# PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

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

*Fourth Sitting*

*Thursday 14 February 2019*

*(Afternoon)*

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**Monday 18 February 2019**

**The Committee consisted of the following Members:**

*Chairs:* †Sir David Amess, Graham Stringer

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

Joanna Dodd, Michael Everett, *Committee Clerks*

**† attended the Committee**

**Witnesses**

James Porter, Horticulture Working Group Chairman, National Farmers Union Scotland

Professor Steven Peers, Professor of EU, Human Rights and World Trade Law, University of Essex

Professor Stijn Smismans, Director of the Centre for European Law and Governance at Cardiff University, the3million

Joe Owen, Associate Director, Institute for Government

Jeremy Morgan QC, Vice-chair, British in Europe

Kalba Meadows, British in Europe

# Public Bill Committee

*Thursday 14 February 2019*

*(Afternoon)*

[Sir David Amess *in the Chair*]

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

**Examination of Witness**

*James Porter gave evidence.*

2 pm

**The Chair:** Welcome, Mr Porter. I do not know if you have appeared before a Committee before, but please enjoy the session as the Committee members gather evidence. You will get questions from non-Scottish Members as well. Will you introduce yourself formally for the record?

***James Porter:*** Ahoy, Mr Chairman, yonder! I am James Porter. I farm on the east coast of Angus—a mixed farm of beef cows, potatoes and cereals. We also have 100 acres of soft fruit, which in the main season employs about 300 seasonal workers. We have quite a large permanent staff to back that up. I am also chair of the horticulture committee of the National Farmers Union of Scotland and vice-chair of Ringlink Scotland.

**The Chair:** It sounds as though you are the right witness for this session, with that expertise. This session lasts until 2.30 pm.

**Q280 Afzal Khan** (Manchester, Gorton) (Lab): I am someone non-Scottish, to start with. Do you have concerns about Scotland's agricultural and associated sectors' ability to recruit the labour they will need post Brexit?

***James Porter:*** Yes, we do indeed. In fact, we have already seen shortages over the last two years of about 10% to 15%. We are seriously concerned about the situation currently. We have, as I said, 300 seasonal workers lined up to come over, and many of them return year on year—about 70% are returnees. As many of them have said, any kind of restriction that is put in place will encourage them to go elsewhere. There are lots of jobs available in Germany, Holland and elsewhere in western Europe.

**Q281 Afzal Khan:** In your view, can those vacancies not be filled by workers from the UK?

***James Porter:*** No. That is generally recognised. In fact, the Migration Advisory Committee report recognises that that labour force is not there. To take Angus, where I am, as an example, there are only 1,400 long-term employed in the county. Angus Soft Fruits, which is the marketing group that I market through, employs about 4,000 people in Angus across 20 growers, so the workforce is not really there. That has been recognised for quite a long time, generally.

**Q282 Afzal Khan:** You said that 70% were returnees. Do you have any other concerns about the 12-month visa, or the £30,000 income threshold that we have been talking about?

***James Porter:*** Regarding the 12-month visa and so on, I think you are talking about things that are in the Bill. I have more immediate concerns, and I can tell you what they are and then come back to that, if you will allow me.

The first thing is the seasonal agricultural workers scheme allowing for 2,500 workers this year. NFU Scotland has long argued that that is not nearly enough, and that it needs to be at least 10,000. We are very concerned that that should happen immediately, because we know we are going to be short. About three or four weeks ago, I spoke to Pro-Force, which is one of the accredited labour providers, about how things are going. It is employing people to pick daffodils in Cornwall, and it has already filled the 1,250 places—it gets given half of them—and is struggling to find EU workers to come in and do that. Added to that is the uncertainty about where we are currently with leaving the EU. We really feel that the number of places ought to be put up to 10,000 immediately as a contingency.

Secondly, if we leave the EU without a deal, there is currently in place—I think I have got this right—a three-month rule, so workers can come over for three months without any application, after which they will have to apply for an extension that will let them stay for up to three years. Three months does not bear any relation to what is actually happening on the ground. Most of our workers come over in the early spring—it is probably earlier in England; I am not quite sure when they kick off—and go through the whole season, and then go home for the winter. We feel that the three-month rule will be very obstructive. I have been told that if the slightest impediment is put in the way of the guys and ladies who are coming over to pick fruit for us, they will decide to go elsewhere. We feel that the three-month rule should be extended to 12 months, and then whatever comes after that. We are in a very precarious position. Everything I am hearing on the ground is telling me that if the slightest hindrance is put in their way, they will go elsewhere. I will let someone else speak for a bit.

**Q283 David Duguid** (Banff and Buchan) (Con): You mentioned the very low unemployment rates in Angus. They are broadly similar, and perhaps even lower, in Aberdeenshire, just north of you—where I am from, obviously. Can anything be done to make agriculture or horticulture more attractive to British workers from elsewhere in the UK?

***James Porter:*** There are two or three problems. This is seasonal work, and most people in the UK are looking for full-time work, not seasonal work. The nature of the job really requires you to be on the farm at that point. We have very early starts in the morning, so it does not marry in naturally. The other thing is that it is quite a physical job. No one is pretending it is an easy job; it is quite hard work, and I do not think it is necessarily for everyone.

**Q284 David Duguid:** You also mentioned that there is a risk that if it were made more difficult for workers from the EU to get to the UK, they could go to Germany or other places where there is similar work.

***James Porter:*** It is already happening. There is a risk that it will get worse, which is not good.

**Q285 David Duguid:** The NFU Scotland president, Andrew McCornick, said—I cannot remember which Committee session it was in—that NFU Scotland is already looking for ways to attract labour from outside the EU. Is that correct?

***James Porter:*** If you were to say tomorrow that you would increase that number to 10,000 places, we would not have any trouble filling that from outside the EU. That is not an issue.

**Q286 David Duguid:** That was a supplementary question to my other question, but my main question is this. We heard on Tuesday repeated accusations from witnesses that some short-term contracts—agriculture was mentioned specifically—run the risk of being exploitative. Can you give us some indication of the work that the National Farmers Union and your members do to make sure that is not the case?

***James Porter:*** All the fruit and veg farms that supply supermarkets are Sedex registered and audited by the Sedex members ethical trade audit, SMETA. That is a pretty rigorous audit that looks at wages, accommodation, conditions and so on, and it is recognised globally. The Gangmasters and Labour Abuse Authority also monitors very closely what is going on. You are allowed to employ directly from the EU as a producer, but if you use an agency, it has to be an accredited agency. If you are discovered not to be using an accredited agency or not to be complying with the requirements of the Scottish Agricultural Wages Board, you will be de-listed from supermarkets immediately and subject to the full force of the law.

We have quite a good track record from the last few years of not exploiting our workers. It is generally the case across the industry that most growers have a lot of returnees, and I think that is a sign that the relationship is symbiotic. I am very comfortable with where we are on that. I am happy to look at other ways of improving that oversight if that is what is needed to satisfy people.

I feel I ought to answer the earlier question about the 12-month rule, because I have not answered it. I am afraid it does not make any sense to me. I cannot think of any employment situation where you would employ someone for 12 months, train them up, show them the ropes and then they have to go away for 12 months.

On the £30,000 limit, I do not think the average wage in Scotland is £30,000, so I do not think that is a realistic number. We employ a lot of Romanian and Polish-speaking people. Generally, we have always promoted through the ranks, because otherwise there is a language barrier and because they have the experience of working on a job. Whether it is pruning blueberries, trimming strawberries or whatever, they know that job inside out. If you try to bring in someone from outside who has had no experience of that job, it does not really work. Our middle management level would come under that £30,000 limit, so it does not stack up. In fact, I think abattoir vets do not even earn £30,000, and I think an extremely high percentage—it might be 80%—are from—

**David Duguid:** I had heard that it was even higher than that; I think it is 90%.

***James Porter:*** I know it is very high. This affects not just soft fruit and veg, but other areas of agriculture.

**Q287 Nick Thomas-Symonds** (Torfaen) (Lab): You said that you felt that the £30,000 earnings threshold was not a realistic number. You have spoken about the temporary agricultural workers scheme, but could you give me a sense of what the impact of a £30,000 threshold would be more generally across the agricultural and associated sectors? Is it really fair to describe people who earn less than that as low skilled?

***James Porter:*** I do not like "low skilled" as a term. I told the MAC in Edinburgh a couple of years ago that I did not like it. I understand what they are trying to get at, but although you do not need an academic degree to do a lot of these jobs, they require quite a high level of skill and experience to learn. I prefer the term "manually skilled". That might be a better one.

If you look across agriculture in general, I do not know the exact numbers, but there are a lot of people working in agriculture from the EU right now who would be earning less than £30,000. It is not just my industry. Perhaps you are not all from rural constituencies, so you are not aware of where agriculture is or the details on soft fruit and veg. Is it worth giving you a little bit of background on it?

**The Chair:** Yes, I think that would be very useful.

***James Porter:*** If you take soft fruit, wages in soft fruit have gone up from £3.60 in 1999 to £8.21 currently, and they are due to go up again in April to around £8.51, I think. Our top 10% to 15% of pickers will earn £10 to £12 an hour. They will get holiday pay and they will get overtime after 48 hours—of time and a half, not time and a quarter—because we have the Scottish Agricultural Wages Board. They pay national insurance. They pay tax. To me, they are a big asset to the country as a whole. We struggle a little bit with this idea that they are not contributing. They are contributing, although they might well be below the £30,000 limit.

Wages have gone up significantly in the last 15 to 20 years. If I look back to that initial period, wages were 22% of turnover, but they are currently 48%. The reason for that is that we are not getting paid a penny more for a punnet of strawberries than we were 25 years ago. It was £2 a punnet when I came home from university in 1993, and it is still £2 a punnet, so we are caught between a rock and a hard place. I really do not begrudge these people—it is about 50:50 men and women—their coin, because they have earned it; I used to pick strawberries and it is hard work. But it is very hard for us to keep innovating and developing our industry and increasing our yields. We cannot go on like that forever. It is very difficult.

We spend a lot of money on innovation. We are not shy of spending money on polytunnels. Most of our crops are now on tabletops, which is a significant capital investment. We are now starting to put in gutters, which will recycle and reuse water. We have spent a lot of money on trying to reduce pesticides. We use a lot of natural predators and natural biopesticides. We are doing a lot of things to improve, invest and innovate. Yields have gone up from 10 tonnes a hectare on average to around 22 tonnes a hectare now. It is difficult. I do not think it is fair to call us low productivity or low

investment, or to say that we are just sitting on our hands and not bothering to try to improve the situation or make things more efficient. We really are.

**The Chair:** Thank you for that explanation.

**Q288 Kate Green** (Stretford and Urmston) (Lab): Can I ask what information your members have had and what knowledge they have about any checks that they will be expected to make on EU nationals' right to work after Brexit?

***James Porter:*** That is certainly not clear in my head at the moment. My current understanding is that if a deal is reached, nothing changes until 2021. Is that right? If there is a deal, nothing changes, as far as I am aware. If there is not a deal, my understanding is that currently there will be a three-month rule and then people will have to apply to stay.

**Q289 Kate Green:** Your understanding is that they will be able to work in the first three months without any documentation, but then they will need to apply.

***James Porter:*** Yes.

**Q290 Kate Green:** How will your members know whether somebody is in their first three months or whether they have already been here for three months working for another employer?

***James Porter:*** They will not.

**Q291 Kate Green:** Does that worry your members, or would it worry them if they thought about it?

***James Porter:*** If I had crop to pick and someone came, unless I was compelled to make background checks, I do not see why it should be up to me to try to find out whether they were in their first three months of employment.

**Q292 Kate Green:** Your members do not make background checks as things stand, because people are here under free movement rules.

***James Porter:*** We do not need to. We do need to check that they are from the EU, so we check ID cards and where they have come from.

**Q293 Kate Green:** But you do not need to check their right to work after that.

***James Porter:*** No.

**Q294 Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Most of my questions have been answered, but I have a couple of short ones. The Bill seeks to end free movement. Is it the NFUS position that continuing free movement would be a better course of action?

***James Porter:*** Yes.

**Q295 Stuart C. McDonald:** Because it has worked well for your members?

***James Porter:*** The MAC report—it is not just me saying this—recognises that there is no negative effect on wages from free movement. It is pretty much neutral; people coming in are not forcing down wages. The MAC also recognises that there is a shortage of labour in agriculture particularly, and it suggests that there should be a seasonal workers scheme to make up for that. The MAC recognises that we need labour coming in from abroad, but it still thinks it should be difficult for us to employ that labour. Yes, I could not agree more. The NFU position is clear: we believe there should be ongoing free movement of labour.

**Q296 Stuart C. McDonald:** Do you know how many of your members have experience of being tier 2 sponsors?

***James Porter:*** No. I certainly do not, and I do not know any who do. There might well be some, but I am not aware of them.

**Q297 Stuart C. McDonald:** Finally, some of the witnesses in Tuesday's session were concerned about the prospects of exploitation in a minority of cases because, if workers were tied to a particular employer or were towards the end of a visa that lasted for only a year or less, there was limited prospect of anyone else taking them on. One solution might be to have a multi-year visa so people at least have the opportunity to come back for a future season somewhere different.

***James Porter:*** That sounds quite sensible. We had the SAW scheme previously, and we worked with it until it was ended when the EU accession countries came in. The agencies are quite closely on top of communicating with the people they place on farms, but I can understand that if someone was compelled to stay on one farm, it might be quite difficult for them to speak out if they did not have alternatives. I am sure there may be ways of trying to make that simpler. Perhaps if they received a visa to work in agriculture and were not compelled to stay in one place, that would give them a bit more freedom if they were not happy where they were.

**Q298 Nic Dakin** (Scunthorpe) (Lab): Going back to tier 2 visas, at the moment the fee to recruit a tier 2 worker is more than £1,000. If that type of system went forward, would that present any difficulties, or does that seem a reasonable level?

***James Porter:*** One thousand pounds per seasonal worker?

**Nic Dakin:** That is the cost for tier 2 at the moment.

***James Porter:*** We are working to a pretty tight budget, so I would not be over-keen to pay that. It does not make sense to me. I can understand if there were rational reasons for putting in restrictions to labour, such as a ready and willing labour pool in the UK that was able to do those jobs, but that simply is not there. I do not understand the rationale for adding costs on an industry where things are already tight. There is no doubt about that.

**Q299 Nic Dakin:** You have illustrated very well the tightness of the industry. We had Alan Manning from the Migratory Advisory Committee here on Tuesday, who seemed to say that people just need to pay more.

***James Porter:*** I think I have quite clearly illustrated how much more we have paid over the last 20 years—it has gone up significantly in the last five. It is all very

well saying you have to pay more. We are paying more but we are not getting paid any more for what we produce, and we have no prospect of being paid more. The alternative is to say, "We will just export that production and we will pay someone £2 a day in Morocco or somewhere to grow it." I do not think that is productive.

**Q300 The Minister for Immigration (Caroline Nokes):** You have been very clear about the investment and innovation that have gone into the sector, with table-top growing, and so on. How far off do you think mechanised picking of soft fruit is?

***James Porter:*** It could be a little like nuclear fusion—it might always be five years off, because it is so complicated. One of those robots takes about 10 seconds to pick one strawberry. They are really not quick. There are research and projects ongoing, but certainly, for the near to medium term I do not see it. You have to remember that you might get a strawberry picking machine, but you then have to develop a blueberry one, a raspberry one and a blackberry one. It is not in the near future.

**Q301 Caroline Nokes:** If it takes 10 seconds for a robot to pick one strawberry, how many strawberries can a skilled picker pick in 10 seconds? A lot.

We heard from the MAC on Tuesday that it felt that a distinction could be made for agriculture as opposed to other sectors. Do you want to expand, in the three minutes allowed, on why agriculture is special and why we should take steps to make sure it stays that way?

***James Porter:*** I will just finish quickly the point about technology. It is ongoing and I am sure we will find ways to reduce the number of people we need quite quickly, with robots taking trays away or doing things like that. A lot of other important development is going on to analyse crops and look at crop predictions. But I put that to one side. Agriculture is different because, unlike any other industry, it is 100% reliant on EU labour or seasonal workers from abroad. It is the seasonal nature of that work that makes us particularly like that. Other industries are heavily reliant on that, but none as much as agriculture, particularly soft fruit and veg.

**The Chair:** If there are no other questions, I thank our witness very much for the time you have spent with us. If you leave and suddenly think of something else you wish you had got off your chest, we will be pleased to hear from you in writing.

***James Porter:*** Thank you for taking the time to hear what we have to say.

**Examination of Witness**

*Professor Steven Peers gave evidence.*

2.29 pm

**The Chair:** Welcome. This session can last until 3 o'clock. Will you formally introduce yourself for the record before the questioning begins?

***Professor Peers:*** Thank you for inviting me. I am Professor Steve Peers of the University of Essex. I am also involved with the UK in a Changing Europe project, looking in particular at immigration aspects of Brexit.

**Q302 Afzal Khan:** Professor, you have highlighted certain discrepancies between the treatment of EU citizens who are already in the UK in the event that we reach a deal, and their treatment in the event of a no-deal Brexit. Will you run through those discrepancies?

***Professor Peers:*** One distinction is that, as I understand it, according to the Government's policy paper, there would not be a right of appeal in a no-deal scenario, whereas under the withdrawal agreement there would be. Another discrepancy relates to how long and how extensive family reunion rights would be under the withdrawal agreement compared with a no-deal scenario; they would be truncated in a no-deal scenario.

There is a more recent Government policy paper about what will happen to people who come in during the period after Brexit day in the event of no deal. Obviously, in that case, there would not be a fully-fledged transition period. The Government's plan is to have a short-term permit and for people then to be rolled over into the general immigration system if they want to renew it. That is obviously quite different from the position people would be in if the withdrawal agreement were ratified, in which case the transition period free movement rights would continue for them as acquired rights. Also, under the withdrawal agreement, the transition period can be extended by one or two years, whereas, as far as we know, the Government are not, at least at the moment, planning for their own unilateral transition period to be extended.

**Q303 Afzal Khan:** Clause 4(2) gives the Secretary of State powers to modify

"any provision made by or under primary legislation passed before, or in the same Session as, this Act"

and "retained direct EU legislation". Could the Government use that power to roll back their commitment to EU citizens?

***Professor Peers:*** As I understand it, yes, as the Bill stands, because schedule 1 removes a whole series of existing provisions that would otherwise be retained EU law of various types. If you give the Government that sort of power to amend quite generally—more generally than under the withdrawal Act—legislation relating to the acquired rights of EU citizens, what is the limit on what they can do? It would be useful for Parliament to consider whether there ought to be statutory protection of at least some core rights acquired by EU citizens and others, such as family members and Turkish, Swiss and Norwegian citizens, in the period of EU membership so that appendix EU to the immigration rules cannot simply be done away with or robbed of key protections by statutory instrument in a very simplified way.

**Q304 Afzal Khan:** Could the Government use powers in the Bill to amend immigration legislation affecting non-EU nationals?

***Professor Peers:*** As I understand the Bill, it is focused on ending the free movement of EU citizens and issues related to it. The EU-Swiss agreement is also mentioned in schedule 1. There is not much in the Bill that addresses the White Paper issues about future immigration policy. I assume the Government will want either to introduce another Bill or to use the immigration rules to develop that future policy to deal with issues such as the cap—£30,000, or whatever it might be—for workers and

non-EU citizens. As far as I know—I do not know whether the Government have been clear about this—that is an issue for the future. The Bill does not deal with that as such.

**Q305 Afzal Khan:** As it is currently drafted, the Bill contains no protections for EU citizens already resident in the UK. Would there be stronger protection for EU citizens if the Government's commitment were laid out in primary legislation?

***Professor Peers:*** Yes, of course, because then it would take a further Act of Parliament to amend it, assuming there was no other Henry VIII power lying around that could be used to repeal it. Assuming that does not happen, you need an Act of Parliament to change an Act of Parliament, so you would have to go through that process. The Government might, of course, have a majority in the Commons and the Lords to proceed with that, but certainly it is a longer process involving more public discussion. Bills get more scrutiny than statutory instruments and are usually more open to public debate than the statutory instruments process is. It is not an absolute guarantee, but it is a relative guarantee if you put something in primary legislation compared with secondary legislation.

**Q306 Afzal Khan:** Finally, what concerns do you have about the ability of EU citizens in the UK and UK citizens in the EU to accumulate social security rights if we leave the EU without a deal? Clause 5 of the Bill grants Henry VIII powers to the Secretary of State to make broad changes to social security co-ordination. Do you think those rights can be gained without primary legislation?

***Professor Peers:*** Again, it might be more useful to have some kind of statutory protection, at least of basic things such as acquired rights to social security as of Brexit day; obviously, British pensioners or would-be pensioners in the EU would be interested in that, as well as EU citizens who live or have lived here and might return to their original home on retirement. That would be useful as well.

Of course, this is more complicated, because a separate Act has recently passed Parliament that sets out separate powers to negotiate on social security. In this case, with social security, the Commission has proposed EU legislation—I think at the urging of member states—to keep acquired rights in relation to social security on the EU side. Depending on the details of how that gets negotiated, obviously very quickly, on the EU side, that might be something it would be useful to match.

Even if we do not have a ring-fenced agreement on all these issues, which would be ideal, would it not be helpful for everyone concerned to at least match the arrangements on social security and acquired rights? Perhaps that could be a statutory commitment and the Minister could come along and adopt a statutory instrument to match whatever the EU legislation is at the end of the day, which will not be too long from now, I think. That would be a good way to look at it going forward.

**Q307 Nick Thomas-Symonds:** Professor Peers, you have written a lot about free movement, including that of UK citizens in the EU27. A former constituent of mine contacted me recently about the situation in Austria; the Austrian Government have just published their scheme for expats, and it is €210 per person for a long-term residence permit, which seemed to me quite an extraordinary amount of money. Can you set out your concerns for UK citizens in the EU27 during this period?

***Professor Peers:*** Yes. There are a number of concerns. First, it would have been better either to have a ring-fenced agreement covering people on both sides and cutting out that part of the withdrawal agreement, which is not particularly controversial, or to have EU legislation similar to the social security proposal that has already been tabled, which unilaterally and uniformly protects UK citizens' rights across the whole European Union. For whatever reason, the Commission did not go ahead with that, but it would have been far better to have done that.

What we have instead is different countries doing different things. Some aspects of UK citizens' rights in the EU27 are governed by EU law on non-EU citizens, and long-term residence is an example of that, but there are parallel national laws on long-term residence too. I do not know the details of the Austrian law offhand, but the EU law on long-term residence has case law saying that you should not impose disproportionate fees, so someone might want to challenge the €210 as a disproportionate fee. However, if that is a national law on long-term residence, you do not have an EU law argument about it, so there will be a lot of non-uniform degrees of protection of UK citizens.

It would be better to have standard rules, because a lot of those citizens would be looking at national long-term residence; EU long-term residence is not necessarily used that much. Some of them will face the difficulties of paying high fees. There may of course be other difficulties in applying. There may be earnings thresholds, or other criteria to be met in relation to health insurance or being employed and so on, to get long-term resident status under national law. Those could be difficult to meet.

There might be issues to do with family reunion. Certainly if the family member has not been registered yet, or if they come after Brexit day, different rules might apply to them. It might be quite challenging to bring families in, or have them to stay. If there is a separation or divorce that could raise issues, and people would be in a more difficult position than they would under EU legislation.

Anyone who does not yet have the right to long-term residence could be in an even more difficult position, depending on how restrictive national law is in relation to how they qualify for the right to stay. Would they be given something like pre-settled status, which we will have in the UK, on the basis that they are on their way to getting long-term resident status, or, instead, a short-term permit? It might be that that could not be renewed, or could not be renewed on the same basis, or would not let the person change jobs, or would not let a student look for work—all things that people would have as an acquired right if the withdrawal agreement is passed.

People who are not registered under the national system for registering foreign citizens will have difficulty in any event. They might have difficulties for that reason alone with qualifying under a national system of getting residence permits. If they do not get a residence permit at some point, their life will be more difficult in terms of travel, access to benefits or whatever it might be.

Those points are a broad indication. They will be different in each country and the details will differ, but they give a broad idea of the sorts of problems UK citizens might face.

**Q308 Kate Green:** I would like to follow up on Afzal Khan's questions about social security. I think you said that one way in which the Government might want to use the powers in clause 5 would be to mirror any changes that the EU might make, to ensure that there would be a continuing set of reciprocal arrangements. However, the explanatory notes to the Bill say:

"This clause allows the Government (and/or, where appropriate, a devolved authority) to make regulations to implement any new policies regarding co-ordination of social security."

Do you think that might be too broad a power for the Government to have?

***Professor Peers:*** It does seem like an awfully broad power, yes. It would be useful, I think, for Parliament to insist on some sort of statutory limits or guidelines in primary legislation as to how the Government might use their power. One of them could be a requirement, or a push, at least, towards mirroring whatever the EU ends up with, since we know the plan is to have EU legislation on this issue, and it does seem likely to go through, as member states wanted it. That would be one way forward.

I do not know whether there are other issues as well, that Parliament might want to constrain the Government on, somewhat; but it seems like a reasonable argument, that the Government should not have unlimited powers and some constraints should be set by primary legislation.

**Q309 Kate Green:** The explanatory notes also suggest that regulations could be made under the clause to make different provision for different categories of persons. Do you have any views on that power, and how Ministers might exercise it, and any constraints Parliament might think of to be placed on that?

***Professor Peers:*** I imagine that you might end up with different social security treaties being negotiated with different countries. There are not always arrangements with other countries to uprate pensions, for instance, whereas with the EU, at least until now, it has been the case. I suppose some treaties would cover that and some would not. It makes a big difference over time to pensioners who are not getting their British pensions uprated. Again, that might be something you want to address in the legislation, to specifically require pensions to be uprated, for instance.

**Q310 Kate Green:** For those who have contributed to the British social security system and then have expectations as pensioners?

***Professor Peers:*** Yes.

**Kate Green:** Finally, what do you think will be the impact on labour market mobility of the possibility of different social security co-ordination arrangements in the future?

***Professor Peers:*** People are always going to ask themselves, "What are my pension issues if I move to another country?"—or, of course, if they move to a different job in the same country. Moving from a better pension to not such a great pension might counteract any pay increase someone might get, for instance. People have to think about that. Perhaps people in their 20s do not do that so much, but as we get on we start to think more about these things.

**Q311 Kate Green:** Those who are more highly paid, and therefore expect a higher pension, might think about it more as well.

***Professor Peers:*** Of course that is a possibility, although I am sure that people on every pay level are concerned about pensions. It is bound to factor into people's considerations, although it is hard to quantify. I am sure that someone has studied it in detail, but I have not. However, it will undoubtedly be a factor, and it is one reason why the first regulation the EU ever adopted, in 1958, was on social security co-ordination. That was precisely the reason why they did it—plus, it was a treaty that was ready to be copied into regulation. There has been so much case law on it over the years because of the importance of social security co-ordination to labour mobility.

**Q312 Stuart C. McDonald:** Can I ask about clause 2, which relates to Irish citizens? I think everyone welcomes the inclusion of the clause. However, we heard evidence earlier this week that there are perhaps other issues for Irish nationals that we should cover, and that the clause does not go far enough to protect their position. Do you have any thoughts on that?

***Professor Peers:*** First of all, I agree that it is useful to have the clause there. I think there was a general assumption in some quarters that we did not need to say anything on Irish citizens, because they were covered, although my colleague in Leicester, Bernard Ryan, questioned that over the years. It is now there in the legislation, and it is useful to have.

However, having looked at that recently, I think the question of family reunion might arise. Are Irish citizens covered by the general appendix EU rules on family reunion as the Government intend to implement them in event of no deal, where there would be a shorter period in which the EU rules on family reunion apply? Does their being covered by those rules depend on whether they apply for settled status? There might be an answer to that that I have missed, but that question certainly arose for me.

That is not just about people who have non-EU citizens as family members, about people who have EU citizens as family members. After a no-deal Brexit, EU citizens would be coming here on a limited basis, according to the Government's plans on limited three-year permits. Someone might be in a better position if they are here as a family member, so it would be useful to know whether such people would end up being covered as family members. Perhaps that will be clearer when we get further changes to the immigration rules to implement the no-deal plans. I have checked this afternoon, but I have not seen that implemented yet. It would be useful to see it.

**Q313 Stuart C. McDonald:** Turning to the settled status scheme, you spoke earlier about trying to put at least the central elements of the settled status scheme and the rights for the 3 million, to use that expression, in the Bill. People have also given evidence that the

system should be declaratory in nature, rather than people having to apply for something before they have any rights. Do you agree with that?

***Professor Peers:*** In an ideal world, yes. However, given that it is the Government's intention to end free movement, the difficulty will be how to distinguish between EU citizens who are here on a free movement basis before Brexit day—or the end of whatever further period we might have—and those who come after that period and who do not have ongoing free movement rights. How do you distinguish between them if there is not at least some system of registration?

By way of a compromise, it might be useful to make it clearer that settled status is a registration system, rather than an application system, because I think that a lot of people were unsettled by its being described as an application system. I know that the withdrawal agreement says that. It also says that people will have to be given settled status if they meet the criteria, so there is not really any discretion for the Government. Given that, why not simply describe it as a registration system? Otherwise, a lot of people will be concerned about what they see as an implied threat. If we are going to go ahead with it, which seems quite likely, a useful way forward would be to reconceive it.

**Q314 Stuart C. McDonald:** Are you concerned, as things stand, about this cut-off point? Are you concerned that however well the Home Office does in registering as many folk as possible, tens of thousands—if not hundreds of thousands— will miss that deadline? Can you see a case for scrapping the deadline altogether, or for having some other compromise to prevent, for want of a better word, a Windrush-style situation from arising again?

***Professor Peers:*** There is a case for having either a longer deadline or no deadline at all, or having some kind of fairly general excuse clause that gives the Home Office a lot of obligations—not necessarily discretion—to accept late applications for quite an open-ended series of reasons. Obviously, there will be people who do not know about it or understand it. I am in contact with people who know the system well and are campaigning about it and so on, but I realise that that is a bubble. There are a lot of EU citizens outside it who will not understand it very well or follow the details, or who will shake their heads and ignore it in the way you might ignore something like an ominous-looking bill. It would be much better to be as flexible as possible about subsequent future registration and various methods of forgiveness and excuses that people might need to invoke.

**Q315 Eleanor Smith** (Wolverhampton South West) (Lab): My question is about the fact that the Home Office is saying it will grant settled status to someone for two years; I was going to ask whether you thought that was feasible, but I think you have answered that. Do you think the two years the Home Office is granting everybody is feasible? Do you think this can be done in that short space of time?

***Professor Peers:*** It is quite hard to say. This is an app and an electronic process, but that is still a lot of people to go through the electronic process. I do not know about the technological feasibility of it. The difficulty will be with the people who do not get settled status, the people who do not apply and the people who get pre-settled status and argue that they should have had settled status. There will be those categories of people, and there will be some overlap with people who come in either during the transition period, if we have a withdrawal agreement, or during the unilateral, more truncated transition period if we have a no-deal scenario.

In that case, especially if there is no deal, I can imagine employers or landlords being confused about the situation: are these people necessarily entitled to be here or not? There will be people who could have had settled status but do not have it yet because they have not replied or they are waiting for a reply, as well as people who have a more limited leave to stay and more limited rights. Ultimately, there could be some confusion about telling those two groups apart, and we want to avoid a scenario where employers, landlords and banks start to become nervous about renting to or hiring people who are entitled to be here, especially because for a while we will have a category of people who are entitled to be here but do not have the documentation.

That is the background against which we could end up with a Windrush scenario, because at some point there would be greater demands for documentation and some of those people will not have got it or will not then be able to get it. If they have been self-employed, for instance, they may not have the records of all the work they did on an odd-job basis that would easily satisfy the system that they are entitled to be here.

**Q316 Caroline Nokes:** From the evidence we have heard from you in the course of the past 25 minutes or so, it is clear that the decision to end free movement following the outcome of the 2016 referendum has painted a complicated picture. Was that always an inevitable outcome, once we knew the result of the referendum?

***Professor Peers:*** It was, obviously, the Government's choice to interpret the referendum results as an end to free movement. There were other options, such as signing up to the same sort of relationship as Norway or Switzerland have with the European Union, or trying to negotiate another variation on that—although I do not know how willing the European Union would have been to negotiate a variation other than the Norwegian version of free movement minus a little bit. Given that free movement was so frequently mentioned during the referendum, the Government felt that was politically necessary.

It is inevitable that we will get into legal complications once we end free movement, because we have a big category of people who have been here on one basis and we are saying that they will all have to transfer to another basis. We are talking about 3 million people, and equivalent significant numbers of UK citizens in the EU. That is bound to be an issue.

**The Chair:** If there are no other questions, I thank you very much indeed for the time you have spent with us. If you should remember something that you wish you had raised, please write to us. Thank you.

**Examination of Witness**

*Professor Stijn Smismans gave evidence.*

2.55 pm

**The Chair:** Welcome to the Committee. Would you please kindly introduce yourself for the record?

***Professor Smismans:*** I am Stijn Smismans, professor of European law at Cardiff University, and I am speaking on behalf of the3million, which represents European citizens already resident in the UK.

**Q317 Afzal Khan:** We heard from Professor Bernard Ryan on Tuesday that a gap in the Bill is its lack of provisions for EU citizens who are already here and who will now apply for settled status. Do you agree? What kind of provisions would be needed to secure the rights of EU citizens in the UK?

***Professor Smismans:*** I entirely agree. The objective of the Bill is to remove free movement and substantially to regulate future immigration. However, as collateral damage, the 3 million EU citizens who are in this country will be affected. The Bill does not provide any guarantees for them, which is quite remarkable. It provides protections for Irish citizens, which for reasons of history one can understand. However, at the same time, Irish citizens have lived in this country over recent decades with the same status as EU citizens, so it is strange that the Bill protects only that category and does not provide any protections for the EU citizens already here.

What the Bill does is actually quite radical. These EU citizens have been living here for decades completely legally, and legitimately expecting that their status is solid. One day, the Government said that they were going to remove all those people's rights—their complete status. The Government say they will replace it with something new, although the definition of that is not yet entirely clear. There is still room for manoeuvre on which rights they will get, and particularly on the definition of the status, which can be partially set out in secondary legislation.

Moreover, the Government are not going to grant that status; EU citizens will have to apply for it and must comply with the criteria. If, by a certain deadline, they do not have those documents, they can be immediately deported, because they will be here illegally. That is quite radical for people who have been living here for, potentially, decades.

To put yourself in their place, imagine that you, as British citizens, have in the same way legitimately expected that you have the right to stay here, and one day the Government say that they will abolish the status that you have and replace it with something new. They assure you that it will be more or less the same, but they will set it out in secondary legislation. You must then apply for it, and if you do not get it, you can then be deported. You may say that British citizens are British citizens, not EU citizens, but over recent decades EU citizens have been living here with nearly exactly the same rights as British citizens, except the right to vote in national elections. They have had substantially the same rights, and they have never had to provide any other proof of their identity. They are now going from that status, which is protected not only in primary legislation but supranationally, to one that is not even set out in primary legislation, because the Bill does not provide that protection. It removes those people's rights and gives a very broad delegation to secondary legislation, leaving much to be set out there.

the3million proposes that the Bill should set out several criteria. To start with, the process of registration should be set out in primary legislation, with criteria that give clarity on the exact status those people will have. We also propose that the procedure should be declaratory, compared with the current constitutive one. Obviously, that also implies that there have to be limits on the Henry VIII powers that are given in this Bill.

**Q318 Afzal Khan:** Just to make sure we catch both these areas, I have two quick questions. We have heard that the implementation Bill may be a chance to guarantee the rights of EU citizens in primary legislation. Do you want to expand on that? What is the case for doing it in this Bill?

***Professor Smismans:*** The most logical way of proceeding would be to wait until we know whether there is a withdrawal agreement, because that withdrawal agreement provides protection for EU citizens and the UK would have to implement it with an implementation Bill. At the moment we do not know whether there will ever be a withdrawal agreement. If there is one, we do not know exactly what the implementation Bill will do. In the case of no deal, this Bill is the only place where you can provide guarantees in primary legislation.

Even if there is a withdrawal agreement in the end, if it were to be adopted in a couple of weeks, we would have a month to discuss the implementation Bill. That Bill will probably be limited in how much detail it would provide on the rights of EU citizens already here. There are some aspects that the withdrawal agreement does not set out in detail, such as the registration procedure. In any case, that would have to come in primary legislation set out here, and not just in the implementation of the withdrawal agreement. If it is not set out now, there is a very big chance that if there is no deal, there will be no guarantees in primary legislation, and even if there is a withdrawal agreement, the implementation Bill does not do that properly, because there has not been enough time to discuss it.

**Q319 Afzal Khan:** What concerns do you have about the Henry VIII powers in this Bill? Do they potentially allow the Government to amend the rights of EU citizens in the UK by secondary legislation?

***Professor Smismans:*** The provisions given here for secondary legislation are very broad. The process for applying for status is not in primary legislation, so that is a starting problem. The rights we currently have can broadly be revised by the powers given in this Bill, so the status that we once had can be undermined gradually over time. That is why we propose that if a delegation remains in the Bill, there should be a sunset clause on it, so it is only for tweaking technical issues in current rules. In particular, there should be a clause that stipulates that these provisions should not at any time undermine the existing rights of the people already here.

We understand that one wants to regulate free movement for the future, abolish it and create new rules, and we understand that that might require Henry VIII powers. That is a choice. But it is a very different thing to remove the existing rights of people who have been here for decades. That should be set out in primary legislation, and it should not be possible to play with that in secondary legislation.

**Q320 Maria Caulfield** (Lewes) (Con): I just want to clarify something. You seemed to suggest that EU citizens who are living here now do not have to apply for any settled status, but that is not the case, is it?

***Professor Smismans:*** No, our proposal is that there should be a registration system. If there is no registration system, these people will not be able to distinguish themselves from future immigrants, so there has to be some registration.

**Q321 Maria Caulfield**: But even EU citizens now, as we are still members of the EU, still have to apply for settled status. There is a process in place and they have to have lived here for six months in any 12-month period for five years in a row. That is the case now, is it not?

***Professor Smismans:*** Yes, that is the process that is set out in secondary legislation, not in primary legislation. If the criteria for that are changed over time, we have no protection against that.

**Q322 Maria Caulfield**: But that is the case now?

***Professor Smismans:*** That is the case now.

**Q323 Maria Caulfield**: So there is a process that EU citizens have to follow in this country, if they want to apply for settled status.

***Professor Smismans:*** This is the process for settled status that is in place now. It has problems and is surely not perfect. We know from the numbers—if the numbers are confirmed as they are now—that there is a considerable group of people who will be at risk at the end of that process, and who will not have registered, particularly the vulnerable. There is a big risk that a percentage of people will get the reply that, "You don't get settled status. You get pre-settled status." Quite a few people who have been living here for more than five years but have failed to prove it get pre-settled status. At some point in the future, those people will have to prove again that they have the five years. If they cannot manage to do that now, it is unlikely that they will be able to do it in the future. That will be pushed by the deadline. You have a category of people who are strongly at risk of becoming illegal if they do not have the document by that time.

**Q324 Maria Caulfield:** Okay, but there is a process in place now. Although we have free movement, which this Bill aims to end, there is already a process in place that people from the EU have to follow. It is a cumbersome and bureaucratic process, but it is not true that this is something new and different that has not happened to other members of the EU.

***Professor Smismans:*** No, this is new because it has been put in place in the context of Brexit. It is not a process one had before. Before, one had the process of permanent residence applications, which hardly anyone applied for, because they did not feel the need for it. That process of permanent residence was exactly a declaratory process. If you had the document, it was convenient for you to show that you had that status. If you did not have the document, that was not a problem. It is a declaratory status.

What we will get is completely the opposite, which is why we say we need a declaratory process, so that the sole fact of not having the document does not mean that you do not have the rights. It just means that, at that stage, you cannot prove it because you do not have the document, but you should still be able to apply to get the document even after the deadline. That is the difference between the declaratory and constitutive systems.

**Q325 Maria Caulfield:** For British citizens in other EU members states, do they have to apply for ID cards now as current members of the EU?

***Professor Smismans:*** For ID cards, no. That is a national issue. There are a lot of EU countries that have registration systems on arrival. The UK could have done that decades ago—could always have done that. The fact that it has never done that actually creates a lot of problems now.

**Q326 Maria Caulfield:** For those British citizens, as EU citizens now, what are the consequences if they do not apply for an ID card in that particular country?

***Professor Smismans:*** That depends on the country.

**Maria Caulfield:** Could you give me an example?

***Professor Smismans:*** In some countries, it will create problems in getting access to public services if people are not registered. Under EU law, they could be there for three months without registration. Some countries say that after those three months, you have to register. If you have not done that, and you want access to welfare benefits, they would say, "Well, you haven't registered."

It has always been the case that countries could do that. The UK could have done that, but has not done that. Having people who are not registered now creates a difficult problem for the future, because non-registration will have the immediate effect that you become illegal. Even in the EU, it is not, "If you haven't got registration, you aren't legal." You might not have access to certain services, but you are not illegal and you are not deported on that ground.

**Q327 Kate Green:** May I ask you about the provisions in the Bill relating to social security? What are your views about the powers in clause 5?

***Professor Smismans:*** They are very wide. These are the essential rights of people who have built up pension rights, sometimes in several countries. EU rules allow that rights built up in several places can be aggregated. We do not know what will happen with that. If there is a withdrawal agreement, it will be guaranteed. If there is no withdrawal agreement, we do not know. The promise so far, which is not yet set out in a legal text, is that rights built up until now will still be recognised, but rights built up after Brexit will not be recognised. That is obviously a problem. You are saying, "Okay, you have built up these rights until now; be happy with that," but that means that people cannot move any more. If I have built up pension rights here, having been told, "We will recognise them and we will recognise the pension rights you have built up in Belgium, France and Italy," but from now on I am told, "We will recognise only what you do in the UK", that means that I cannot move back to Belgium if I want to or if I have to go and take care of my mother. I cannot do that, because my pension rights will have been building up until this moment in time.

That is why there should be limitations on how these rights can be affected and undermined by secondary legislation. Ideally, this is set out in the withdrawal agreement; it should be guaranteed in primary legislation. The withdrawal agreement is important for this issue, because it includes elements of co-ordination between countries. You can never resolve it unilaterally, because

there are always aspects of co-ordination of information. You have to know what has been done on the other sides. And actually there are already proposals for statutory instruments that say, "If we don't get the information from the other country, we are not obliged to take these rights into account." There are already statutory instruments—proposals for that—that are undermining our rights.

There is a tendency in the first proposal for statutory regulation to forget about the 3 million already here. It is all set out: "We are going to change the rules on free movement for the future." It is a kind of generic approach: forget about the 3 million who have built their lives on these rights. So there are no guarantees there. These guarantees have to be set out in primary legislation.

**Q328 Kate Green:** The statutory instruments that you are talking about are statutory instruments that the Government have already laid under the European Union (Withdrawal) Act 2018. That is correct, is it not?

***Professor Smismans:*** Yes.

**Q329 Kate Green:** That would give the Government the opportunity to demand information or make assumptions about your status if you could not supply that information.

***Professor Smismans:*** Yes, exactly.

**Q330 Kate Green:** Given that the Government are already laying statutory instruments under the European Union (Withdrawal) Act 2018, what further concerns do you have about the additional provisions in this Bill?

***Professor Smismans:*** This goes on the same line as what the withdrawal Act allows them to do. It is not particularly worse than the powers given there, but it is not giving any guarantees.

**Q331 Kate Green:** So it does not make the situation better and it may be making it even more punitive.

***Professor Smismans:*** Yes, it makes things worse, in that the Bill obviously removes the free movement rights in their entirety. On social security, it does not remove them as such, but it gives the power to do that under secondary legislation. So in a way that is less radical than the first aspect of the Bill, but in practice it may well come to the same thing.

**Q332 Kate Green:** Do you have any concerns about the power that this Bill would confer on Ministers to make different provisions in relation to social security for different categories of European economic area or other nationals?

***Professor Smismans:*** Yes, the Bill explicitly says that. The positive interpretation might be, "Well, actually, we needed that to say we have to distinguish between future immigration and those people who are already here." The practice of the first instruments that are adopted is that actually they do not make that distinction, so it can be used in many different ways. That is why our proposal is that if there is such delegation, at least there has to be a protection for people who are already here saying that their rights cannot be removed by secondary legislation.

**Q333 Mrs Kemi Badenoch** (Saffron Walden) (Con): Professor, as part of the3million, you have had frequent meetings with Government in terms of designing the settled status scheme. Can you tell us how effective you think the Government and the Home Office in particular were in engaging with stakeholders?

***Professor Smismans:*** There has been engagement with stakeholders on the practical implementation, for sure, which has been useful. I think it has been more difficult to have any influence or feedback when civil society has said, "Well, actually, our rights have to be guaranteed; it's not just an issue of practical implementation." That has been far more problematic. There has been an involvement, but given the state of the legislation and the rules, clearly civil society has not been as effective as it hoped.

**Q334 Mrs Badenoch:** I hear what you are saying. In answer to previous questions, you talked about the dissatisfaction with the way the rights have transitioned. However, my understanding is that you were consulted extensively on the design of the settled status scheme.

***Professor Smismans:*** The main flaw of the design is its basic principle: it is a constitutive system. Whatever criteria you put in or however you organise it, the practical consequences can be dire under a constitutive system.

Another key aspect that is highly problematic is that the scheme will, in the end, give you an electronic code, not a physical document. That is highly problematic in practice. People need a physical document. For other immigration statuses, people get physical documents. If people do not have that physical document, private actors will ignore them. Again, the vulnerable will struggle if they only have a code. A private landlord might not make the effort to make use of that code, or might not know how.

There are also huge IT risks. Every IT specialist we have spoken to says it is an incredible risk. Data might get lost. That happens. The data system might be hacked, which will mean that the status of these people will be gone, and they will have to reapply. If that happens, they will not have any document and will be immediately illegal, with all the consequences of the hostile environment hitting them immediately. They need a physical document. That is a key ask, because those with all other immigration statuses get a physical document. Why do these 3 million people not? It is very important.

**Q335 Mrs Badenoch:** Thank you for that. You talked about the flaws of the system. There were bits that you had an input in designing or were extensively consulted on, so something in there must be good. Do you think there is anything in there that could be useful as the basis of a future immigration system? What do you like about the settled status scheme?

***Professor Smismans:*** I will not express myself on the future immigration system. That is not my task. the3million defends the rights of the EU citizens already here. Whatever system is designed for the future is a political choice that we do not have to make, so we do not make any statements on that.

In the same way, we say that ending freedom of movement for the future is a legitimate choice, and that is fine. We can talk about the interpretation of the referendum, as the Minister did before, which I heard from the back, but we usually leave the interpretation of the referendum up to you. However, let me remind you

that, before and after the referendum, all parties said that the rights of EU citizens already in the country would be protected, and that everybody who was already here would be able to remain here with the status they already had.

The Bill wipes out those people's rights completely and leaves it to secondary legislation to sort them out, and also makes them register with an uncertain outcome. That is not the promise that was made by any political party during or after the referendum.

**Q336 Paul Blomfield** (Sheffield Central) (Lab): That exchange anticipated my next question, which was going to be about the physical documents. In that discussion, you made the point that you were consulted. You have made a very powerful case on the importance of physical documentation. Presumably, you made that case to the Home Office in the consultation?

***Professor Smismans:*** Yes, we have said repeatedly how important a physical document is and that we want one.

**Q337 Paul Blomfield:** Did you hear any convincing argument from the Home Office as to why that should not be provided?

***Professor Smismans:*** We have heard arguments that this is the future and that the electronic system will work. Unfortunately, I think that there are inherent risks in the future, and people should be prepared for that.

**Q338 Paul Blomfield:** May I move to a different area—the right of appeal? You expressed concern about it earlier, and I assume that you also expressed your views about it fairly robustly in consultation with the Home Office. I guess that the Home Office would have said in reply that there was the option to pursue administrative review and judicial review. What was your reaction to that?

***Professor Smismans:*** There are two issues. On the one hand, if there is a withdrawal agreement, it will require a right of appeal—at least, I hope that if there is a withdrawal agreement implementation Bill, that will be one of the things explicit in it. We do not know whether there will be a withdrawal agreement, and from what I hear there is no clear promise that we would get a right of appeal without one. I am an EU lawyer, not an immigration lawyer, so I am relying mainly on what I have heard from my colleagues in immigration, but we know that there have been considerable problems with how administrative review has worked in the past. It means the Home Office having to judge itself. That might be fine as a first access point or a first way to resolve things, if it works, but it is not enough; we need judicial review and the right of appeal on top.

**Q339 Jack Brereton** (Stoke-on-Trent South) (Con): Obviously you are here to particularly represent those EU citizens who are currently living in the UK, but may I ask you the same question that I asked some of our panellists this morning about British citizens living in the EU? Do you think that all the EU countries have been doing everything possible and taking adequate steps to guarantee the rights of British citizens living in the EU?

***Professor Smismans:*** No, they definitely have not. That is why it is so important that we get the withdrawal agreement or, if there is no withdrawal agreement, that we get a separate citizens' rights agreement. What we have been asking for is that the citizens' rights part of the withdrawal agreement be ring-fenced and adopted. The withdrawal agreement was agreed between the EU Commission and the UK Government; it did not pass in Parliament, but citizens' rights were not the debated issue. If the withdrawal agreement fails, it will be because of the border between Northern Ireland and Ireland and the wider issue of where the future relationship is going, not because of citizens' rights.

The best way to safeguard our rights is through the withdrawal agreement or, in the event of the failure of the withdrawal agreement, to have a separate citizens' rights agreement under article 50. That would mean that British citizens in the European Union were protected at a supranational level; they would not depend on 27 national rules, in the same way that we do not depend just on the UK. It is a kind of balancing act, in the way that there has been a reciprocal solution between the rights of EU citizens here and British citizens in the EU. That would remain in place for that category of people on both sides. That is the best guarantee.

In any case, issues such as social security co-ordination will require international treaties. You can resolve some issues unilaterally or set out some guarantees in primary legislation, but for the issue of British citizens in the EU, doing that would depend on all the countries at a national level. As we have seen recently, there is not much willingness among European Union member states to let the European Union do that. If there is no agreement, it will mainly be up to national solutions in each country. On social security, you would then have to negotiate agreements between the UK and the 27 countries separately. Surely that would not provide the protection that the withdrawal agreement or a separate citizens' rights agreement could provide.

**Q340 Jack Brereton:** Do you think that the UK and the EU have approached these issues from different perspectives?

***Professor Smismans:*** The withdrawal agreement provides a solution. There is quite broad agreement on both sides, and within EU member states in general, about the solution for EU citizens. The problem is that it is linked to the fate of other dimensions of Brexit, and by linking that, once the rest falls apart, this guarantee falls apart unless you use article 50 to still adopt that.

That has to be done quickly, because once the UK is out of the European Union it cannot use article 50. That means that for all the rights set out in that agreement, if they have not been adopted under article 50, you have to go to the different legal basis of the new treaties, which does not give you the same powers. The complete set of rights protected there could never be protected in another way than through article 50, so once the UK is out, if these citizens' rights have not been guaranteed, it will be too late to provide the same level of protection that we have now. At best, it will come up with a sub-optimal solution that will then have to be ratified in all the member states, so it will also take much more time, which means extra insecurity in the meantime.

**Q341 Afzal Khan:** This 3 million is a big number. Even if small numbers get caught up in something like what has happened with Windrush, do you think there is a risk that EU citizens will be caught in that way?

***Professor Smismans:*** Exactly. With the settled status scheme, even if there is a 95% success rate at the end, 5% of 3 million is a lot of people. Given the current consequences, that means being hit by the hostile environment—that you are illegal whatever you do. If you are in work, that will be illegal. You lose all access to services and you can be deported at whatever moment in time. Even if it is 5% of 3 million, that is a huge number, and it will be at least 5%, because people will not register, will be rejected, or people will be in the quite unstable position of pre-settled status. After five years, they might try again, and are likely to fail again. It is likely to be hundreds of thousands.

**Q342 Caroline Nokes:** I think that you have said that the best way to protect citizens' rights is through the withdrawal agreement, and you will certainly get no argument from me on that front. In the event of a deal, given your clearly expressed view that citizens' rights should be protected in primary legislation, is a withdrawal agreement Bill the best place to do that?

***Professor Smismans:*** That is what I said, and ideally that would have been the case. The problem is that first, we do not know whether it is going to happen, and secondly, if it is going to happen, the time will be so short that we will not know what is in there.

**Caroline Nokes:** But ideally, that would be the place.

***Professor Smismans:*** Yes. Ideally we would have discussed the withdrawal agreement and implementation Bill, and then we would discuss a Bill that removes all that except for this category. If we say, "We will remove everything, and then maybe we will see what comes after the rest", that is more problematic.

**Q343 Caroline Nokes:** Do you think that the3million has a role to play in encouraging EU citizens to apply through the settled status scheme?

***Professor Smismans:*** Definitely, and it is ready to do so. Nobody gets an advantage from people not being documented, given that there will be two categories of people.

**Q344 Caroline Nokes:** Good. I am very pleased to hear that the3million wants to continue to play a role, because we have certainly welcomed its input so far. Have you ever applied for an e-visa or an electronic travel authority to go to any other country?

***Professor Smismans:*** No.

**Q345 Caroline Nokes:** Would it be your view that ETAs, or the electronic system for travel authorisation to go to the United States—you have clearly not applied for one of those—are better than physical documents, or do you think a wet stamp on a passport is the 21st-century way of dealing with things?

***Professor Smismans:*** I have no experience with that system, so I cannot compare it.

**Q346 Caroline Nokes:** Would you acknowledge that physical documents can get lost and might need renewing, which could potentially come at a cost to either the individual or the state?

***Professor Smismans:*** They can get lost, but we would hope that they are backed up on the electronic system, so a person has two ways of being secured.

**Caroline Nokes:** Although if we had an electronic system, that also might be backed up.

***Professor Smismans:*** Yes, yet IT specialists say there is a big risk there.

**The Chair:** Thank you very much indeed for your time. We are very grateful for the evidence you have given the Committee.

**Examination of Witness**

*Joe Owen gave evidence.*

3.30 pm

**The Chair:** Welcome. Would you like to introduce yourself to the Committee, just for the record?

***Joe Owen:*** I am Joe Owen, associate director at the Institute for Government.

**Q347 Afzal Khan:** What do you think about the powers in clause 4?

***Joe Owen:*** The Bill is a framework Bill that gives the Government broad powers with which to move forward. In some respects, particularly when we look at some of the criticisms we have already heard about this being a kind of blank cheque for Government, that is not uncommon on immigration. The basis of the legislation—the 1971 Act—means that the Government have pretty broad powers to start making changes in the immigration system. This is not necessarily a massive deviation from that.

Looking at this, there is an important question about whether the basis of immigration rules, with which this clearly shows a problem, is the right way to do immigration rules. It is certainly the case that between 2010 and 2013, for example, there were some pretty big changes in the immigration system, not least reducing non-EU migration, over which we had control—for want of a better phrase—by about 40%. That was all done without primary legislation, just through immigration rules.

There was also the introduction of the minimum threshold for family reunification, which meant that around 40% of British citizens, I think, would not be able to bring over spouses from the rest of the world under those rules. Whether or not you agree with the policy, there is a question about whether it is right that that can be done through immigration rules and negative procedure. The broad question with the Bill is the continuation of broad powers to make changes in the immigration system. There is a valid question at this point about whether that is the right way to progress with immigration legislation.

**Q348 Afzal Khan:** Do you think there is sufficient scrutiny of immigration rules now?

***Joe Owen:*** There is obviously value in having immigration rules that can be quick and responsive and make changes where there is recognised abuse in the system, or equally to loosen things up if there is a squeeze in the labour market. There is clearly value in having reactive immigration rules, but there is a question about the level of scrutiny more broadly. There is one quite interesting question about what happens before it gets to Parliament.

In the benefits system, there is the interesting example of the Social Security Advisory Committee, which brings together experts from an operational perspective, who are used to implementing the rules on a day-to-day basis, from a legal perspective and from business, non-governmental organisations and so on, to try to work out how those rules would be implemented in practice. That is quite an interesting model that there is less of when it comes to immigration rules; there is less up-front kicking the tyres.

When it comes to parliamentary scrutiny, that is done through the negative procedure as the baseline. I have already touched on some of the big changes that it was possible to make through the negative procedure. This change prompts a discussion about whether that is the right way for changes to be made in the immigration system and whether there needs to be another look at the balance of power between the Executive and what can be done through primary legislation. As I said at the beginning, that is not to say that everything should be done under primary legislation, because there are strong arguments for being able to be reactive, but I think there are certain cases where there is insufficient scrutiny of immigration rules.

**Q349 Afzal Khan:** Do you think there was sufficient scrutiny of the hostile environment when it was brought in?

***Joe Owen:*** That is a good question. That came through primary legislation with the 2014 Act, so there was an opportunity to discuss it. There was never really a White Paper. If you want a White Paper that sets out the hostile environment, you need to go back to Labour. I think it was in 2007 when they called it the "difficult environment", or the "uncomfortable environment", which put out a lot of the ideas that became the basis for the 2014 Act. Obviously, things changed, and it was not exactly that blueprint, but not much of a blueprint was laid out.

There is a question about what happened to some of the challenges that were picked up during that process. We know from the Government's own impact assessments that they recognised that the right-to-rent measures, for example, would affect people of an older generation who had their rights guaranteed under primary legislation, whose documents might have been destroyed. It basically described the Windrush issue in a policy equality statement in, I think, 2015.

There is a question about the extent to which that was scrutinised, and what happened to that information afterwards. However, in terms of the level of scrutiny of the hostile environment, there was a piece of primary legislation, but there is an argument that there was not as much information White Paper-wise as you might normally expect.

**Q350 Afzal Khan:** Knowing what we know about where we are with the current immigration system, do you think that it needs to be reviewed before we add another 3 million or 4 million EU citizens? Would it help to streamline, improve and simplify it?

***Joe Owen:*** Yes. This is a big opportunity to change the way the immigration system works, but clearly there is a trade-off between time and the level of ambition for what you can change. As it stands, the system would need to be up and running in less than two years. Clearly, time is a big constraint. That is one of the reasons why a lot of what sits at the core of the policy in the White Paper is the points-based system that existed before 2010. There were then a series of add-ons, such as the cap, which this removes, and stuff around the resident labour market test. Those things that were bolted are being stripped back.

The fact that there is so little time means that the level of ambition has to be curtailed in terms of what you can do. You would expect that changes will be needed over the longer term; we will not be done and dusted in December 2020. Such things as the promised review of the sponsorship system for employees might have to be done in the longer term. One of the things that we are looking at is whether there needs to be a bigger review of how the immigration system works, and the structures and processes in the Home Office. That was one of the things announced by the Home Secretary in response to the DNA testing issue.

One of the areas that is not touched on, and which will likely need a review—this has definitely been a theme in the evidence of all your previous panellists—is how enforcement works. You have heard from all the panellists since I have been here about the question of settled status, and what happens to the people who do not have settled status at the end. It is almost certain that quite large numbers of people will not.

It would be heroic if the Government managed to get to 95%. I think the dreamers scheme in the US, which was kind of similar in terms of the application process and who was eligible, got about 43% of people who were eligible. I think we did something in the UK around family leave to remain in the early to mid-2000s where we got about 20% coverage. Even if we were to stretch to 95%, which would be a really good job by the Home Office, you are talking potentially about nearly 200,000 people who do not have documentation. How does the enforcement system adapt to take into account the fact that that is just a reality we will be dealing with?

The Home Office will need to deal with the fact that there will be people for whom it does not have paperwork, and who technically may have no legal right to stay, if they did not apply within the time period. I think most people in the UK would recognise some kind of moral entitlement to stay if someone has lived here for 20-odd years. How the enforcement system adapts to that will be an important challenge.

**Q351 Kate Green:** Can I ask you about the provisions in the Bill that relate to social security co-ordination? Clause 5, again, gives the Government Henry VIII powers to modify the social security co-ordination arrangements, including modifications to entitlements that people may currently have in primary legislation. You have spoken a bit about how immigration rules have been used to modify primary legislation. What is your view of those Henry VIII powers?

***Joe Owen:*** I have to admit that I am by no means an expert on social security, but this is part of a broader Brexit phenomenon. The level of uncertainty of what sits ahead, and the need to pass legislation, means that the Government have to take broad powers in certain areas to cover all aspects of a no-deal scenario. Whether there is the necessary scrutiny of that, and the necessary security as to the powers being used properly, is a

different question, but it would in some cases be quite difficult to get away from taking broad powers on Brexit-related issues, unless the Government were to be quite forward-looking about what they planned to do.

In short, it is kind of unavoidable that there are some quite broad powers in the Bill, but there is a serious question about whether there is the right level of scrutiny, and what more Select Committees, for example, could do to make sure the powers are used properly.

**Q352 Kate Green:** Is there a difference when delegated legislation is used to remove rights currently enjoyed by people who are already here, and when it is a matter of the application of those rights in future?

***Joe Owen:*** Most people would recognise a difference between those two. There is a question as to how to manage that in legislation. I am not entirely sure how one could go about that at this point.

**Q353 Kate Green:** I guess it would be possible to constrain the scope of what could be amended in delegated legislation more tightly than the Bill does.

***Joe Owen:*** Yes, that is certainly an option.

**Jack Brereton:** You have mentioned the constraints of time, which, obviously, are potentially quite challenging. If we were to leave with a no-deal scenario on 29 March, and the Bill was in place by then, how do you think implementation on the ground would go? Would there be challenges to get things running in that timeframe?

***Joe Owen:*** There are two things when it comes to no deal; there is the settlement scheme for EU citizens who are here before 29 March, and then there is the temporary leave to remain scheme for those who arrive afterwards. The first system is up and running and being trialled. While rights change in certain areas as a result of there being no deal, the process in the system is the same—so, credit to the Home Office for having a new technology system up and running and being trialled within two years. Most people, looking at Government IT projects, would say that was pretty impressive. Obviously it still has a long way to go before it can be said to be complete.

**Q354 Jack Brereton:** Do you think the ambition set out in the Bill—you mentioned ambition versus time—is appropriate, considering the constraints we face?

***Joe Owen:*** The second part of your question—the bigger challenge to do with time—is about what happens to EU citizens who arrive after 29 March, on a temporary leave to remain. It is as true on this as it is for huge areas of the Government's no-deal preparations: there is very little visibility, as to preparedness, in comparison with what would be expected for most major Government projects. In reports from the Infrastructure and Projects Authority, for example, there is little information about where Government preparedness is, on a host of no-deal issues. On the policy aspect, you get the sense that the temporary leave to remain is a bit of a Whitehall workaround, given the political incentive to end free movement if we leave without a deal on 29 March, but there are the practical problems of not being able to do much about that until you have registered as many as possible of the EU citizens who were here before 29 March and got a new system up and running. Neither of those things will be true for 30 March, so we have a registration scheme that will exist that will not really be enforced by landlords, businesses and employers in the same way as other parts of the migration system would be.

There is a big question about how that registration scheme will work in practice and what problem it is trying to solve besides saying, "We have ended free movement." As with settled status, when we switch to a future migration regime, what happens at the back end to all those people who did not apply, for good or bad reasons—they may not have known that they needed to—and are not registered, or who do not then qualify for the future migration system? If that is a big number, will one of the first things that the UK Government do, after their new immigration system is put in place, be to close down bank accounts or start to deport loads of European citizens who came in that period? That would be a bold move.

That links back to how enforcement will work, particularly with the no-deal scenario. I appreciate that that has not necessarily answered your question about the powers in the Bill and the link to that, but it is an important question about how the no-deal scenario would work.

**The Chair:** I have four more people wishing to ask questions and 13 minutes.

**Q355 Paul Blomfield:** I have a more general question on the issue, given your wider brief. When the Home Secretary introduced the Bill to the House, he said that it sought to address people's concerns about immigration, which were the main factor behind the Brexit vote. Do you think it odd, then, given the division between primary and secondary legislation, that this is essentially an enabling Bill that provides no clarity at all about the future immigration arrangements—what the Home Secretary defined as the critical issue behind the Brexit vote?

***Joe Owen:*** Obviously, the Bill is accompanied by the White Paper. In comparison with a lot of the Brexit White Papers for the big Brexit Bills that are coming through, it is probably the meatiest in terms of setting out what life after Brexit will look like in the policy area. In comparison with things such as trade or customs, where there is a huge uncertainty—

**Paul Blomfield:** Critical issues such as the tier 2 salary cap have deliberately gone out to consultation, however, because there is no agreement within the Cabinet about what that should look like.

***Joe Owen:*** There are bits that are still up for grabs, but in comparison with a lot of other areas, we have a clearer vision of the detail of the policy for after Brexit. There is an interesting question, between the Bill and the White Paper, about the vision and strategy—what is immigration for, after Brexit? That question is still missing and has been missing for quite a long time. The last immigration White Paper was in 2006, I think, and there has never really been a discussion about the aims and objectives of the immigration system.

In the most recent White Paper, there are conversations about salary thresholds and regulated qualifications framework levels, and quite detailed policy questions. At the front, in terms of aims and objectives, there are

two pages that talk about being fair and balanced and working for the whole UK, but with no real idea of what that means and what the system is supposed to achieve. There is that gap. In terms of whether the Bill is quiet on the big issue, I think the White Paper is there.

There is a question about what the Bill should say about citizens' rights, if anything. It is fair that, given what is in the withdrawal agreement as it stands, and the fact that it is a key part of the negotiation, it makes sense that that sits in the withdrawal agreement Bill, not least because there are some things in there about the precedent of EU law and so on, which is all best dealt with in a single case. If there is no contention—I have not heard much in the UK Parliament, I have heard nothing in the EU and I have heard nothing between the UK and the EU about disagreement with the citizens' rights part of the withdrawal agreement—why has the withdrawal agreement Bill not been published in draft, or at least the areas that cover citizens' rights? That would be a way of setting out in more detail what is likely to come down the track, for those who are uncertain about what is missing in this Bill, even if it is in draft and only covers certain sections of the withdrawal agreement.

**Q356 Eleanor Smith:** You mentioned the Americans and the figure of 45%, and we keep saying that it is realistic that we are trying to get 95%. Is that realistic? How is it feasible for the Home Office to do that in two years?

***Joe Owen:*** It is very unrealistic that there will be 100%, although I may come to regret saying that. Considering that we do not entirely know how many EU citizens are in the UK and exactly where they are, trying to target them is a huge challenge. You have already heard from a number of people about the can'ts, the don'ts and the won'ts. There will be some who cannot get status, even if they want to, because they do not have the right information, they cannot access the internet or for other valid reasons. There will be the don'ts—children or elderly people, for example—who do not know that they need to apply. Then there are the won'ts, who are the people who say, "I completely disagree with this as a policy; I think it is ridiculous and I am not going to do it as a matter of principle."

Those people will exist. The first two categories are likely to be filled with more vulnerable people, as previous people giving evidence have attested. There needs to be a recognition that designing for 100% is the wrong way to go. The right way to go is to make sure that there are sufficient safeguards and clarity in the system about what happens to people who do not have settled status at the end of the two years, possibly for very good reasons, and what will happen to those who we think do not have good reasons as to why they do not have settled status. Having clarity about what will happen to those people—they will inevitably exist—at the back end of the two years is really important.

**Q357 Nic Dakin:** What is your view about the proposals outlined in the European temporary leave to remain scheme for EU citizens who arrive in the UK after 29 March, in the event of no deal?

***Joe Owen:*** As I have previously said, it seems like a workaround to a problem. There is a political imperative to do something to end free movement, but practically it is really difficult, because EU citizens need to be given time to apply; you need the White Paper and the new system needs to be up and running. Until there are those two things, it is almost impossible to meaningfully end free movement. We therefore have a system where, for citizens coming into the UK, it will be exactly as it is now; and then after three months, if they want to stay longer, they can apply for temporary registration, which will be largely a security check. There is nothing to enforce whether people have that or not. If I go to my employer at the end of 2020 with a European passport, they do not know if I am someone who has lived here for 30 years and has not claimed settled status yet, or if I turned up a year ago and I have not bothered to do the registration scheme. There is a real difficulty about how this will practically be enforced.

As I said, another issue is what happens at the back end, when the new system comes into place and people who are here—who have either registered or have not registered—apply for the new system. If they are unsuccessful, what happens to them and what is the treatment of them? What kicks in around that, again knowing that large groups of people are likely to be in that situation? People will be expecting that to be dealt with in a way that carries public confidence.

**Q358 Stuart C. McDonald:** You spoke a couple of times about the possibility that the enforcement system would have to adapt or changes would have to be made to the back end of the system, as I think you referred to it, to do with the large group of people that will inevitably miss the deadline. Can you say any more about how you can see this system adapting? How far can it really change from what it is? What sorts of things do you have in mind?

***Joe Owen:*** There are some questions around built-in safeguards in the immigration enforcement and caseworking system within the Home Office. There have already been quite positive steps, with a team of senior caseworkers being established in response to Windrush last year. They are there to provide a bit more discretion—a second pair of eyes—on some of the difficult cases. How do we build that into the system to ensure that there is a safeguard for people who have characteristics that make you think that the person has been caught up without the right paperwork, but would have been covered under the withdrawal agreement? Addressing some of the structural and process questions—assuming that the policy around the hostile environment or compliant environment of enforcement through public services, landlords and employers continues—would seem to be one way. There is also more that can be done with people who end up being the arm of immigration enforcement, such as landlords and employers, through education and outreach. Those are some of the more processy things, rather than questions of policy.

**Q359 Stuart C. McDonald:** I can see that that sort of thing can make a difference around the edges, but it is not going to get to the nub of the issues. Fundamentally, the problem is that you will still have hundreds of thousands of people who are simply without rights. Some of the bolder suggestions have been not to have a time limit at all, so that people can continue to apply, or to make the system a declaratory system

***Joe Owen:*** Those are certainly options, if you want to change the timeline. In terms of changing the timeline,

if you give EU citizens more time in which to apply, to some extent that is likely to kick on the point at which you can bring in any new immigration scheme, because you need to find a way to differentiate between people when they apply for jobs.

**Q360 Stuart C. McDonald:** Possibly. People who qualify for the settled status scheme will still have every incentive to do so anyway. That could be one of the incentives: they will not able to get employed until they have the documentation. They still have every incentive to do it, but that would just mean that they could not be removed and subject to everything else.

***Joe Owen:*** Precisely. This is about how you build safeguards into the system, so that the first time something flags up, you do not necessarily get a very strongly worded letter about having to leave the country, but perhaps a reminder that you need to be applying for settled status. There should be different grades of how the Home Office interacts with people whom it thinks are caught up as a result of not having the information. A time limit is one option and a declaratory system is another option. In the past, when there have been big groups of people who do not have status, you could just do a total amnesty and say, "Fine, we are just going to do a declaratory scheme and issue people with the necessary documentation." All those things are options. Assuming that those big policy choices do not get taken, just in terms of the structures and processes, it is important that there are these necessary safeguards built in as a kind of bare minimum.

**The Chair:** Thank you very much for your time this afternoon, Mr Owen. The Committee is very grateful for the evidence you have provided us with. Our two final witnesses have been sitting patiently throughout the whole of our proceedings, so I think they will be familiar with what will happen.

**Examination of Witnesses**

*Jeremy Morgan and Kalba Meadows gave evidence.*

3.59 pm

**The Chair:** This session finishes at 4.30 pm. Will you both kindly introduce yourself for the record?

***Jeremy Morgan:*** I am Jeremy Morgan. I am the vice-chair of British in Europe, which is a coalition of groups across Europe. I am a committee member of British in Italy.

***Kalba Meadows:*** I am Kalba Meadows. I am a committee member of British in Europe. I also co-ordinate the largest member group of British in Europe, which is a citizens' rights group based in France.

**Q361 Afzal Khan:** Thank you for attending. Clause 5 of this Bill—

***Jeremy Morgan:*** Can I ask you if we could cheat? We are the only representatives of British citizens in Europe, and we have heard various questions asked of other people who are not British citizens in Europe—questions that we know the answers to. Could we ever so briefly start by answering those questions, or would that be completely contrary to everything this Committee does?

**The Chair:** Yes, as long as you do not take too long, because colleagues will have lots of questions.

***Jeremy Morgan:*** It is not going to be a speech, but Professor Peers touched on the different rules that apply across the EU27 countries. There are some overarching EU rules that will apply even when we are no longer EU citizens, particularly one that covers people who have been resident for five years, and that is across the board. If you are resident for less than five years, you are subject effectively to national immigration rules, with one or two EU glosses. In Italy, I think there are 25 different statuses that one can apply for at less than five years; in Germany, I think it is 180. So, it is an enormously complex mish-mash, which you have to try to fit yourself into, and certainly there will be people who do not.

If I may, I will just give you one example of how the five-year system for long-term residents—for what they call third country nationals—works. The rule enables countries to ask for a minimum income and health insurance. In Spain, the minimum income that a pensioner has to produce is a little over €25,000 a year. The UK state pension translated into euros at the moment is worth a little over €9,000, so people who are living in Spain—some of them can probably manage, with difficulty, on the state pension in Spain—are just never going to meet that minimum. That is a massive theoretical problem; Kalba will tell you a little bit more about the practical problems.

***Kalba Meadows:*** Yes, there are very great practical problems, because of the question of registration across the different EU27 countries, as was mentioned by a witness earlier. There are very different schemes in practice for British citizens living in the EU. Some countries—like my country, France—do not apply any kind of registration system at all for British citizens or EU citizens from another country who are living there. So we have between 150,000 and 200,000 British citizens living in France, only around 16% of whom have any form of registration at the moment. Other countries have a system of registering your residence, but nothing else; other countries have greater systems, where you register your residence and apply for a relevant card. As you can see, there is already a huge difference between how people are treated across the countries.

Come 29 March, if there is no deal, all of us will share one thing: overnight we will become third-country nationals. Now, without any form of legislation in our host countries, we would become illegal—literally within a minute. All of our current rights would fall away. We are totally reliant on our host countries putting into place legislation that would stop that happening. So far, legislation has been very slow to arrive. My country, France, was the first to bring out legislation; I hope to say a little more about that later. But the issue is that we are going to have 26—I am excluding Ireland here, for obvious reasons—different pieces of legislation, operating in very different ways in very different countries. So there are going to be very big differences between people, according to where they live.

Using my country as an example, we have a number of different cards for people who have been in residence for less than five years. Everybody who has been in residence in any EU country for less than five years has to fit into national immigration law. Long-term residence

status, which is mixed competence between EU and national law, does not come into effect until the five-year point.

As you can see, there is a big gap there. Everybody is going to be taking a different route to get there, and it is entirely possible that there will be large numbers of people who simply do not meet the conditions. What of them?

**The Chair:** Thank you very much for making those points. Now we will have the questions.

**Q362 Afzal Khan:** Clause 5 of this Bill grants the Secretary of State:

"Power to modify retained direct EU legislation relating to social security coordination".

What concerns do you have about these powers?

***Jeremy Morgan:*** They are very open ended, and to my mind they are unnecessary, certainly at this stage. You have to recall that we set out the legislative framework in our paper. At present, the EU's social security co-ordination rules apply in this country, because we are still in the EU. The 2018 withdrawal Act preserves them as retained legislation after 30 March, if that is the date on which Brexit happens and there is no withdrawal agreement. However, in exercising a regulation-making power under that Act, the Department for Work and Pensions has already put forward a slightly amended version of the EU regulation, to take account of the fact that, basically, there will no longer be communication between the various countries.

There is no need for any rushed legislation on this. The existing law, which we are told it is the intention of the Government to preserve, is in place. The amended statutory instrument is in place. The new regulations are simply there to make further changes, as yet unspecified. No policy reasons for that are put forward in any of the supporting documentation. It is unnecessary, very broad and very worrying.

**Q363 Afzal Khan:** What concerns do you have about the changes the Government have already introduced on social security through secondary legislation?

***Jeremy Morgan:*** You have to bear in mind that British citizens in Europe are somewhat less affected by UK law, for obvious reasons, than the EU citizens living here. Probably the most important aspects for UK citizens in the EU are healthcare, which in the EU is an aspect of social security, the aggregation of pension contributions and exporting pensions.

I, as a UK pensioner living in Italy, am entitled to receive my pension, but I am also entitled, under EU law, to an annual increase. There is a great concern that that might not continue—the Government have not committed to continue uprating our pensions beyond April 2020. That is a huge worry, because although inflation is quite low, the British pension is the lowest in the OECD countries and has already been devalued by 20% because of the fall in sterling. Not to increase that is adding insult to injury to people who left this country on the basis that they would always get their uprating.

**Q364 Afzal Khan:** What has been the effect on your rights, as British citizens living in the EU, of the uncertainty over the rights of EU citizens in the UK?

***Kalba Meadows:*** We share the uncertainty with them. Right now, we share even more uncertainty, and I will tell you why. As the rights of EU citizens have not been enshrined in primary legislation, national Governments across the EU27 are reticent in coming forward with their own legislation, because they are concerned that the rights of their nationals living in the UK will not be equally protected.

In France, the legislation we now have—it came out last week—includes a clause that clearly states that, although it protects the rights of British citizens in a no-deal Brexit to some degree, everything in that can be withdrawn by decree if the French Government consider at any point that the British Government are not treating French citizens in the UK fairly and equally. Although, on the one hand, you might say that we have less uncertainty, because that is in place, on the other hand, it is not certainty, because it can be withdrawn by decree at any moment.

We are seeing across the EU27 that Governments are reluctant to come forward with legislation because the UK has not enshrined EU citizens' rights in primary legislation. We hear that in our conversations with member states, and we are very aware that Governments are holding back on coming forward with their protections for us. You can imagine that that creates the most incredible uncertainty for people, because this is actually about people.

***Jeremy Morgan:*** To underline that, we are not talking about hearsay here. As an organisation we have been involved in negotiations with our national Governments and with the EU Commission and MEPs. We have had fairly high-level involvement and we do know what they are thinking and saying.

**Q365 Afzal Khan:** The Government have said that they need the powers in clause 5 to introduce as yet unspecified post-exit policy changes in social security. Do you think it is right that we grant powers to the Government without knowing what they will do with them?

***Kalba Meadows:*** I come back to the uncertainty. On clause 5 on social security co-ordination, 80% of the British living in Europe are of working age or below. That is an awful lot of people potentially affected by social security aggregation, and add to that the pension issues that Jeremy has already outlined. We are talking more than 1 million people who are affected by social security aggregation—the aggregation of the contributions they make to their retirement pension. That is a fundamental right that we all moved across the Channel with.

I would also add that British citizens moving abroad are mobile. It is not so much that a British citizen moves from the UK to one country. We are mobile citizens, and many people have worked in three or four different countries. That is a complicated aggregation scenario. It is entirely possible, due to the rules in individual countries about minimum contribution periods—in Italy, you have to contribute for 20 years before you can receive a pension; in the UK, as you know, it is 10; in France, it is 10; and so on—that without co-ordination, people could work an entire working life and not receive any state pension.

**Q366 Jack Brereton:** You mentioned the variable way in which different countries in the EU are treating the rights of British citizens living in the EU. I ask you a

similar question to that which I asked one of our other witnesses earlier. Do you think that different countries, the EU, and the British Government have approached this from a different perspective?

***Jeremy Morgan:*** Yes. In so far as we are talking about Britain versus 27 or 26 different countries, clearly the British Government's aim has been to get the withdrawal agreement through—to get Brexit—and almost anything that has to be done in order to achieve that, they will do. Obviously, there are difficulties at the moment. The other countries are more concerned with specific national issues. I do not think you can generalise.

***Kalba Meadows:*** I do not think you can. I agree with what Jeremy says.

***Jeremy Morgan:*** The French are terribly concerned, for example, that people who are not French citizens should not be involved in public administration. In Italy, they are much more concerned about families. That is the Italians and the French for you.

**Q367 Jack Brereton:** Do you think there has been a willingness to trade off some of those rights?

***Jeremy Morgan:*** It is very hard to say.

***Kalba Meadows:*** I do not think it is so much a trade-off as the fact that in each country you are coming from an entirely different culture, and the starting point is different. The one thing they have in common is a desire to protect their citizens in the UK. That is a shared point of view.

**Q368 Stuart C. McDonald:** Based on what you have said so far, what we should be doing is, first, encouraging the Government to seek a ring-fenced agreement on citizens' rights and, secondly, setting out in this Committee strong rights for EU nationals in the UK in the Bill, whether there is a no-deal Brexit or a managed withdrawal, and, because of reciprocity, you will then see stronger rights for UK nationals across Europe.

***Kalba Meadows:*** Yes.

**Stuart C. McDonald:** So that is a plan of action.

***Jeremy Morgan:*** In connection with ring-fencing, we must not forget that the UK has signed no-deal deals with Switzerland and EEA countries. It is extraordinary that they should not be able to do the same thing with the EU.

**Stuart C. McDonald:** What happens in different scenarios if UK nationals currently in Europe want to come back to the UK with family members? How might whether we are in a deal or a no-deal situation affect that?

***Kalba Meadows:*** Thank you for asking that, because it is a very important aspect that is causing a lot of concern. You are talking about Surinder Singh rights: the right of, let us say, a British citizen who has exercised freedom of movement by living elsewhere in the EU to come back to the UK with their non-British family member. That right will disappear after Brexit whether or not there is a deal. Let us say that we are talking about somebody who is married to a Dutch citizen. Anybody wanting or needing to come back to the UK after Brexit would have to comply with UK immigration laws in order to come back. Surinder Singh rights will disappear after Brexit, whether or not there is a deal.

**Q369 Stuart C. McDonald:** Does that mean the full gamut of the £18,700 threshold, and so on?

***Kalba Meadows:*** Absolutely. That leads to a situation where people may be forced to make a choice between their family in their host country and their family in the UK. Very often we are talking about people who need to come back to the UK to look after elderly parents.

I can give you a specific example very quickly. Let us call her Nicky. She lives in the Netherlands, where she looks after her husband who has multiple sclerosis. In the UK she has parents in their 80s getting older who will need care, and she is an only child. What does she do? She cannot come back to the UK, because there is no way, as a carer, she would earn the amount required in order to bring her husband. She cannot bring two very elderly parents to the Netherlands, because they do not speak Dutch. She is stuck. She has to make an impossible choice.

**Q370 Stuart C. McDonald:** That is definitely something that we need to address. Finally, how do we put the rights of EU citizens in the UK in the Bill? Do we look to the withdrawal agreement, or to appendix EU of the immigration rules? Are there things that you would want improved, even if we were just transposing them into the legislation?

***Jeremy Morgan:*** You put the withdrawal agreement into primary legislation. That takes you an awful long way down the road. We are not entirely happy with the withdrawal agreement, but it is the best thing out there at the moment.

**Q371 Stuart C. McDonald:** The withdrawal agreement does not stop us going further. What is your unhappiness with it?

***Jeremy Morgan:*** It is more on the rights that we have in the EU. We have lost our freedom of movement rights, so the people who Kalba mentioned, who have moved to Europe—not necessarily to the Netherlands or to Luxembourg—have lost their right to move around. Many of them move there precisely because it is a very mobile market. People with IT skills, for example, work a two-year contract in one country and go to another. There are so many British people who have taken advantage of that, made lives for themselves, and ended up, in the course of that, picking up a family from one of the countries they have stayed in.

It has become a very complex system. Taking that right away from them is very serious indeed. The British do not have it in their gift, although at an early stage in the negotiations, I think in September 2017, the British offered to give EU citizens in the UK indefinite right to return. At present, you are allowed to be away for five years with your settled status, and then you lose it. The offer was to make that a lifetime right to return in exchange for freedom of movement for UK citizens in the EU. That was not accepted by the EU at the time, and has not been pushed as hard as it should have been since, because it is a terribly sensible arrangement.

**Q372 Caroline Nokes:** Thank you very much for your evidence, and for taking the time to come to see us and to set out your concerns so clearly. Do you think that this Bill is the right place to put citizens' rights in primary legislation, or do you think that would better be done in the withdrawal Bill at the appropriate time?

***Kalba Meadows:*** There is a timing issue, in that the UK may leave the EU in six weeks with no deal. That does not leave very long to legalise the rights of British citizens living abroad. If we know that the EU27 states are looking for legal guarantees for their own citizens living here, we do not have very long to do it. They will be looking for those in order to put into place their own legislation. I would have concerns about leaving it too long.

**Q373 Caroline Nokes:** From the conversations that you have had to date with officials, MEPs and so on, you believe it to be an absolute imperative that it is in primary legislation and not something that is left to the secondary rules that have to date established the 3 million EU citizens' rights here.

***Jeremy Morgan:*** It would make it an awful lot easier for them because they could say there is at least a law. The problem then, of course, is that the law can be changed, but it still would look an awful lot better. They know who Henry VIII was as well and they have seen the discussion. EU officials and politicians are pretty tuned in to what goes on in this country. They have seen the discussion and it worries them.

***Kalba Meadows:*** May I add briefly that when I had this conversation with senior politicians and officials in France, they were not at all impressed? They did not accept that what is currently in place to cover settled status in the case of no deal was in fact offering sufficient guarantee.

**Q374 The Minister for Employment (Alok Sharma):** Thank you for your submission. I know that you have also talked to my officials on some of the amending SIs. I have one question on pensioners' uprating, which you brought up. What impact do you think it would have on UK nationals? Have you talked to people extensively about potentially losing their uprating?

***Jeremy Morgan:*** It would be devastating.

***Kalba Meadows:*** You took the words out of my mouth.

**Q375 Alok Sharma:** Are you saying that it would actually change people's behaviour and as a result they might choose to move back to the UK?

***Kalba Meadows:*** It would be devastating in that the UK pension, as Jeremy has said, is already very low, and it has been devalued by the depreciation in sterling. Many people are in the position of what you would call only just managing.

**Q376 Alok Sharma:** Answer the direct question. Do you think it would change people's behaviour? Would they decide as a result of that to move back to the UK?

***Kalba Meadows:*** It is not even as simple as that. For many people, moving back to the UK is barely an option. Most people do not have links in the UK. They do not have housing in the UK. They have housing where they are. Their lives are where they are.

**Q377 Alok Sharma:** So it would not change behaviour.

***Kalba Meadows:*** It may well change behaviour in that people would have no choice. But it is a very difficult thing to even contemplate.

**Q378 Kate Green:** Very difficult to do what?

***Kalba Meadows:*** To move back to the UK.

**The Chair:** Colleagues, if there are no further questions, I thank our two witnesses for the evidence that they gave the Committee. We have now reached the end of our oral evidence sessions. The Committee will next meet on Tuesday 26 February, not next week, under the chairmanship of Mr Graham Stringer at 9.25 am to begin line-by-line consideration of the Bill. I remind Members that the deadline for amendments to be considered for that sitting will be the rise of the House next Thursday on the 21st, so any amendments must be tabled by then.

4.24 pm

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

*Adjourned till Tuesday 26 February at twenty-five minutes past Nine o'clock.*

## Written evidence reported to the House

ISSB07 Lift the Ban Coalition
ISSB08 Liberty
ISSB09 NFU Scotland
ISSB10 3million
ISSB11 British in Europe
ISSB11(a) British in Europe - position paper on Pensions
ISSB12 Families Together Coalition
ISSB13 JUSTICE
ISSB14 Bart Oonk