort should be exempt from measures that are put in place to ensure compliance with those laws and rules.

On the prohibition on sharing data collected by the police in respect of witnesses or victims of crime, we believe that could lead to unintended consequences. It could prevent those with unresolved immigration status, particularly those who are vulnerable, from being brought into the immigration system, regularising their status and receiving necessary support. In some cases, such as where someone has been the victim of domestic abuse, it could prevent the Home Office from providing information to the police on known vulnerabilities or safeguarding concerns, thereby reducing a perpetrator's ability to control or coerce their victim. Engagement with immigration enforcement could, for example, reveal previously undisclosed evidence of domestic abuse, which the Home Office could then pass on to the police, leading to the provision of support from a specialist domestic abuse team and potential access to a refuge. Data sharing in those circumstances would be proportionate and necessary, and in the best interests of the victim. Data sharing also enables the Home Office to trace missing families and protect children who may be at risk, working collaboratively with social services, the police and local authorities to ensure safeguarding actions are taken. We will always have due regard for the safety and best interests of any children.

The Home Office has robust safeguards and controls in place to ensure data are handled securely, lawfully, ethically and in accordance with relevant data protection regulations. It must have a legal basis for processing data, and comply with the General Data Protection Regulation and the Data Protection Act 2018 when doing so. Individuals' rights are protected by the role of the Information Commissioner's Office, the UK's independent body which upholds information rights. I remind the Committee of the comments I made at one of the last Home Office oral questions that were held physically in the Chamber before the current arrangements. When asked, for example, about whether the details of those approaching the NHS for treatment for covid-19 would be passed on to immigration enforcement, we were clear that, purely for the purposes of immigration enforcement, that would not be something we would be doing. Our approach is proportionate.

Stuart C. McDonald: The purpose of the new clause, and what it says expressly, is that information cannot be shared with the Home Office for the purposes of

immigration control or enforcement. To my mind, that does not mean, for example, stopping the police making inquiries with the Home Office about whether somebody has been the victim of domestic abuse. I therefore think that is a rather unfair interpretation of what we are proposing.

Kevin Foster: Part of how we respond to victims and others is sometimes to look to resolve their immigration status as well. I would say it is quite proportionate that two parts of the Home Office work together on the enforcement of the UK's laws, subject to it being proportionate and appropriate to do so. I think people would find it strange if that did not occur.

For the reasons we have outlined, with the robust safeguards in place, and the proportionate and legitimate aim of ensuring our immigration laws are not completely undermined, the Government will not accept the new clause.

Stuart C. McDonald: I am grateful to the Minister for his response. I am not sure I agree with his reasoning on what the new clause would or would not allow, but I will take that away and give it further thought. In the meantime, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 60

REPORT ON THE STATUS AND SOCIAL SECURITY ENTITLEMENTS OF UK NATIONALS IN THE EU MEMBER STATES

"(1) The Secretary of State must prepare and publish quarterly reports on the progress being made by EU member states on the migration status and social security entitlements of UK nationals in their countries.

(2) A Minister of the Crown must, not later than a month after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report."—*(Kate Green.)*

This new clause would require the Government to update the House of Commons on the progress being made by the EU27 countries on the implementation of protections for UK nationals in their countries on a quarterly basis.

Brought up, and read the First time.

Kate Green: I beg to move, That the clause be read a Second time.

The new clause would require the Government to report quarterly on the status and social security entitlements of UK nationals in EU member states. I am grateful to British in Europe for its comprehensive briefing in preparation for this debate.

Implementation in the EU of the citizens' rights part of the withdrawal agreement is still in its early stages, with few countries having final or even draft legislation in place. Application processes have begun in only a handful of countries. The situation has understandably been exacerbated by delays caused by the covid crisis. However, that creates uncertainty for thousands of UK families and individuals in the EU, who are awaiting the outcome of applications to be allowed to stay in countries in which they have made their home that have opted for an application or constitutive system.

The European Commission's promised guidance note, which was eventually published on 12 May, is helpful in clarifying some of the uncertainties, but outstanding issues include how dual UK-EU nationals and other citizens who do not rely on the withdrawal agreement for residence rights can evidence their rights; how the withdrawal agreement applies to UK citizens who are eligible for protection under the withdrawal agreement in their own right and for protection under EU law as family members of EU citizens; and whether UK citizens eligible for protection under the withdrawal agreement, which of course confers no right of free movement to third EU countries, can obtain the rights at least to some mobility enjoyed by other third-country nationals, either in addition to their withdrawal agreement rights or by waiving that protection and opting to register as non-withdrawal agreement third-country nationals.

In addition, the common format of the card evidencing withdrawal agreement rights, mandated by the Commission for UK nationals in the EU, fails to distinguish between permanent residence and ordinary residence. The conditions for lawful residence under EU law, which applies during the transition period, and under the withdrawal agreement for those who have not yet acquired permanent residence or had permanent residence confirmed, include requirements to be employed or self-employed, or economically self-sufficient with comprehensive health insurance.

Those conditions are applied strictly in many EU countries. The lockdown restrictions of the covid crisis, however, have caused people to lose their jobs or much of their income, and some will be unable to obtain comprehensive health insurance because of exclusions—students studying abroad and recent graduates are at particular risk.

We know the Government do not intend to extend the transition period. Will the Minister tell us whether the Government intend to ask EU member states to grant extensions to time limits for securing rights under the withdrawal agreement, which people have been unable to comply with because of covid restrictions on travel or the closure of administrative offices? That applies not only to residence rights across the EU, but to citizenship applications where 31 December this year is a cut-off date, such as is the case in Germany or Italy.

With much still unresolved, British in Europe and the3million have suggested that they should attend the specialised committee on citizens' rights of the joint committee on implementation of the withdrawal agreement established—

The Chair: Order. The new clause is about the Government reporting to the House of Commons. I understand the points that the hon. Lady is making, but if she would relate her comments to the reporting, I would be grateful.

Kate Green: Of course, Mr Stringer; that is very helpful guidance. These are matters on which I hope the Minister may be able to give some immediate answers about the Government's current actions, but obviously the report to the House would be able to demonstrate the effect on UK nationals in the EU of our withdrawal from the European Union, which I think the public as a whole will be concerned about. As I go through further remarks about possible effects, I will naturally seek to come back to the point that I seek the approval of the Committee on regular reports on these matters being

[Kate Green]

made to the House, including on the suggestion by British in Europe and the3million that they should be able to attend the specialist committee on citizens' rights of the Withdrawal Agreement Joint Committee.

There are other uncertainties for UK nationals who are not covered by the withdrawal agreement. Jeremy Morgan of British in Europe agreed in our oral evidence session last week that UK nationals resident in the UK but who own second properties in the European Union will potentially now be caught by the 90 out of 180 days rule under the Schengen arrangements. It is not clear whether the UK Government have given up on negotiating up to 180-day stays for UK citizens visiting the European Union, so it would be useful to have regular reports to the House on whether negotiations are continuing, or on the impact if they are not.

The concerns I have outlined so far affect UK nationals who already live, work or own property in the European Union, but there will also be concerns about UK nationals moving to the EU in the future after the end of the transition period. In our evidence session on 9 June, Jeremy Morgan of British in Europe drew attention to whether UK nationals will be able to buy property in certain EU countries after the transition, which again I think would be of interest to the House and the wider public, and future reports on that would be welcome.

On Tuesday, we debated the implications of clause 5 and the draft social security arrangements published by the UK and the EU. I am grateful to the Minister for the letter he sent me late yesterday evening, which I think has been copied to all Committee members, in response to a number of issues I raised in that debate. The analogy drawn in the letter with other treaties between the UK and third countries simply exposes the more limited protection that those treaties provide, and that such treaties seem to be the model for our future arrangements with the European Union—for example, on aggregating contributions, sharing information or healthcare. If those are to be a model for future coverage for UK nationals in the EU, again I think that is something that should be drawn regularly to the attention of the House.

The draft social security agreement attached to the free trade agreement published in February makes it clear that the Government envisage that short-term visitors would be covered, but what of those who go to work or make their home in the EU in future? The Minister's letter says that contributory employment and support allowance will be available for four weeks. I note in passing that a decreasing number of people get contributory ESA anyway, and that that four-week grace period will be of no use to disabled people moving abroad, or even visiting for five, six or seven weeks. I think the House would like to be aware of the implications of new arrangements for disabled people.

Similarly, on healthcare, the Minister's letter may try to gloss over this, but for those who are not going to be covered by the withdrawal agreement, the S2 will be scrapped, so they cannot in future go abroad and have treatment paid for in the EU, even if the NHS cannot provide that treatment. Importantly, we will lose the mutual recognition of prescriptions, which could have quite significant consequences for some UK nationals.

My assessment is that, for those UK nationals moving to the European Union after the transition, the unspoken thrust of the letter sent by the Minister last night is a levelling down of protections and rights, which I feel the House should want to track on a regular basis. I recognise that a number of bilateral reciprocal arrangements—some going back many years—between the UK and certain member states may fill in some of the gaps in social security co-ordination arrangements in the future, but it is unclear whether either country will regard them as remaining effective. In any event, many of the arrangements offer only very limited protection. Again, I think it would be useful for the House to be updated on the standing of, and application of, these bilateral agreements.

If no agreement is secured with the European Union and the Minister hopes that instead a series of new bilateral arrangements might be negotiated between the UK and each individual member state, there may be a fear in those member states that that could impinge on the co-ordination arrangements that apply in relation to other member states, and that fall within the scope of European Union co-ordination regulations. It would be useful for the House to have regular updates on that.

The picture that I have painted suggests at best confusion, and at worst the prospect of less favourable protections for UK citizens in the European Union—those already there, and those who move to European Union countries in future. The UK Government have an obligation to look after the welfare of their citizens wherever they are located. Quarterly reporting to Parliament will make it possible to conduct scrutiny of the way in which the Government meet the obligation.

Kevin Foster: I thank the hon. Member for Stretford and Urmston for moving new clause 60, which is well intentioned but ultimately unnecessary. The Government are monitoring closely the implementation of the withdrawal agreement for UK nationals in the EU and information on citizens' rights in each EU member state is already provided by the Government on our "Living in" guides on gov.uk.

Having ratified the withdrawal agreement and legislated for it domestically in the EU (Withdrawal Agreement) Act 2020 in January, the Government are now closely monitoring the progress of member state implementation during the transition period, via our network of embassies, high commissions and consulates across Europe. We are committed to providing UK nationals overseas with clear and appropriate information and are working with member states to ensure that any introduction of, or changes to, administrative procedures that are in line with the withdrawal agreement will be communicated to resident UK nationals.

The EU's social security co-ordination rules will continue to apply in full to individuals in full scope of the withdrawal agreement, including UK nationals living and/or working in the EU, and EEA citizens living and/or working in the UK by the end of the transition period. Those rights are protected for as long as they remain in full scope of the withdrawal agreement.

Information is available via our "Living in" guides on gov.uk, and UK nationals should sign up for the latest information on the actions they need to take. The

"Living in Europe" guide, which is also on gov.uk, provides further information on citizens' rights to UK nationals in the EU.

Beyond that, we also have a governance structure established by the withdrawal agreement to monitor the correct implementation and application of the withdrawal agreement. The Withdrawal Agreement Joint Committee, chaired by my right hon. Friend the Chancellor of the Duchy of Lancaster, has already met twice, on 30 March and 12 June.

The Specialised Committee on Citizens' Rights, co-chaired by UK and EU officials, met on 20 May. As set out in the joint statement following the meeting, both the UK and the EU exchanged updates on the implementation of the citizens' rights part of the withdrawal agreement and discussed preparatory work for future meetings. The Government and European Commission share the objective of ensuring the correct and timely implementation of the withdrawal agreement to provide certainty to UK nationals in the EU and EU citizens in the UK. The Committee will therefore meet regularly during the transition period and thereafter.

Finally, I reassure the Committee that we are calling on the European Commission and all member states to ensure timely implementation and clear communications to UK nationals in the EU, in line with what has been agreed in the withdrawal agreement.

I will briefly cover some of the points that the hon. Member for Stretford and Urmston made. The Government are continuing their negotiations with a view to a future partnership. We have already looked to extend our generous visitor visa provisions to EEA nationals from 1 January, on the same basis as we have to many of our traditional international friends and allies, such as Canada, the United States and Japan. We continue in discussions to seek a productive partnership. However, I am sure that the hon. Lady will appreciate that it is not possible for us, in domestic UK immigration measures, to legislate for what other nations should offer the United Kingdom.

On that basis, I ask the hon. Lady to withdraw her new clause.

4.15 pm

Kate Green: I feel that the Minister's response has rather missed some of the points that I was trying to make. In seeking a report to Parliament, I am asking for something a little bit different from information to UK nationals about what they should be doing at any given time, whether or not they moved to the EU before or after the end of transition. Intergovernmental discussions—or discussions between the UK Government and the European Union—taking place in the joint committee are very important, but they are not a parliamentary event that ensures full public information and scrutiny of those discussions. My point on the bilateral treaties was also about thinking of protections for UK nationals, which, if I may say so, are in the gift of the UK Government. The signs are worrying when looking at the Government's draft agreement, published earlier this year.

I will not press the new clause to a vote, but I gently suggest to the Minister that keeping the House updated on such matters is not only important to hon. Members, but of considerable importance to our constituents. We have found at times that Ministers are quite tardy in coming to the House to inform us about the progress of negotiations with the European Union, at least in relation to these important matters. I hope that the Minister will use his good offices to encourage his colleagues to keep us as well informed as possible. I beg to ask leave to withdraw the motion.

New clause, by leave, withdrawn.

Question proposed, That the Chair do report the Bill to the House.

Kevin Foster: On a point of order, Mr Stringer. I thought it appropriate to thank you and Sir Edward for your very effective chairmanships and for keeping us all in order—even me, with the interesting slip that I managed to make earlier today. I hope that it did not cause too much hilarity in the Committee.

Holly Lynch: Oh, it did!

Kevin Foster: I am sure it did. I should also thank the shadow Minister and the SNP spokesperson for the spirit in which we have debated the Bill, put on the record a number of important points and explored a number of issues of concern to a range of constituents. I am sure that hon. Members would want me to express gratitude to the Clerk, who has ensured that the Committee was conducted professionally and well. I also thank my officials at the Home Office and those at the Department for Work and Pensions who have supported me both by preparing for the Committee and by preparing briefings on a range of amendments.

I can imagine how you will rule on this point of order, Mr Stringer—probably in line with every other point of order that has ever been raised in the five years that I have been here—but I wanted to put those few comments on the record as we come to our conclusion.

Holly Lynch: On a point of order, Mr Stinger. I echo the Minister's sentiments—I am grateful for the points that he just made. I thank my Committee colleagues, not least the hon. Member for Stretford and Urmston—I am eternally grateful for her support on a personal basis; her experience in this subject area is second to none—the hon. Members for Kingston upon Hull North and Coventry North West, and our Whip, the hon. Member for Ogmore, for their support. I also thank you, Mr Stringer.

I echo the Minister's sentiments: the Clerk has been incredibly helpful to Members across the Committee and her efforts have been nothing short of herculean, often responding to emails in the early hours of the morning. We are eternally grateful to her for that. I also put on the record my thanks to my staff members, Jamie Welham and Charlotte Butterick, as well as to Heather Staff in the office of my hon. Friend the Member for Stretford and Urmston.

Putting politics and the subject matter to one side, we can always collectively breathe a sigh of relief when the intensity and pace of any Bill Committee comes to an end. I very much look forward to returning to some of these issues on Report and Third Reading.

The Chair: That was outrageously out of order. Thank you for the kind comments.

Bill accordingly to be reported, without amendment.

4.19 pm

Committee rose.

Written evidence reported to the House

IB17 British Medical Association

IB18 Countryside Alliance

IB19 Northern Ireland Human Rights Commission

IB20 techUK

IB21 Immigration Law Practitioners' Association (ILPA)