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GENERAL COMMITTEES

Public Bill Committee

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

Tenth Sitting

Tuesday 5 March 2019

(Afternoon)

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

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not later than

Saturday 9 March 2019

The Committee consisted of the following Members:

Chairs: Sir David Amess, †Graham Stringer

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

Joanna Dodd, Michael Everett, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 5 March 2019

(Afternoon)

[Graham Stringer *in the Chair*]

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

New Clause 13

Annual review of the ending of free movement in the United Kingdom

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

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

(a) the UK economy;

(b) the NHS and social care workforce; and

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

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

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

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

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

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

2 pm

The Chair: I remind the Committee that with this we are considering:

New clause 43—*Future immigration policy*—

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

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

Alison McGovern (Wirral South) (Lab): It is a pleasure to be back under your chairship, Mr Stringer.

To continue the point that I was making, the Bill will have a huge impact on our health service and, specifically, the social care sector—even though, ironically, the social care sector is the prime example of where a labour shortage has failed to increase the wages of the people working in it. That should be a lesson to us all, if we think that we can promise people a pay rise on the back of immigration restrictions.

That said, we have all received a lot of evidence about the impact of the Bill on the health service, and that supports the case for the new clause. The Government have a large degree of control over workforce issues in the national health service and in the social care sector, so it would be right for the Government to feel the need to report to Parliament on the matter.

Maria Caulfield (Lewes) (Con): I completely support some of the arguments that the hon. Lady is making. The social care workforce is made up largely of women. Does she think that that is a key reason why the sector is underpaid?

Alison McGovern: The hon. Lady is obviously a top feminist, because she identifies probably the single biggest reason why the care sector is low paid. The work done by women has traditionally, for reasons of structural power, been paid much worse than similar jobs that have traditionally been done by men, and that helps to make my point. If we want to increase the pay of women in the social care sector, a good way to go about it would be to encourage those women to join a trade union, so that they can enforce their rights, bargain for better pay and increase their dignity and their control over their workplace. I argue that a restriction on free movement is, at best, not the most effective way to support those women. None the less, it would be interesting to learn, and the Government ought to take responsibility for finding out.

In support of my new clause, I would like the Government to consider not just the impact on our labour market of the policy of ending freedom of movement, but the huge impact that the policy will have on UK nationals—we barely discuss the restriction of fundamental rights, freedoms and abilities that ending free movement will entail—and on some large and, in many cases, fast-growing sectors in our economy.

In the tourism industry, for example, many British workers spend time working in a different country to develop their skills, perhaps before they run their own tourism business or come back to work in the UK. Many such opportunities could be curtailed, and it would be a dereliction of duty for the Government to ignore the fact that that will be a consequence of the policy.

Arts, culture, film, music and sport are all areas in which the UK has traditionally excelled, and I hope it will do in future. They are multibillion-pound industries, and the impact on them of ending free movement will be huge. If we think about the orchestra in the city region that I represent in Merseyside—or the fine Hallé orchestra in the city of Manchester, which you represent, Mr Stringer—the impact of the ending of free movement on those orchestral musicians will be absolutely profound.

We are offering those industries a future immigration policy that is unclear at this point, and yet their ability to move around and work on the continent of Europe is mission critical to them in their great work of producing fantastic music—the best in the world, some would say, in the case of the Royal Liverpool Philharmonic Orchestra. I simply cannot countenance the idea of the Government taking that step without thinking that they ought to report on it.

Nic Dakin (Scunthorpe) (Lab): What my hon. Friend has said applies equally to dance and theatre.

Alison McGovern: Of course it does. I use the broad sweeping terms of arts and culture, but each of the composite parts of the British arts and cultural industry will have its own specific problems. It is easy for us to ignore it, but for a theatre producer who is looking to tour with a dance company, the ending of free movement will be highly significant.

That is even before we get to science-based industries. We have all received many representations from science-based industries that spin out of research programmes that are connected not just to EU funding, but to scientists' ability to work easily across the continent of Europe. The Government say that they wish to support science and technology, because it is the British way to improve our economy by inventing new things—we are, of course, the home of the computer. However, free movement is an integral part of that, and it has offered the science-based industries a great ability to draw staff in from among the best in Europe, wherever they are.

Finally, we ought to consider, and the Government ought to monitor, the policy's impact on manufacturing. The Government have argued that their policy on Brexit—specifically, ending free movement and coming out of the single market—will somehow support manufacturing. UK citizens who work in manufacturing often want to grow their skills and see, understand and manage manufacturing plants across the continent of Europe. They want to understand how things are done differently elsewhere and bring those skills back to Britain. To ignore the barrier to future manufacturing prosperity that the policy will create is to ignore an important impact of the ending of free movement.

We know far too little about the impact of immigration on our local economies. There is no evidence of a statistically significant relationship between EU immigration and employment rates or wages. We do not have enough evidence about the impact of those things on local economies, despite the political rhetoric. The Government have a duty to do better, and I hope the Minister will support my suggestion.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I was going to speak to new clause 43, which covers largely the same ground as new clause 13. The latter clause is probably better drafted, and the hon. Lady has given a comprehensive speech in support of it, so I will simply say that I approve of everything she has said.

The Minister for Immigration (Caroline Nokes): New clauses 13 and 43 focus on requiring the Government to report on the impacts of ending free movement and our future immigration rules, respectively, on European economic area and Swiss nationals. As I have said, I appreciate that some Committee members do not believe we should end free movement. I pay particular tribute to the hon. Member for Wirral South, who spoke passionately on the matter.

I emphasise again that the Government fully recognise the great contribution that migrant workers make to the UK. We remain committed to ensuring that the future immigration system caters for all sectors, and that it benefits the UK economy and our prosperity. We want the existing workforce to stay and we want to continue to attract other international workers to the UK. That is why the White Paper contains a route for skilled workers—it will, for the first time, encompass medium-skilled workers as well as the highly skilled—and a temporary worker route, which will enable people of all skill levels to come to the UK for up to 12 months. Neither of those routes will be subject to a cap on the number of visas granted.

The Government take seriously the economic impact on the UK economy of the proposals that we set out in the immigration White Paper in December and other measures in the Bill to end free movement. These proposals are designed to benefit the UK and to ensure that it continues to be a competitive place, including for medical research and innovation.

I share the hon. Lady's concern that policies are properly evaluated and their full impact considered. That is why the immigration White Paper contained a full economic appraisal, running to more than 50 pages. It is a serious piece of work, which I encourage all hon. Members to study carefully. However, although it is considered and well thought-through, that appraisal is, by its nature, predictive. The proof of any immigration policy is its actual effect, which can be established only once the policy is in operation. We need to understand how policies work in practice, how businesses and employers react and how individual prospective migrants behave. We also need to understand the prevailing economic conditions in the UK and the countries from which migrants might come.

The hon. Lady spoke of the quality of the debate in the referendum of 2016. I well remember some comments that were made at that time about the views of experts. Perhaps unsurprisingly, I give quite a lot of credence to the views of experts, and accordingly I have a lot of sympathy with the sentiment behind the new clauses. I am pleased to tell the Committee that the Government already have plans in place to ensure there is an annual review of the kind that is envisaged.

Hon. Members will see that there is a section in chapter 3 of the immigration White Paper on the future role of the Migration Advisory Committee. It says that the Government will commission MAC to produce an annual report on key aspects of the UK's immigration system. That strikes me as a comprehensive offer, and I think it would be best for any annual review to be undertaken by MAC, which has a good reputation for its independence and, of course, its expertise.

Accordingly, given our existing commitment to a proper, thorough and independent review of the operation of the future immigration system, I hope that hon. Members who have tabled these new clauses will see that they are not required and feel able to withdraw them.

Alison McGovern: I accept what the Minister says, and I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 15

SETTLED STATUS

'(1) Any person who has their right of free movement removed by the provisions contained in this Act has the right of settled status in the United Kingdom if that person —

(a) is an EEA or Swiss national;

(b) is a family member of an EEA or Swiss national or person with derived rights;

(c) is resident in the United Kingdom on or prior to 31 December 2020.

(2) Any person who is entitled to settle status under subsection 1 has the same protection against expulsion as defined in Article 28 of Directive 2004/38/EC of the European Parliament and Council.

(3) The Secretary of State must ensure that any person entitled to settle status under subsection 1 receives proof of that status via a system of registration.

(4) The Secretary of State must issue a paper certificate confirming settled status to any person registered for settled status under this section.

(5) No fee may be charged for applications to register for settled status under this section.

(6) Any person who has acquired settled status under the provisions of subsection 1 is entitled to—

(a) remain in the United Kingdom indefinitely;

(b) apply for British citizenship;

(c) work in the United Kingdom;

(d) use the National Health Service;

(e) enrol in all educational courses in the United Kingdom;

(f) access all benefits and pensions, if they meet the eligibility requirements.

(7) A person's right to use the National Health Service (d), enrol in educational courses (e) and access all benefits and pensions (f) under subsection (6), is the same as those for a British national.

(8) Any person who is entitled to settled status under subsection (1) loses their settled status only

(a) if they are absent from the United Kingdom for a period exceeding five continuous years after 31 December 2021 or

(b) if the criteria for expulsion as set out in Article 28 of Directive 2004/38/EC of the European Parliament and Council applies to them.

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

(10) This section applies if the United Kingdom leaves the European Union —

(a) following a ratified and implemented withdrawal agreement; or

(b) without a ratified and implemented withdrawal agreement.'—*(Afzal Khan.)*

Brought up, and read the First time.

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

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

New clause 16—*Rights of family members*—

'(1) Family members of any person ("P") granted settled status under the provisions of clause [Settled status] are entitled to settled status in the United Kingdom after 31 December 2020 if —

(a) the family member's relationship with "P" began before 31 December 2020; and

(b) the family member is still in a relationship with "P" when the family member applies for settled status.

(2) Any family member of any person ("P") granted settled status under the provisions of clause [Settled status] are eligible for a family visa to come and live in the United Kingdom if that relationship began after 31 December 2020

(3) Any children born in the United Kingdom to a person granted settled status under the provisions of clause [Settled status] is a British citizen, whether the child was born before or after that person being granted settled status.

(4) Any family member who is entitled to settled status under subsection (1) loses their eligibility for settled status if they are absent from the United Kingdom for a period exceeding five continuous years after the date on which their settled status was granted.

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

(6) This section applies if the United Kingdom leaves the European Union —

(a) following a ratified and implemented withdrawal agreement; or

(b) without a ratified and implemented withdrawal agreement.'

This new clause is consequential on NC15.

New clause 17—*Settled status: further provisions*—

'(1) The Secretary of State must ensure that no EEA or Swiss national, or family member of an EEA or Swiss national or a person with derived rights, is denied settled status in the United Kingdom on account of their non-exercise of European Union treaty rights or a removal decision made as a result of their non-exercise of European Union treaty rights.

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

New clause 18—*Right to family life*—

'(1) Article 8 of Schedule 1 of the Human Rights Act 1998 (Right to respect for private and family life) applies to all EEA and Swiss nationals who are granted settled status in the United Kingdom.

(2) Article 8 of Schedule 1 of the Human Rights Act 1998 1998 (Right to respect for private and family life) applies to all EEA and Swiss nationals who are granted a work visa under the provisions of clause [Work visas for EEA and Swiss nationals].'

This amendment is consequential on NC21

New clause 33—*No time limit for applicants for settled or pre-settled status*—

'(1) No time limit shall be placed on the right of EEA and Swiss nationals to apply for settled or pre-settled status in the United Kingdom.

(2) No EEA or Swiss national can be removed from the United Kingdom under the provisions of the Immigration Act 1971 after exit day if that person meets the requirements for settled or pre-settled status under appendix EU to the Immigration Rules.

(3) In this section, "exit day" has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.'

This new clause would ensure that there is no time limit on applicants to apply for settled or pre-settled status and prevent EEA nationals who had not yet been granted this status from being removed.

New clause 35—*Documented proof of settled or pre-settled status*—

'Any person granted settled or pre-settled status under appendix EU of the Immigration Rules must be provided with a physical document confirming and evidencing that status within 28 days of that status being granted.'

This new clause would ensure that all EEA and Swiss nationals granted settled or pre-settled status must be provided with physical proof confirming their status.

New clause 47—*Settled status*—

'(1) A person to whom this section applies has settled status in the UK.

(2) This section applies to EEA and Swiss nationals, family members of EEA and Swiss nationals, and family members who have retained the right of residence by virtue of a relationship with an EEA or Swiss national and meet any one of the following conditions—

(a) they have a documented right of permanent residence;

(b) they can evidence indefinite leave to enter or remain;

(c) they have completed a continuous qualifying period of five years in any (or any combination) of those categories.

(3) This section also applies to—

(a) EEA and Swiss nationals who have ceased activity, and

(b) family members of EEA and Swiss nationals who have ceased activity and who have indefinite leave to remain under subsection (3)(a), providing the relationship existed at the point the EEA and Swiss national became a person who has ceased activity.

(4) This section also applies to family members of an EEA or Swiss national who has died where—

(a) the EEA or Swiss national was a resident in the UK as a worker or self-employed person at the time of their death;

(b) the EEA or Swiss national was resident in the UK for a continuous qualifying period of at least two years before dying, or the death was the result of an accident at work or an occupational disease; and

(c) the family member was resident in the UK with the relevant EEA or Swiss national immediately before their death.

(5) This section also applies to (a) a child under the age of 21 years of an EEA or Swiss national or (b) a child under 21 of the spouse or civil partner of an EEA or Swiss national where the spouse or civil partner was the durable partner of the EEA or Swiss national before the specified date, the partnership remained durable at the specified date, and the EEA or Swiss national has settled status under this section.

(6) The Secretary of State must, by way of regulations, make provision for EEA or Swiss nationals to secure documentary evidence of their settled status, without charge.

(7) A person with settled status has indefinite leave to enter or remain in the United Kingdom; has the same rights and entitlements as a UK citizen and cannot lose settled status through absences from the UK of less than five years.'

This new clause would ensure that certain EEA and Swiss nationals, and family members, have settled status by operation of law, and make clear what settled status entails.

New clause 48—*Settled status: relationships with British citizens—*

'(1) A person to whom this section applies has settled status in the UK.

(2) This section applies to a family member of a qualifying British citizen and a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen; and the person has a documented right of permanent residence.

(3) This section also applies to a family member of a qualifying British citizen and to a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen and there is valid evidence of their indefinite leave to enter or remain.

(4) This section also applies to a person who meets the following criteria—

(a) they are a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen;

(b) the applicant has completed a continuous qualifying period of five years either (or any combination) of those categories; and

(c) the applicant was, for any period of residence as a family member of a qualifying British citizen relied upon under subsection4(b), in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6).

(5) This section also applies to a person who meets the following criteria—

(a) the person is a child under the age of 21 years of the spouse or civil partner of the qualifying British citizen (and the marriage or civil partnership was formed before the specified date); and

(b) the applicant is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6); and

(c) the spouse or civil partner has settled status.

(6) The Secretary of State must, by way of regulations, make provision for persons who qualify for settled status by virtue of this section to secure documentary evidence of their settled status, without charge.

(7) A person with settled status has indefinite leave to enter or remain in the United Kingdom; has the same rights and entitlements as a UK citizen (subject to subsection (9)); and cannot lose settled status through absences from the UK of less than five years.'

This new clause would ensure that certain family members of UK citizens have settled status by operation of law, and make clear what settled status entails.

New clause 49—*Limited leave to remain—*

'(1) A person to whom this section applies, has leave to enter and remain until 30 March 2024, or until such time as the person has settled status.

(2) This section applies when—

(a) a person is an EEA or Swiss national, a family member of an EEA or Swiss national or a family member who has retained the right of residence by virtue of a relationship with an EEA or Swiss national; and

(b) the applicant is not eligible for settled status because they have completed a continuous qualifying period of less than five years.

(3) This section applies when—

(a) a person is a family member of a qualifying British citizen and is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6) or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen; and

(b) the applicant is not eligible for settled status solely because they have completed a continuous qualifying period of less than five years.

(4) This section applies when—

(a) the person is a child under the age of 21 years of the spouse or civil partner of the qualifying British citizen (and the marriage or civil partnership was formed before the specified date);

(b) is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6); and

(c) the spouse or civil partner has been or is being granted limited leave to remain under this section.

(5) The Secretary of State must, by way of regulations, make provision for persons who qualify for leave to remain by virtue of this section to secure documentary evidence of their leave, without charge.

(6) A person with limited leave to enter or remain in the United Kingdom has the same rights and entitlements as a UK citizen.'

Afzal Khan: My hon. Friend the Member for Sheffield Central will speak to new clause 15.

Paul Blomfield (Sheffield Central) (Lab): I am pleased to speak in support of new clauses 15 to 18, and to offer our support to new clauses 33, 35 and 47 to 49.

Mr Stringer, you will no doubt recall, as other hon. Members will, our first Opposition day debate after the referendum in 2016. In that debate, we called on the Government to offer a unilateral guarantee concerning the rights of EU nationals. I am confident that doing so would have led to reciprocal guarantees for UK citizens by the EU27. It would have prevented two and a half years of uncertainty and anxiety for EU nationals and their families, and it would have set off the negotiations on the right tone. In contrast, the Government promised the EU the "row of the summer" over the scheduling of the talks.

We must remember that we are talking about not only the concerns of EU citizens in the UK but, given the principle of reciprocity, the concerns of the 1.2 million Brits in the rest of Europe. It is disappointing that during the entire process, none of the three Secretaries of State for Exiting the European Union has agreed to meet the British in Europe group. The fact that the Government did not secure their onward freedom of movement as part of the withdrawal agreement says an awful lot about their commitment to that important group of UK citizens.

2.15 pm

Our discussion of the new clauses is timely, given that last Wednesday the House decided, with the reluctant and belated agreement of the Government, to seek an agreement with the EU to ring-fence part 2—the citizens' rights section—of the withdrawal agreement. However, the shambles that led to that, in which the Home Secretary was apparently unaware that the Prime Minister opposed the amendment in the name of the hon. Member for South Leicestershire (Alberto Costa) until the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East pointed it out in Committee that morning—if anyone has not seen the clip of that, I recommend it—sums up perfectly why we need to get the rights into primary legislation.

I was pleased to be among those who signed that amendment, and pleased that the Government finally accepted the proposal made by the hon. Member for South Leicestershire. I am sure we can all agree that it was unfortunate that he had to resign from the Government over an amendment that they subsequently supported, but I hope that that will be remedied. I hope that we can bring the same spirit of cross-party consensus to the new clauses that we are considering.

The registration of more than 3 million—approaching 4 million—EEA nationals and their family members will be the biggest immigration documentation undertaking in the country's history. New clauses 15, 16, 17 and 18 set out the rights of EU citizens, their family members and non-EEA nationals whose rights derive from their relationships with EEA citizens—namely Zambrano carers, Chen carers, and Ibrahim and Teixeira carers.

First and foremost, new clause 15 would make settled status a declaratory system, to ensure that all EEA nationals, their family members and those with derived rights who are resident in the UK by 31 December 2020 have a legal right to stay, and that the only ground for denying an individual settled status is serious criminality. If, as they repeatedly say, the Government are serious about wanting EEA nationals and their family members to stay in the UK, they should not require them to jump through hoops.

We have heard from Professor Smismans that

"the practical consequences can be dire under a constitutive system"—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 14 February 2019; c. 132, Q334.]

We can easily envisage that certain groups are at risk of not applying, for an array of reasons: children whose parents do not apply; long-term residents, including those who have already been granted permanent residency; and people who mistakenly believe that they are not eligible. This system would mean that people would have to apply only for proof of status, which they would practically require.

We have seen a number of problems. Representatives from the3million have highlighted to me today their concern that the application process for settled status is not as simple as was promised. Too many—16%, I understand—of those who have engaged with it so far have faced demands for extra evidence, beyond the initial application, if no Revenue and Customs or Department for Work and Pensions data was available. Too many—30%, I understand—have been given not settled status but pre-settled status, although some of them have lived in the UK for more than five years.

Nick Thomas-Symonds (Torfaen) (Lab): My hon. Friend mentions that further evidence is being demanded. Is that not precisely what started to happen with the Windrush scandal, causing so many problems? Is that not why we need as many safeguards as possible in the scheme?

Paul Blomfield: My hon. Friend makes a really important point. With the history of the Windrush experience being so close, one would imagine that we would not yet have forgotten its lessons and would seek to apply them in this situation. We tabled the new clauses precisely because of that concern.

It is well known that other problems with the process include its inaccessibility to iPhone users. The Government talked about how easy this process would be—people would be able to do it on their phones—but that is not the case for half of the UK's adults, who happen to use an iPhone. The inability to develop an app for use on an iPhone does not create a great deal of confidence in the rest of the process or the Home Office's ability to handle it. People who already have proof of permanent residence are being asked to provide evidence of it, even though they were promised a simple swap to settled status. We need to have local support centres where people can apply offline, but they are not available.

The new clauses would remove the category of pre-settled status. This distinction, whereby an individual must be resident for five years to qualify for settled status, seems to be the result of a copy-and-paste exercise from the rules for permanent residence. A number of the stakeholders from whom the Committee took evidence do not see the rationale for it and believe that it serves no clear purpose. In fact, it creates more bureaucracy for individuals and the Home Office—this morning we discussed how difficult the Home Office sometimes finds it to deal with complicated or even simple procedures.

The Government have already admitted that it will be difficult, if not impossible, to distinguish easily between EU citizens who arrive before and after 29 March, which adds another layer of uncertainty. We can easily foresee the confusion for employers and landlords, who will wonder what different rights apply to the different categories, with detrimental effects for the holders of pre-settled status. I would welcome clarification from the Minister. If it is not simply to mirror the rules on permanent residence, can she explain the rationale for pre-settled status?

New clause 15 sets out other requirements, such as ensuring that applicants are issued with physical documentation of their proof of status. I acknowledge that this replicates new clause 35, which was tabled by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. It is another area where the Home Office will inevitably have to move. The Joint Council for the Welfare of Immigrants and Professor Smismans vividly illustrated not only the administrative hassle of a digital system, but the potential implications for the treatment by what they describe as "private actors" and for

"equal access to work and housing."

No other immigration status in this country operates exclusively digitally. The Government have said that they want this system to be more user-friendly than the current application process, but members of the3million group have made it absolutely clear that physical proof of their status would improve their experience of the system and provide some much-needed reassurance. I really do not understand why the Government are so resistant to that, and I urge the Minister to take the opportunity on this issue to work with, rather than against, EEA nationals and the people who speak for them. I imagine that this is an area that the Government will have to move on, as they did on the fee—many of us argued for it for a long time before the change was made.

New clause 15 would put on the face of the Bill the Government's commitment not to levy a fee. For a long time, the Government were insistent on the need to charge £65 for an application. I am sure the Minister will embarrassingly recall that—in a written answer to me—she was not prepared to rule out the £65 fee for victims of modern slavery and trafficking at that stage. I am delighted that the Government moved on the issue. It might have been because of the embarrassment that, at one stage, the European Parliament was even considering covering the cost of the fees on behalf of EU nationals in this country. After campaigning by Opposition Members and other parties, along with the3million and trade unions, it was a good step that the Prime Minister conceded that the application should be free; therefore, the Government should have no issue putting that into the legislation.

New clause 16 details the rights of family members of EEA nationals who are eligible for settled status. New clause 18 would make it explicit that article 8 of schedule 1 of the Human Rights Act 1998—the right to respect for private and family life—applied to holders of settled status and of the work visa for EEA and Swiss nationals dealt with in new clause 21.

On new clause 17, the Government have repeatedly stated that there would be only three criteria for settled status: nationality of a relevant country or a family member, residence in the UK and a criminality check. The rules in the appendix of the Immigration Rules go beyond that; they leave a loophole where someone who is not a serious criminal and otherwise eligible could be denied settled status on the basis of non-exercise of treaty rights. New clause 17 seeks to address this issue. Following legal action from the JCWI, from whom we took evidence, the Government narrowed the rules, but the power still remains. In written answers to me, the Minister has stated:

"the UK has decided, as a matter of domestic policy, to be more generous than the draft Withdrawal Agreement in certain respects. In particular, those applying under the scheme will not be required to show that they meet all the requirements of current free movement rules, such as any requirement to have held comprehensive sickness insurance or generally to detail the exercise of specific rights under EU law, such as the right to work."

The new clause would enshrine that policy in law.

If the Government do not accept new clause 17, could the Minister explain why they are so intent on wishing to retain a power that they never intend to use?

Stuart C. McDonald: I give my support to the new clauses tabled by the hon. Members for Manchester, Gorton and for Sheffield Central, who made a lot of excellent points, including about the need or otherwise for pre-settled status.

This is probably one of the most important debates that we will have in this Committee. We all know that the settled status scheme is a huge undertaking. There is no doubt in my mind that the Home Office is doing its best to implement it to the best of its abilities. I do not question the commitment and effort made to attempt to have that scheme reach as many people as possible. The amendments are not about that, but whether EEA nationals and family members should be required to apply for their rights in the first place.

We are clear that EEA nationals' rights should be declared in law. They should be able to retain their rights without any need to apply. Instead of applying for the right to remain in what is their home country, instead people would apply for documents simply to evidence that right. After all, that is pretty much the position they are in now: EEA nationals can make the UK their home simply by meeting the qualifying criteria by exercising their EU treaty rights. However, even though they do not need to, many find it very handy to apply for a document that proves they are exercising treaty rights and are allowed to remain here, so they apply for residence documents. Those documents do not give them any extra rights, but are simply convenient. It is far easier to hand a residence document to a landlord than a few months or years of bills, bank statements and wage slips to prove their right to be in the country.

All we are saying is that the same should happen in future. The Bill will strip people of hugely important rights; it should therefore also replace those lost rights with other rights that are granted automatically. All those who meet the Home Office criteria for settled status should be granted it as a matter of law. Applications for settled status documents would then be the means to simply evidence those rights, just in the same way as happens now. All that will become hugely important the day after the deadline for settled status applications passes.

[Stuart C. McDonald]

If we do not make these changes, the evidence tells us that hundreds of thousands of people will be here without any status at all. They could, in theory, be removed. The Home Office talks of proportionate responses in allowing those with a reasonable excuse to apply late. However, that is tinkering around the edges. The fact remains that there will still be hundreds of thousands of people here without permission—people who were lawfully resident one day, and unlawfully the next.

2.30 pm

However, if we accepted the amendments to make the system declaratory, no one would lose rights overnight. Those who have not applied would still find it much more difficult to go about their lives as they would find it impossible to prove their status in some circumstances, but at least they would be able to remedy that and there would be every incentive for them to apply for proof of settled status.

In the last couple of weeks, the Home Office has started trying to say that the problem with the Windrush scandal was that the system was declaratory. That is simply an outrageous rewriting of history: no report or inquiry into that scandal has reached that conclusion. The point about Windrush was that people were left with no means to prove their rights. In fact, back when that declaratory law was passed, no one for a moment would have envisaged that 40 years down the line it would be impossible to work, rent, drive or access services without such proof.

Let me also point out, as I did last week when the Home Secretary appeared before the Home Affairs Committee, that British citizenship, for example, is a largely declaratory system, too. None of us in this room applied for British citizenship, as far as I am aware. The law simply declares that we are British citizens because of the circumstances in which we were born. We can apply for a British passport to prove our citizenship, but it does not constitute it or give us any extra rights. Declaratory systems can work perfectly well, and we can make a declaratory system work perfectly well for EEA nationals already in the UK.

Unlike in the case of the Windrush generation, a system is already set up to provide evidential documents such as the one that the Minister has established and we should use it in that way. To my mind, this is a no-brainer. It also means that rights protected by primary legislation cannot be tampered with through changes to immigration rules.

Lifting the time limit for applications for settled status, as suggested in new clause 33, is very much a second-best option; amendments that would declare the rights in law are by far the better option. Both the3million and British in Europe were clear in their evidence that the priority was a ring-fenced agreement on citizens' rights, as has already been mentioned. After that, comes a clear statement of rights and a description of settled status in the Bill. That would help the 3 million who are here. It would also help the British in Europe as they sought reciprocal provisions in other EU member states.

New clause 35 requires a document to be provided so that EEA citizens can prove their settled status. I am not a luddite—I am open to better use of technology—but there are good reasons, as the hon. Member for Sheffield Central has already said, why the 3 million are not happy with being told that they will not get any sort of physical document.

The JCWI points out that under the right to rent scheme, landlords are already overwhelmingly in favour of physical documents, rather than carrying out online checks. During one mystery shopping exercise, out of 150 emails from migrants requesting that landlords check their identity online, 85% received no response. Only 12% of inquiries received a response that might invite a follow-up such as a phone call or viewing. Only three responses explicitly stated that the landlord was willing to conduct an online check. A migrant with documentation received a response rate of roughly 50%—still totally unacceptable, but better than for those without. Forcing EEA nationals to rely purely on an electronic system will place them at a massive disadvantage in comparison with British passport holders.

Further concerns include problems of proving status for the most vulnerable with limited ability to use computers, dangers of mistakes in the system, hacking and loss of data. There are also concerns that holders will be asked to inform the Home Office of any changes to mobile phones or email addresses at any moment because they are required for the system to work.

What we are arguing is not that we want to scrap the use of technology: we simply suggest that at least we can offer a physical document in parallel. That would make life much easier for those caught up in this system.

Caroline Nokes: I thank the hon. Members for Manchester, Gorton and for Sheffield Central for tabling new clauses 15 to 18. I am also grateful to the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North for new clauses 33, 35, 47 to 49.

Before turning to the new clauses, I will say a few words about the proposal put forward by my hon. Friend the Member for South Leicestershire (Alberto Costa), to which the hon. Member for Sheffield Central referred and to which the House agreed unanimously last week. We and the EU have been clear that providing certainty for citizens is a priority. That is why we have written to the EU about ring-fencing the citizens' rights part of the withdrawal agreement. As my right hon. Friend the Home Secretary said to the Home Affairs Committee last week, we should not underestimate the challenges involved in reaching such a joint UK-EU commitment. But we share a common goal in seeking to protect citizens' rights. In the meantime, we will continue to seek commitments from the EU and its member states to protect the rights of UK nationals in the EU in the event of no deal.

The hon. Member for Sheffield Central raised a number of points specifically on the settled status scheme and the ease of applications. I must, once and for all, put to bed the allegation that people will not be able to use their iPhones to apply. Individuals will be able to use any desktop, laptop or mobile device to make an application. It is only during this current phase of testing that people need to use the EU Exit: ID Document Check app to verify their identity, which is currently—I use that word advisedly—available only on Android devices. When the scheme is fully live at the end of March, the use of the app will be entirely optional.

The app is just one of several ways in which people will be able to verify their identity, including by post or face to face at an application centre. Additional routes that will be available to have identity documents checked include 50 locations where applicants will be able to have their passports scanned and verified. We are also rolling out additional digital support, which I saw in operation at the Barbican library some months ago, and a dedicated telephone advice and support service is also available. It is important to the Government that we make it as easy as possible for people to apply, and the Home Secretary continues to work very closely with Apple on the upgrades to its systems—not ours—required in order to have a chip-check device available on iOS.

There was a question about pre-settled status, which we grant to people with fewer than five years' residence. This is a well-established rule that derives from the EU's free movement directive: after five years, a person gets permanent residence. The draft withdrawal agreement specifically refers to these rules. The Opposition's proposal would mean that a person here for a day, and with no intention to make their life in the UK, would immediately get indefinite leave to remain.

I turn to the new clauses tabled by hon. Members. The new clauses would give automatic immigration status to EEA and Swiss nationals—to whom I will continue to refer as "EEA nationals" for brevity—and their family members resident in the UK. As I have explained before to the Committee, this is called a declaratory system: individuals would automatically acquire status without needing to apply, but could subsequently register for a document if they chose to, in a similar way to how current free movement rights operate.

I welcome the fact that hon. Members share my aim to secure the rights of EEA nationals who are resident in the UK, which we all agree is of the utmost importance. The Government devoted a great deal of thought to how best to manage the end of free movement residence rights as we leave the EU. As I have explained before, a declaratory system is not the answer. As I explained to the Committee last week, in a deal scenario the EEA regulations that implement the free movement directive will remain in force until the end of the implementation period on 31 December 2020 and will be saved for the six-month grace period thereafter.

In a no-deal scenario, clause 4 of the Bill will save the EEA regulations from the date when they are repealed by schedule 1, and these will apply for people who are resident before exit day. This will maintain their current position until the deadline for applying under the settlement scheme expires in December 2020, and will ensure there is no change in their status as a result of Brexit until then. EEA nationals and their family members will be able to secure their immigration status in UK law after EU exit through the settlement scheme, which provides a quick and easy way for EEA nationals and their family members to apply for and be granted status. As the hon. Member for Sheffield Central pointed out, this will now be free of charge.

The overwhelming majority of EEA nationals will need only to prove their identity, demonstrate residence in the UK and declare any criminal convictions. We will work with applicants to ensure that they are granted the status to which they are entitled. The scheme has, of course, been designed to comply with the Government's obligations under the European convention on human rights. I take such obligations incredibly seriously, and they are applied by default to everything the Government do. Although new clause 18 is well-intentioned, it is unnecessary.

Some hon. Members might think that a so-called declaratory system would be better for EEA nationals, as it would provide them with an immigration status without their needing to apply. Although I understand why hon. Members wish to make the new system as streamlined as possible, I disagree with the proposals for a declaratory system. As I have said previously, requiring EEA nationals to apply for and receive a formal grant of status via the settlement scheme is key to ensuring that life continues smoothly for them in the future. Resident EEA nationals will be able to use their settled or pre-settled status to distinguish themselves from EEA nationals arriving in the UK in the future. In addition, a declaratory system for the resident population would provide much less incentive to apply for status and thereby receive the documentation that will enable them to prove that status.

Stuart C. McDonald: The incentive is there because, in order to be able to work, rent and access services, people will need to have a document that proves they have settled status. Can the Minister address what exactly is going to happen and what the status will be of the hundreds of thousands of people—we heard about them in evidence—who will miss the deadline if this system is not declaratory?

Caroline Nokes: We covered this point previously in the evidence sessions and also last week. The Government are absolutely determined to have a proportionate approach to those who miss the deadline and to assist those who have challenges through vulnerability, to make sure that they do indeed go through the settled status scheme.

It is important to us to reflect that people will want to be able to evidence their status here. However, at some point in the future we have to be able to draw a distinction between those who arrived before we left the EU and within the implementation period and those who arrived afterwards. Having a large proportion of this cohort legally entitled to a status but with no formal evidence to prove it would lead to confusion among employers and service providers and make it difficult for individuals to prove their right to benefits and services to which they are entitled.

In the longer term, it could also make it more difficult for them to prove that they have a legal right to reside in the UK. I am sure that Committee members will agree that that is not the outcome we want.

Stuart C. McDonald: It does not make it one iota more difficult for people to prove their status, because they will be using the same scheme. The only difference a declaratory system makes is that on the day after the application deadline there will not be hundreds of thousands of people without status. It will be just as easy for people to prove their status because they are using exactly the same scheme.

Caroline Nokes: The hon. Gentleman will be aware that it is the Government's intention for there not to be hundreds of thousands of people without status and to

[Caroline Nokes]

ensure that people are assisted through the scheme where necessary. I was alarmed earlier today to hear information about a councillor from the hon. Gentleman's own party who was encouraging others not to apply. I am sure we would all agree that that is the worst piece of advice that any elected representative could give.

I have taken incredibly seriously the lessons learned from Windrush, where individuals became entangled in measures intended to tackle illegal migration precisely because they did not hold the documentation that they needed. It is absolutely crucial that people understand their immigration status and the basis on which they have a right to remain in the UK. We have been developing plans for the EU settlement scheme. As we have been developing those plans, we have received queries about various groups of EU citizens who believe that they were here lawfully, but who are not meeting the requirements of the free movement directive.

Last week, I used the oft-quoted example of the househusband who did not have comprehensive sickness insurance, or carers who could not demonstrate the role that they were undertaking. We are catering for cases such as those through the scheme, but it illustrates the peril of declaratory systems, which lull people into a false sense of security. The EU agreed that a constitutive system was a sensible option for the UK to take and other member states are following this option for UK nationals. The Government's approach already achieves the purpose of the amendments. I ask hon. Members to withdraw new clause 15 and not to move the others, for the reasons outlined.

I turn to the other new clauses, which relate to the EU settlement scheme. I thank hon. Members for new clause 33, which seeks to remove any deadline for applications under that scheme. However, removing the deadline is not appropriate for a number of reasons. EEA nationals will benefit from applying to the scheme before the deadline, so that they can prove their rights in the UK. After the deadline, the future immigration system will be in place; future arrivals will have different rights from those of the resident population. Without a deadline, there would be little incentive for the resident population to apply. Reducing the incentive to apply might lead to an increased number of EEA nationals failing to apply for and receive a grant of status. Those individuals would consequently face difficulty in proving their right to benefits and services to which they are entitled.

Stuart C. McDonald: The Minister is not addressing the point I am making; in fact, she is almost making contradictory arguments—that this will reduce the incentive to apply and create difficulties in accessing benefits, services and so on. That is exactly the point, though. The difficulty in applying for benefits, accessing services, accommodation and everything else is exactly the incentive that means that people will apply for status. Yet the Minister is seeking to argue both ways.

Caroline Nokes: I do not think I am seeking to argue both ways. I fear that with no deadline people will not see the need to apply, yet then might—in a moment of crisis or emergency—come up against the need to be able to immediately prove their status without having the ability to do so.

2.45 pm

Stuart C. McDonald: That is the critical difference between the two proposals. Under the Government's current proposals, at that critical moment these people will have no status, and—despite vague assurances about proportionate responses, whatever that means—many of these people will find themselves without any status at all. If our proposals are correct, at the very least they will have the right to be in this country at that moment of crisis. It will simply be a matter of getting a document to prove it, if they still have that ability.

Caroline Nokes: The hon. Gentleman says that it is "simply" a matter of getting the evidence to prove status, but as we saw—I am loth to go there—with the Windrush crisis, there were people who had absolutely every right to be in this country but could not evidence it. We are determined not to repeat that with this scheme: the incentive is to encourage people to apply, to provide them with a deadline, and to make sure that as many as possible can evidence their status so that they are not doing so in an emergency situation. As I have said several times, we will take a pragmatic approach to those who have a good reason for missing the deadline by allowing them to apply late. That is a requirement of the withdrawal agreement, and we will follow the same approach in a no-deal scenario.

New clause 35 would require the Home Office to provide EEA nationals with a physical document evidencing their status under the EU settlement scheme. The digital status given to EEA nationals will be a secure and permanent record held by the Home Office that is accessible to the holder at any time, but which cannot be lost or stolen. Users will be able to choose to allow third parties, such as employers, to have time-limited access to relevant information to demonstrate their status. By giving individuals direct access to their own data and the ability to share this at their discretion with service providers, we are giving them greater transparency and control over which data is shared. People will be able to better understand their rights and keep information updated.

We have already trialled this service with non-EU-national migrants to view and share their right-to-work information with employers, and the service has been well received by those involved. With an online service, we can also ensure that employers and others required to check a person's status see only the information relevant to their need. Using a physical document as evidence of status—as has been the practice to date—does none of this. It can also cause significant problems when documents are lost, stolen, damaged, expired or in the process of being renewed. Physical documents are also more open to forgery and fraud: something we must seek to avoid.

Additionally, there are individuals whose documents are controlled by others, such as in cases of domestic violence, modern slavery and human trafficking. Moving to an online status is a step forward in tackling those who seek to control others. A digital status is also much easier to use for the visually impaired and dyslexic users who may have difficulty reading a physical document.

Stuart C. McDonald: There are some valid points in what the Minister says, but surely there is a compromise here. Could there not be the online system but some sort of physical document parallel to that, so that we had the best of both worlds?

Caroline Nokes: As the hon. Gentleman will be aware, the Government are moving to a position of everything being digital by default. We think that the correct way forward. I have enjoyed my exchanges with the3million. The hon. Member for Sheffield Central suggested that I had not adequately engaged with them. I have met them on several occasions and listened to their views, but we do differ on the determination that we have to use the digital status. We believe that any 21st-century Government would want to do that.

Paul Blomfield: With my respect for the Minister I would not want it to be suggested that I was misrepresenting her engagement with the3million, and I am aware that she had productive discussions with them. However, there have been critical issues on which she has not been prepared to listen, and the issue of physical status documentation is one of them. It still eludes them, as it eludes us, why the Minister cannot agree to have a physical document available as an option for those who want it.

Caroline Nokes: I thank the hon. Gentleman for that suggestion. Just because I disagree, that does not mean that I have not listened. We have made a commitment to digital by default, which I think is the right way forward. I made a point earlier about the challenge of different types of document, and the difficulties that might be presented if some people could produce one sort of document and others were reliant on digital only. I happen to think—perhaps I spent a long six months as the Minister responsible for the Government Digital Service—that this is the right way forward. The Government have always been very clear that this is our direction of travel.

I understand that it represents a cultural change for many, and I am very conscious that many EU member states not only require an identity document to be held at all times, but enforce compulsory identification on request, for instance from police officers. That is very different from the way in which the UK behaves. We do not have those requirements, nor are they part of our culture. Our methods of proving identity and rights do not have to mirror what other countries do.

Paul Blomfield: I find it difficult to accept the Minister's general statement that those are not part of our culture. It has been pretty clear from evidence from employers and landlords that they would find physical documents much easier to deal with. If she is wrong on this, and if we fail in our endeavours to make the amendment, will she agree to the Home Office reviewing the practice within a reasonable period of introducing it?

Caroline Nokes: From the demonstrations that I have had of the digital right-to-work check, and the work that I have done with the Landlords Consultative Panel surrounding the digital right to rent checks, we have seen a very simple and straightforward procedure where the individual can send a time-limited link to a prospective employer that does not require them to do a great deal of research to find digital status; it is there at the click of a mouse button. However, I am listening to the views put to me by the Committee, and will reflect on them over the next few weeks.

As I said, the new digital capability forms part of moving the UK's immigration system to digital by default, and is a simpler, safer and more convenient system. The proposed new clause would be a step backwards in simplifying the current system. I therefore request that the hon. Member for Manchester, Gorton withdraw the new clause.

Afzal Khan: We wish to press new clause 15 to a vote.

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

The Committee divided: Ayes 8, Noes 10.

Division No. 14]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 22

EEA Nationals and the TOEIC test

'(1) The Secretary of State must disregard the results of the TOEIC (Test of English for International Communication) test for any EEA or Swiss national who applies for—

(a) settled status;

(b) pre-settled status;

(c) a visa to work or study in the United Kingdom; or

(d) any new visa system established under the provisions of this Act.

(2) The Secretary of State must, within 6 months of this Act having received Royal Assent, carry out a review of the consequences of the licence given to ETS (Educational Testing Service) to administer the TOEIC test in the UK.

(3) The review under subsection 2 must include, but is not limited to, consideration of the allegations that some candidates may have cheated when taking the TOEIC test.

(4) The review under subsection (3) must be laid before both Houses of Parliament."—*(Kate Green.)*

Brought up, and read the First time.

Kate Green (Stretford and Urmston) (Lab): I beg to move that the clause be read a Second time. I do so on behalf of my right hon. Friend the Member for East Ham (Stephen Timms), who is not a member of this Committee but who has been particularly active on this issue, along with other colleagues.

This new clause relates to the testing of foreign national students in English proficiency. In 2011, the Home Office gave a licence to the US firm ETS to operate an English language test—the Test of English for International Communication or TOEIC—that was widely used to assess whether the English-language capabilities of overseas students were sufficient for them to study in the UK.

[Kate Green]

In February 2014, the BBC "Panorama" programme exposed cheating on a significant scale on the TOEIC test. Test centres were facilitating proxies to take the test, allowing students with poor English to obtain a pass certificate. ETS responded to this exposé by undertaking analysis, using voice-recognition software of the recordings of all those who had taken the TOEIC test in order to study in the UK. They reported to the Home Office that, of 58,458 candidates who took the test in the UK between 2011 and 2014, 33,725 had definitely cheated and 22,694 probably had. Only 2,039 candidates were given the all-clear.

The Home Office responded by cancelling the visas of many of those ETS claimed had definitely cheated. Their colleges were required to expel them from their courses and, of the 22,694 students that ETS claimed had probably cheated, the Home Office stated that none had action taken against them without first being given the opportunity to resit a test with a different provider. Up to the end of 2016, the Home Office published data on its response to the ETS allegations. By the end of that year, there were more than 35,870 refusal, curtailment and removal decisions made in respect of ETS-linked cases. There were more than 4,600 removals and departures in respect of ETS-linked cases. These figures suggest that a significant number of those who lost their visas as a result of ETS allegations are still in the UK, but nobody knows how many. One estimate is that at least 2,000 are still here.

No in-country appeals were available to those accused of cheating, but some of those affected have managed to get their cases before the UK courts. In a growing number of cases, they have been able to convince the courts that they did not, in fact, cheat. In one case, the appellant showed that he never even took a TOEIC test.

ETS's evidence has not stood up well to the scrutiny it has received in these cases and was described by one computer expert as worthless. It has proven extremely difficult for students to obtain from ETS the recordings alleged to be of them taking the test and ETS's records, for example of where the test was taken, have proven unreliable. It is also clear that many of those affected can speak excellent English and some have passed comparable tests with other providers. This is the regime that EEA national students will be subject to in future.

The students whose visas were summarily cancelled have been left in a terrible plight. They were thrown off their courses and were not entitled to any refund of the fees they had paid. They are not permitted to study or work in the UK, and many are dependent on support from friends. In some cases, they have invested their family's life savings in obtaining a British degree. Now the savings have gone, they have no qualification and face destitution. Many say they could not endure the shame of returning to their home country with nothing to show for their efforts and having been apparently convicted by UK authorities of having cheated. At a meeting in the House of Commons attended by some 50 TOEIC victims recently, it was claimed that all suffer mental health problems.

The student who never took a test, but nevertheless had his visa cancelled on the grounds that he cheated, had completed an MBA course at the University of West London, subject to having to pass two resits. When the Home Office refused his visa renewal on TOEIC grounds, the university withdrew him. He had paid more than £10,000 in fees for the course and has since spent £5,000 on legal costs to win his appeal.

3 pm

The Upper Tribunal judges concluded, however, that the Home Secretary had not shown that that claimant had used deception in relying on an ETS TOEIC English language test. In reconsidering the application, the Home Office refused it again, apparently still taking the view that the student had cheated. A further appeal is due to be heard in May. The student is being supported financially by his wife, who also lost her visa following an allegation of cheating in TOEIC. She works 10 hours a day, seven days a week, renting a chair as a self-employed beauty therapist in Peckham.

There have been a number of cases about the treatment of such students. In one, that of Assan, the Court of Appeal heard that because of the nature of the allegations, the necessity of oral evidence to defend them, and the fact that adequate facilities did not exist to enable evidence to be given by someone outside the UK, the out-of-country appeals model was not adequate. It would not be adequate in future were it to continue to apply to EEA students. In an earlier decision, in the case of Qadir *v.* the Secretary of State, the upper tribunal found that evidence used by the Home Office had "multiple shortcomings and frailties".

So far, students who have taken the test come from more than 180 different nationalities. I acknowledge that the largest groups came from Bangladesh, India and Pakistan, but 75 came from countries in the European economic area, including 11 alleged by ETS definitely to have cheated and 16 probably to have cheated. Given that the Home Office is still using ETS allegations as a basis for refusing applications, the main purpose of the new clause is to ensure that no EEA citizen should be disadvantaged in a future application for leave to remain in or to enter the UK as a result of ETS making an allegation of cheating, in particular given the increasing uncertainty about the reliability of such allegations.

The new clause would require the Home Secretary to carry out a review of what happened in the TOEIC affair. On a number of occasions in the House, the Home Secretary has in fact committed to look into it. On 30 April 2018, he was asked:

"Will he undertake to look carefully at the case of TOEIC students?"—[*Official Report*, 30 April 2018; Vol. 640, c. 46.]

He replied, "Yes." On 19 December, when asked:

"Is he in a position yet to offer any relief to those students…who had their visas cancelled after being accused, often wrongly, by an American firm of having cheated in their English language tests?",

he replied that

"we are still looking at this but we are taking it very seriously."—[*Official Report*, 19 December 2018; Vol. 651, c. 821.]

So far, however, there has been no announcement of a conclusion.

We need urgent action to bring to an end the grave injustice inflicted on such a large number of students, whose only mistake was to choose the UK as a place to study. A simple remedy, proposed in early-day motion 2061, which has so far attracted support from more than three dozen Members of Parliament, would be to allow those students, including EEA ones, to remain in

the UK to sit a new secure test, and to reinstate the visas of those who pass to allow them to complete their studies and clear their names of the allegations levelled against them.

I very much hope that the Immigration Minister will be able to give firmer assurances to people who have suffered such injustice at the hands of that American company. That might have happened some years ago, but the issue remains very live for those individuals. Members of the Committee might be aware that the issue was covered again on "News at Ten" this week. It is an extremely painful story that does not reflect well on the education provided in this country. I am sure that the Minister will agree that at a time when it is important for us to be an attractive destination to international students, this is an injustice that the Government will want to do everything they can to put right, and as quickly as possible. I look forward to her response.

Afzal Khan: I strongly agree with the new clause. I have been involved in campaigning on the TOEIC test issue. It is a burning injustice that is long overdue for resolution by the Home Office. Thousands of innocent students have spent years trying to clear their names. In Committee, we have discussed the terrible consequences of the "hostile environment", and those all rained down on the students. I hoped that the issue would be resolved long before now, given that the scandal first broke five years ago. Given that the legal limbo continues, we support the new clause as a vehicle to compel Ministers to resolve it.

Caroline Nokes: I thank the hon. Member for Stretford and Urmston for tabling the new clause on behalf of the right hon. Member for East Ham. The new clause relates to the use of certificates to evidence knowledge of English. It raises an important issue, and I would like to explain the Government's response to widespread abuse of English language testing facilities, which came to light in 2014.

The scale of the fraud—there is no doubt it was a fraud—is illustrated by the fact that so far more than 20 people have received criminal convictions for their role in facilitating the deception, and sentences totalling more than 60 years have been handed down. Further criminal trials are ongoing. There was also a strong link to wider abuse of the student visa route. The majority of individuals linked to the fraud were sponsored by private colleges rather than universities, many of whom the Home Office had significant concerns about well before "Panorama" uncovered the specific fraud. Indeed, 400 colleges who had sponsored students linked to the fraud had already had their licences revoked prior to 2014.

The Educational Testing Service had its licence to provide tests within the UK suspended in early February 2014 and was removed from the immigration rules on 1 July 2014. Approximately 20% of the tests taken in the UK were provided via ETS prior to its suspension.

During 2014, ETS systematically analysed all the TOEIC tests administered in the UK dating back to 2011 and classified them as either questionable or invalid. ETS categorised results as questionable where it had significant concerns about the test centres and sessions where they had been obtained.

We have always recognised that it was possible that a small number of students who took legitimate tests could have received a questionable result. That is why we ensured that those people were given the chance to resit a test or attend an interview before any action was taken against them. ETS categorised results as invalid only where the same voice was matched to two or more tests taken in different names, indicating that deception was likely to have been used.

Stuart C. McDonald: All this was a good few years before the Minister's time in office, but was one of the fundamental problems here that the big multinational company responsible for messing up the test in the first place was then handed a blank cheque to mark its own homework afterwards? Why was that not handed to a completely independent body, rather than just letting ETS fix its own mess? How much did it have to pay in compensation to the Home Office?

Caroline Nokes: I reject the description of a global company making a mess of it. This was systematic fraud and deception—I indicated earlier the number of criminal convictions. This was not a mess; it was fraud. It is really important to remember that.

Stuart C. McDonald: It was a fraud, absolutely. It was far too easy to perpetrate. People employed by that company or at least subcontracted further down the line by that company were assisting people with their tests and allowing different people to sit the tests. The safeguards that the company put in place were clearly way short of what was required. It made a mess of things.

Caroline Nokes: That is absolutely why that company was suspended from the immigration rules in July of that year, which is perhaps evidence of why occasionally it is useful to use the immigration rules as a very swift device to resolve problems. I would point out that the report on the ETS system, which was undertaken by Professor Peter French, concluded that the number of false matches was likely to be very small and it was more likely that people were given the benefit of the doubt than that they were falsely flagged as having cheated.

Kate Green: One of the difficulties that the students face is that it is proving very difficult for them to get a copy of the recorded evidence on which ETS and, it would seem, the Home Office are relying. We seem to have a system that, in its impact, is not just on a number of individuals. I am quite surprised that the Minister is taking such a hard line, because even one failure of justice is one too many.

Caroline Nokes: As I indicated earlier, those who received a questionable result were given the opportunity to take an additional test or to attend an interview before any action was taken against them. I know that Members have expressed concern about the reliability of the matching. It is important to note that an independent expert report from Professor French, a professor of speech science, which reviewed the system, indicated that the number of false matches was likely to be very

[Caroline Nokes]

small. It is also worth noting that the courts, even when finding in favour of individuals, said that the evidence for invalid cases was enough to justify reasonable suspicion of fraud and for the Home Office to take action. It is then for individuals to address this evidence, as a number have, through appeal or judicial review.

The first part of the hon. Lady's amendment requires the Secretary of State to disregard the results of any English language test for any EEA or Swiss national applying for settled status, pre-settled status, to work or study or for any other visa system established under the provisions of the Bill. We have set out very clearly our intention to create a single, skills-based immigration system. English language ability will remain a key strand of the immigration requirements for many of those coming to work, study and settle in the UK. Although EEA nationals often have excellent English language skills, currently we exempt only nationals of majority English-speaking countries and those who have certain qualifications obtained in English, having shown their English language skills through a secure English language test.

Requiring EU citizens to obtain evidence of their English language would put them on a par with a citizen of any other non-majority English-speaking country under the current system. However, evidence of English language is not a requirement for settled or pre-settled applications, and no EEA or Swiss national applying under the settlement scheme will have to demonstrate their English language ability.

The Government believe it is a reasonable expectation that those coming to work or study in the UK are able to speak a satisfactory level of English. Therefore, evidence of English language will continue to be a requirement for other visa routes, such as study and skilled work routes.

Kate Green: I am grateful that the Minister says English language capability is not a requirement for settled status and pre-settled status. Will she confirm clearly that, given we know that a small number of EEA nationals have already taken this test and may not have passed it, failure to pass the test will not prevent them from being obtaining settled status or pre-settled status, nor will it put them at risk of removal or other sanctions?

Caroline Nokes: I think I can give that reassurance. When it comes to settled status or pre-settled status, there are only three requirements. We ask people to provide evidence of their identity, of their residence in the UK for five years for settled status and less for pre-settled status—enabling them to upgrade to settled status later—and of any criminal convictions.

The second part of the amendment provides for a review of the consequences of the licence issued to ETS to administer the English language test in the UK. As the hon. Lady will be aware, there has been significant scrutiny of this issue over the last five years in Parliament, the courts and the media. A specific inquiry was conducted by the Home Affairs Committee in 2016, during which the Home Office answered more than 100 detailed questions. Given the scrutiny that has already taken place, I do not believe it is necessary to require the Home Office to conduct a further review, and I also do not believe that this Bill, which sets out a framework for the future immigration system, is the correct vehicle to require reviews of previous Home Office actions that have little bearing on EEA or Swiss nationals.

I am aware that, following a meeting with the Home Secretary, the right hon. Member for East Ham passed on details of a further number of specific cases to the Home Office. I assure the hon. Lady that we will respond shortly on these cases and the wider issues that have been raised and continue to be raised. I appreciate that there is frustration at recent delays in response to individual representations, but that is because my right hon. Friend the Home Secretary and I both take seriously the issues that the right hon. Member for East Ham has raised.

I hope that the hon. Lady is satisfied from the evidence presented that the Bill is not the right vehicle to address any concerns she may have with the historic abuse of the English language test administered by ETS, and I respectfully ask her to withdraw her new clause.

Kate Green: I am a little disappointed by the tone of the Minister's response. There is no doubt that, as she says, there has been cheating, both corporate and individual. It is unfortunate to adduce other cases that were nothing to do with ETS and the TOEIC case in particular, to imply that there is some general culture of cheating that these students were a part of. We know that specific cases that have been brought either to the Home Secretary and considered carefully, as she says, or to the courts, often have been found in the appellants' favour. The courts have been quite firm in some of their wording, making it quite clear that it is the Government who have failed to discharge the burden of proof that sits on them and not some legal failure on the part of the students to make their case.

3.15 pm

I hear what the Minister says about the situation for those applying for settled status or pre-settled status. I am grateful to her for that assurance. I recognise what she says about the scope of the Bill and that perhaps it is not the ideal vehicle for the new clause. However, despite the reviews and discussions she mentioned, the Home Secretary has twice in the last year made a commitment to come back with a fuller report on the matter after conducting a review of it. That still has not happened, so I am sure the Minister will appreciate my taking this opportunity to put the matter in front of Ministers again. She may also want to know that a new all-party parliamentary group has been established to consider the issue further. She and the Home Secretary can expect to hear more from that group.

With the leave of the Committee, I will withdraw the new clause, but I am sure that my right hon. Friend the Member for East Ham will want to consider further, as I do, what steps may still be available to pursue this injustice suffered by a number of international students. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 24

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT FOR WORK AND PENSIONS AND THE HOME OFFICE ON THE AUTOMATED RESIDENCY CHECK FOR THE EU SETTLEMENT SCHEME

"The Secretary of State shall, on the day on which this Act is passed, publish the memorandum of understanding between the Department for Work and Pensions and the Home Office regarding automated residency checks for the purposes of the EU Settlement Scheme."—*(Stuart C. McDonald.)*

This new clause would mean the memorandum of understanding between the DWP and the Home Office regarding the automated residency checks for the EU Settlement Scheme is published.

Brought up, and read the First time.

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

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

New clause 25—*Data categories for the automated residency check for the EU Settlement Scheme—*

"The Secretary of State shall, on the day on which this Act is passed, publish which categories of data are provided by the Department for Work and Pensions to the Home Office for the purpose of the automated residency checks for the EU Settlement Scheme."

This new clause would require the Home Office to publish information on which categories of data are provided by the DWP to the Home Office for the purpose of the automated residency checks for the EU Settlement Scheme.

New clause 26—*Process applied by the Home Office during the automated residency check for the EU Settlement Scheme—*

"(1) In relation to the automated residency check for the EU Settlement Scheme, the Secretary of State shall, on the day on which this Act is passed, publish the details of the process, which is used in order to—

(a) convert the data provided by Her Majesty's Revenue and Customs to a record of residency;

(b) ascertain whether the record of residency created using the data provided by Her Majesty's Revenue and Customs meets the criteria for settled status;

(c) convert the data provided by the Department for Work and Pensions to a record of residency;

(d) ascertain whether the record of residency created using the data provided by the Department for Work and Pensions meets the criteria for settled status;

(e) combine the record of residency created using the data provided by the Her Majesty's Revenue and Customs with the record of residency created using the data provided by the Department for Work and Pensions; and

(f) ascertain whether the combined record of residency created by the process set out in subsection (e) meets the criteria for settled status.

(2) The Secretary of State shall publish any change to the process set out in subsection (1) within a period of seven days after such a change is implemented."

This new clause would mean that the process applied by the Home Office during the automated residency check, any changes made to that process, and information regarding that process, would be published.

New clause 27—*Data protection impact assessment relating to the automated residency check for the EU Settlement Scheme—*

"The Secretary of State shall, on the day on which this Act is passed, publish a data protection impact assessment relating to the automated residency checks for the purposes of the EU Settlement Scheme."

This new clause would mean that the Secretary of State had to publish a data protection impact assessment relating to the automated residency checks within the EU Settlement Scheme application process.

New clause 28—*Information to applicants on the outcome of the automated residency check—*

"At the same time as an applicant to the EU Settlement Scheme receives a wholly or partially unsuccessful result from the automated residency check, the Secretary of State must provide the applicant with—

(a) the periods of time during which the Secretary of State accepts that the applicant was resident;

(b) the periods of time during which the data do not evidence residence;

(c) the data processed by the automated residency check;

(d) information on the process that was applied to the data in paragraph (c) to produce the periods of time as set out in paragraphs (a) and (b)."

This new clause would mean information was given immediately to an applicant who was informed that the automated residency check result for the EU Settlement Scheme was not successful.

New clause 29—*Legal limits on the use of personal data processed during the EU Settlement Scheme—*

"(1) The Secretary of State may not further process personal data that has been processed during the EU Settlement Scheme application procedure unless—

(a) the data subject has given consent to the processing of his or her personal data for such further processing, or

(b) such further processing is limited to what is necessary in relation to the purposes for which the data are processed, and not further processed in a manner incompatible with the purposes of applying for settled or pre-settled status.

(2) Transferring the personal data to immigration enforcement or to a database accessible by immigration enforcement, does not satisfy subsection (1)(b).

(3) Paragraph 4 of Schedule 2 of the Data Protection Act 2018 does not apply to further processing referred to in subsection (1)."

This new clause would mean that the data of EU nationals who apply through the EU Settlement Scheme are not passed to immigration enforcement or to a database which may be accessed by immigration enforcement.

New clause 31—*Requirement to check manually for system errors when an applicant does not pass the automated residency check—*

"At the same time as an applicant through the EU Settlement Scheme application process receives a wholly or partially unsuccessful result from the automated residency check, the Secretary of State must manually check for errors in the automated data checks, including but not limited to—

(a) data matching errors;

(b) errors in creation of the record of residency from the data;

(c) errors in adding data to a record of residency to create a new record of residency

(d) errors resulting from using the process applied during the automated residency checks on a record of residency to create an output."

This new clause would mean that a manual check for errors is made when an applicant does not pass the automated residency check before they are required to provide documentation to prove their residency for the purposes of settled status.

Stuart C. McDonald: Let me say at the outset that I am stepping somewhat outside my comfort zone in discussing automated data checks, so I am grateful for the assistance provided by the Immigration Law Practitioners Association and the Open Rights Group.

[Stuart C. McDonald]

The settled status scheme relies heavily on automatic data checks. Input of a national insurance number triggers the automatic transfer of certain data from HMRC and the DWP to the Home Office. That data is subjected to algorithmic machine analysis according to a Home Office business logic, details of which have not been made public. Result outputs of pass, partial pass and fail are issued to a Home Office caseworker. Once the output is received, the raw data apparently disappears. Applicants who pass the data check are deemed to have fulfilled the residence requirement for the purposes of settled status. Applicants who do not pass are invited by caseworkers to upload documents for manual checking. Applicants who cannot evidence five years' continuous residence generally receive pre-settled status.

Campaign organisations, including ILPA and the Open Rights Group, rightly believe that the Home Office has three specific legal duties—to give reasons for data check outcomes, to ensure that its caseworkers have meaningful oversight of the checks, and to provide public information about the scheme. The new clauses identify actions that the Home Office should take to comply with those three duties. They seek more information about the data checks and they would increase transparency.

Let me briefly take each of the three duties in turn. The first is the duty to give reasons for the outcome of a data check. The Home Office is under a common law duty to give reasons for its decisions to grant or refuse settled status. The data checks are a mandatory step in the scheme and they are integral to decision making. The duty to give reasons therefore includes a duty to explain why the data checks gave the result they did. Reasons should detail what data was analysed and how the business logic was applied. That information would enable applicants to appreciate whether decisions were open to challenge for irrationality or were made on the basis of inaccurate information.

If the Home Office accepts that it has a duty to give reasons, at least in some cases, how will it approach the need to retain records to supply such reasons? What data about applicants is retained by the Home Office as a result of the data checks? For what reason, and for how long, is that data retained? Which persons does the Home Office envisage will have a genuine business need to see that data?

The second duty is the duty to inform the public about the logic of the data checks. The EU General Data Protection Regulation of 2018 requires the Home Office to process data in a transparent manner. It would be consistent with such duties of transparency and openness if the Home Office provided meaningful public information about its business logic that enabled applicants to understand how it will apply in their case. Will the Home Office provide full details of, or sufficient information about, its business logic to allow its application to all types of individuals to be understood and to allow for independent review? What steps is the Home Office taking to limit and rectify business logic operational errors?

The third duty is the duty to exercise supervisory control over data checks. Making decisions by relying on output from automated data checks without scrutinising these is likely to constitute unlawful delegation of powers. To prevent this, a manual check for system errors should be conducted when applicants challenge refusal of settled status.

Proper oversight, safeguards and transparency are essential when dealing with complex decisions and people in vulnerable situations. It is important for EU nationals to know whether they are eligible for settled status, and if they are not eligible, the future date on which they are likely to become eligible. At the outcome of the data check, the Home Office should inform non-passing applicants which years the checks accepted covered, and which not. This would also improve system efficiency by reducing unnecessary challenges.

Some final questions: on the basis that residence is not contingent on income or contribution, why does it appear that different weighting is applied to data from the Department for Work and Pensions and from HMRC? Why is HMRC requested to provide data first, and not DWP? Will the Home Office add functionality in the scheme to enable applicants to easily request and obtain the information that HMRC and/or DWP have supplied about them? What steps is the Home Office taking to address the particular challenges faced by vulnerable groups such as children in care, persons in abusive or coercive relationships, victims of labour exploitation and trafficking and people who cannot provide documentary evidence, notably children, pensioners, non-working dependants, homeless persons, casual workers and victims of domestic abuse?

Afzal Khan: We support these amendments. I make two brief comments. First, the EU settlement scheme will entail an enormous amount of data sharing between the Home Office and other Departments. It is right that the terms of this data sharing should be transparent. Secondly, the possibility of EU citizens' data being passed on by the Home Office has understandably caused concern among those citizens. We do not want to create any barriers to EU citizens applying for settled status. Getting a high take-up rate is already going to be extremely difficult. Providing for explicit consent for data to be shared or reused would be a sensible limit on Government powers.

Caroline Nokes: I am grateful to the hon. Members for their new clauses 24 to 29 and 31. Given the similar effects of some of these new clauses, I will consider new clauses 24 to 28 and 31 together before speaking to new clause 29 separately.

These clauses cover a broad range of issues, including the gathering and using of data and matters relating to the automated residency checks under the EU settlement scheme. As I have said previously, securing the rights of citizens has always been our priority and we have delivered on this commitment. The draft withdrawal agreement published on 14 November 2018 guarantees the rights of EU citizens and their family members living in the UK, and those of UK nationals living in the EU.

The basis of the withdrawal agreement aligns closely to that of existing free movement rules with respect to when a person becomes a permanent resident and, in the case of the EU settlement scheme, acquires settled status. Significantly, the withdrawal agreement states that this assessment should be based not only on length of residence but on the fact that a person is exercising

EU treaty rights for the whole qualifying period. We have, however, gone further than this and are being more generous to all EU citizens in the UK and to those who arrived during the implementation period. We do not test whether a person is exercising treaty rights—for example whether they are in work, studying or have comprehensive sickness insurance. Eligibility is based on residence alone, subject to criminality and security checks.

As part of the application process we will, where an applicant provides a national insurance number, conduct an automated check of residence based on tax and certain benefit records from HMRC and the DWP. We know that most EU citizens will have had some interaction with these departments and that this could demonstrate an applicant's residence, either for the whole five-year period to qualify for settlement, or in part. While it is optional for an applicant to use the automated checks to prove their period of residency, in the test phases most have done so.

To date, 80% of the decisions made have been on the basis of this data alone. Where data exists, the automated checks replace the need for the applicant to submit any other form of evidence. The automated checks happen in real time as the application is completed, and the applicant is informed whether there is enough data to qualify for either settled or pre-settled status. Feedback from the three trial phases to date shows that people overwhelmingly like the simplicity of having their residence proved for them by these checks. The applicant is immediately informed if they need to provide additional documents and prompted to provide such documentation before completing their application.

In such instances, we will accept a range of documents as evidence, and they can be submitted digitally as part of the online application process. Where the applicant accepts the result of the automated check, no further evidence is required, and they will, subject to identity, security and criminality checks, be granted either settled or pre-settled status. The rules for assessing continuous residence are already set out in the immigration rules. The automated checks simply apply those principles to the data provided by HMRC and the DWP. New clauses 26 and 28, although well intentioned, are therefore unnecessary.

I understand the sentiment behind new clauses 24, 25 and 27, on publishing details of the automated residency checks in the scheme, as well as our memorandum of understanding with HMRC and the DWP. We will of course be completely transparent on how those checks work, as it is to everyone's benefit for us to do so. I confirm that we will publish the MOU before the scheme is fully launched. We will also publish further materials, including more guidance on why automated checks may not return the expected data. The EU settlement scheme is still in the test phase, and it is important that we continue to amend our processes and design as we progress through the phased roll-out. I hope that offers reassurance to hon. Members.

On new clause 31, it may be helpful if I explain the different stages of the application process. When an applicant receives a wholly or partially unsuccessful result from the automated residency check, they are still in the middle of the application process and they have completed only some of the online form. They have therefore not yet submitted an application. Informing an applicant of why data has not matched is likely to increase the risk of fraud and identity abuse. The new clause would change the focus of the scheme from granting status to investigating the data quality of employers or of the DWP and HMRC. We consider that a distraction that would cause unnecessary delays for applicants.

I am sure all hon. Members on this Committee share my desire to keep the application process simple and quick in providing results. For the reasons I have given, the new clause is not consistent with those aims. In most cases, it would be far simpler and more straightforward for applicants to submit other evidence to prove residence, rather than seeking to resolve why data has not matched. Of course, the applicant can take up that issue with HMRC or the DWP if they wish. It is already the case that applicants, like anyone else, can ask Government Departments what data is held about them and get incorrect information rectified, as per article 16 of the general data protection regulation.

Our guidance includes a suggested list of documents that could be provided as additional evidence. Examples include bank statements, a letter from a general practitioner, and certificates from school, college, university or an accredited educational or training organisation. I assure hon. Members that we will continue to work to improve the match rates of the automated checks. The test phase gives us the opportunity to test the EU settlement scheme and to make improvements to the process.

New clause 29 seeks to prevent information from those who apply to the EU settlement scheme from being passed to immigration enforcement. Let me confirm that we fully comply with all statutory responsibilities when processing data. The ways in which this information may be processed are set out in the Home Office's "Borders, immigration and citizenship: privacy information notice", which is available on gov.uk. Decisions on whether information should be shared with immigration enforcement are made on a case-by-case basis. It is important that the Home Office uses data in ways that are compatible with the purpose for which it is collected—for example, to assist future citizenship and passport applications and, if needs be, to combat immigration offences.

To conclude, I thank hon. Members for raising these important issues, but I hope the assurances I have provided will lead them not to press their new clauses.

Stuart C. McDonald: I am grateful to the Minister for her detailed answers, and particularly the undertaking to publish the MOU. I obviously need to take all that away and give it further thought, but there seemed to be a lot of helpful answers and pointers in there, so in the meantime, I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 30

EXTENSION OF THE REMIT OF THE INDEPENDENT CHIEF INSPECTOR OF BORDERS AND IMMIGRATION

"(1) The Independent Chief Inspector of Borders and Immigration shall have a remit to inspect any Government department insofar as the department is involved in the EU Settlement Scheme application process.

(2) Government departments in subsection (1) shall include the Department for Work and Pensions and Her Majesty's Revenue and Customs insofar as they are involved in the automated residency checks for the EU Settlement Scheme."—*(Stuart C. McDonald.)*

This new clause would mean that the Independent Chief Inspector of Borders and Immigration could inspect Government departments if they were involved in the EU Settlement Scheme application process.

Brought up, and read the First time.

3.30 pm

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

I will be very short, because this new clause is essentially tied up with the group we have just debated. Because the automated checks involve information passing to DWP and HMRC, the role of the independent chief inspector of borders and immigration should be extended so that they have the power to look under the bonnet, as it were, of both to see what is happening and to ensure that the process is running smoothly and appropriately. That is the new clause in a nutshell. I look forward to the Minister's response.

Afzal Khan: This is a sensible amendment. The independent chief inspector of borders and immigration plays a vital role in inspecting and reporting on Home Office activities. Where the EU settlement scheme overlaps with other Departments, it is important that the inspector has the remit to inspect those. There is some ambiguity about the oversight of the EU settlement scheme if there is no deal. The withdrawal agreement makes it clear that if there is a deal, there will be an independent monitoring authority established to oversee the scheme.

The Minister, in her letter to me on 31 January, set out that if there is no deal, the independent chief inspector of borders and immigration will fulfil that function. Will they get any additional funding to carry it out? Will the Minister expand their remit to cover other Departments, to make sure the inspections are not limited in scope?

Caroline Nokes: I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for new clause 30. However, it is unnecessary. The UK Borders Act 2007 allows the independent chief inspector to inspect the efficiency and effectiveness of services provided by any person acting in relation to the discharge of immigration, nationality, asylum and customs functions. The EU settlement scheme is primarily an immigration function. Therefore, the independent chief inspector of borders and immigration already has the powers to inspect Government Departments involved in the EU settlement scheme application process, and that includes activities undertaken by the Department for Work and Pensions and Her Majesty's Revenue and Customs in support of the EU settlement scheme application process. I therefore request the hon. Gentleman to withdraw the new clause.

Stuart C. McDonald: I am grateful to the Minister for answering my questions. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 32

NO FEES FOR APPLICATIONS UNDER APPENDIX EU TO THE IMMIGRATION RULES

"(1) No fees shall be chargeable for any EEA or Swiss national making an application for leave to remain (whether for settled status or pre-settled status) under appendix EU to the Immigration Rules.

(2) No fee shall be chargeable for any EEA or Swiss national seeking an administrative review of a decision to reject an application for leave to remain under appendix EU of the immigration rules (whether for settled status or pre-settled status), or to exercise a right of appeal against any such decision.

(3) No fee shall be chargeable for any new or alternative scheme introduced for EEA or Swiss nationals in place of appendix EU to the Immigration Rules."—*(Stuart C. McDonald.)*

This new clause would ensure that the Government's commitment to scrap the settled status fee, and extend the principle to any review or appeal, or any alternative scheme set up to replace appendix EU, is legally binding.

Brought up, and read the First time.

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

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

New clause 38—*Visa fees*—

"(1) A fee or charge on an EEA or Swiss national applying for a visa may be imposed only if that fee or charge is equal to or less than the cost of providing the visa.

(2) No child with an entitlement to register for British citizenship shall be required to pay a fee to register for British citizenship.

(3) A fee or charge on an EEA or Swiss national making an application to naturalise as a British citizen may be imposed only if that fee or charge is equal to or less than the cost of processing the application."

New clause 39—*Immigration skills charge*—

"No immigration skills charge introduced under section 70A of the Immigration Act 2014, or by regulations thereunder, may be charged in respect of an individual who is an EU national coming to work in the EU."

This new clause ensures no skills charge can be levied in respect of EU nationals coming to work in the UK.

New clause 45—*Registration as a British citizen*—

"(1) No person, who has at any time exercised any of the rights for which Schedule 1 makes provision to end, may be charged a fee to register as a British citizen that is higher than the cost to the Secretary of State of exercising the function of registration.

(2) No child of a person who has at any time exercised any of the rights for which Schedule 1 makes provision to end may be charged a fee to register as a British citizen if that child is receiving the assistance of a local authority.

(3) No child of a person who has at any time exercised any of the rights for which Schedule 1 makes provision to end may be charged a fee to register as a British citizen that the child or the child's parent, guardian or carer is unable to afford.

(4) The Secretary of State must take steps to raise awareness of people to whom subsection (1) applies of their rights under the British Nationality Act 1981 to register as British citizens."

This new clause would mean that nobody whose right of free movement was removed by the Bill could be charged a fee for registering as a British citizen that was greater than the cost of the registration process, and would abolish the fee for some children.

Stuart C. McDonald: The new clauses highlight in different ways the concern over significant increases in costs relating to the use of the migration system. Scrapping the settled status application fee was very welcome. New clause 32 would simply enshrine that in law and

ensure that any replacement scheme did not attract a fee. That territory has largely been covered by the hon. Member for Sheffield Central earlier, and I will not repeat what he said.

Will the Minister confirm that there will be no fee for seeking an administrative review of any refusal of settled status? What assessments have been made of the costs of future centres that people are required to attend if they need help to scan documents, for example?

New clause 39 allows for a debate on the skills charge of £1,000 for an employee for 12 months and £500 for every subsequent six months. This is a significant tax on employing a worker from overseas. It is not a subtle tax and seems to be based on the false premise that firms that recruit from overseas are the ones that fail to invest in training at home. That is not the case. Comparatively few businesses recruit from outside the EEA currently. Are we really going to impose a significant levy on many thousands of additional businesses, simply because it is proving impossible for them to recruit locally?

Finally, new clause 45 concerns an issue that I have raised with the Minister on a number of occasions and that I feel strongly about: the system of charging people who are entitled to British citizenship by registration, but who are struggling to meet the exorbitant fees, which have escalated to over £1,000. If they are entitled to register as British, that would give many EEA nationals a more secure status than settled status. It is important to emphasise that when Parliament changed the rules on nationality so that birth in the UK was no longer enough to secure British citizenship, it was careful to seek to protect those who would not qualify automatically, but for whom the UK was genuinely home. The debates from the British Nationality Act 1981 show that Parliament envisaged a straightforward automatic grant if certain criteria were met. The fee at that time was just £35. We are not asking for a return to that level, but simply for a level that reflects the financial cost to the Home Office, which is in the region of £300,000, although I do not have the exact figure to hand.

An early-day motion on this topic achieved extensive cross-party support, as did a Backbench Business debate, which I believe happened last year. Again, I ask the Minister to simply listen to colleagues from both sides of the House. We are talking about people who are entitled in law to British citizenship, and they should not be prevented from obtaining that citizenship merely by an exorbitant fee. The Home Secretary himself recognised that it was a heck of a lot of money to be charging children, so I hope the Home Office will stop charging that sort of sum.

Afzal Khan: We support all these new clauses. I will speak briefly on new clause 38, which is in my name.

New clause 38 has three distinct provisions. The first would ensure that EEA and Swiss nationals applying for a visa are not charged above the cost price for that visa. As with many of our amendments, we would prefer that this apply to all migrants, but the scope of the Bill required us to narrow the new clause. The Home Office makes a profit of up to 800% on immigration applications from families, many of whom will not be well off. These applications will often be turned down on technicalities, forcing families to apply and pay again. As EEA nationals join migrants from the rest of the world coming into the UK under work visas, the risk of debt bondage increases. If workers are required to pay high fees for work visas, they will be vulnerable to exploitation and may be left working to pay off debts to recruiters.

The independent chief inspector of borders and immigration has completed an inspection of policies and practices relating to charging and fees. According to his website, he sent the report to the Home Office on 24 January. It would have been helpful to have it in preparation for this discussion. Can the Minister tell us when her Department will publish the report?

The second part of the new clause stipulates that no child with entitlement to register for British citizenship should be required to pay a fee. The principle is that those children, given their entitlement to British citizenship, will not be required to pay fees to realise that entitlement. This was the intention of the British Nationality Act 1981, which ended the principle that being born in the UK in itself makes someone British, when it gave no discretion to the Secretary of State, other than the formal role of registering the citizenship of any person with the entitlement.

The third part of the new clause would require that anyone naturalising as a British citizen should not pay above cost price. It is important to keep the questions of immigration and nationality separate, and to keep entitlement and naturalisation separate as well, despite the Government's attempt to blur that distinction.

The fees are now £1,012 for children and £1,206 for adults. That is an enormous amount, and it disproportionately affects BME people and children under local authority care. The effect of being unable to pay these fees is that British people are subject to the hostile environment, including detention and temporary deportation, which is wholly unjust.

Caroline Nokes: I am grateful to the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East, for Paisley and Renfrewshire North and for Manchester, Gorton for having tabled new clauses 32, 38, 39 and 45.

It may be helpful to provide some background on this issue. Fees for border, immigration and citizenship products and services have been charged for a number of years, and they play a vital role in our country's ability to run a sustainable system that minimises the burden on taxpayers. Each year, income from fees charged contributes enormously towards the running of our border, immigration and citizenship system. The charging framework for visa and immigration services delivered £1.35 billion in income in the last financial year. It is therefore true to say that fees paid by users play an absolutely critical role in this country's ability to run an effective and sustainable system, and as I am sure members of the public rightly expect, to minimise the burden on UK taxpayers.

I also want to explain from the outset that we already have a legislative framework in place that governs fees. Fees are set and approved by Parliament through fees statutory instruments made under powers in the Immigration Act 2014. As hon. Members will be aware, the Prime Minister publicly confirmed that

"when we roll out the scheme in full on 30 March, the Government will waive the application fee so that there is no financial barrier for any EU nationals who wish to stay"—[*Official Report*, 21 January 2019; Vol. 653, c. 27.]

We will be amending existing fees legislation to implement that decision.

[Caroline Nokes]

Outside of applications made under the EU settlement scheme, immigration and nationality fees legislation has always provided for some limited exceptions for paying application fees for limited and indefinite leave to remain. However, those exceptions are limited to specific circumstances, such as for those seeking asylum or fleeing domestic abuse, or where the requirement to pay the fee would lead to a breach of the European convention on human rights. Fee exceptions do not extend to applications made by individuals who are seeking to register or naturalise as a British citizen. That is because becoming a citizen is discretionary and not necessary to enable individuals to live, study and work in the UK, or to be eligible to benefit from appropriate services. Other exemptions are provided by separate regulations governing the immigration health surcharge.

To make provisions that are specific to certain nationalities as part of this Bill would be unfair to all users of the border, immigration and citizenship system.

Stuart C. McDonald: There have been a number of amendments where the Minister has made the point that it would be unfair to apply the provisions to EEA nationals only. We are, of course, constrained by the Bill, but if any unfairness arises from our new clauses and amendments, it is open to the Government to amend the Bill further, and even to amend the long title of the Bill. I am sure the Minister would have support from across the Committee in doing so.

Caroline Nokes: I thank the hon. Gentleman for that kind invitation. He will be aware that it is part of my duty under the Bill to make sure that we end free movement. The scope of the Bill is pretty much limited to that. As he highlighted, I do not want us to lead to a position where the Home Office discriminates against people on the basis of nationality.

I want to address some of the specific points relating to each new clause. Subsections (1) and (3) of new clause 32 provide that no application fee shall be chargeable under the EU settlement scheme, or for any successor scheme. While I am sympathetic to the intention behind subsection (1), I do not consider it necessary. We have a clear legislative framework in place for fees payable under the border, immigration and citizenship services. Therefore, new clause 32 would cut across the existing statutory framework for fees and would risk undermining the coherence of the current system.

Secondly, new clause 32 provides only for the removal of the application fee under the EU settlement scheme, which will only come into effect for applications made after the Bill is passed. As I have said, we are going further than that, and the announcement the Prime Minister made on 21 January makes it clear that the changes we are working to introduce through the fees regulations and the immigration rules will enable us to refund all EU settlement scheme application fees that have already been paid. The new clause is therefore to be unnecessary.

I will now turn to subsection (2) of new clause 32, which provides that EEA and Swiss nationals should not be charged a fee to appeal, or to administratively review, a decision not to grant settled status under the EU settlement scheme. I shall deal with administrative review and appeals separately. We have already discussed administrative review of a decision under the EU settlement scheme, for which the fee is set at £80 per review—the same fee that applies to administrative reviews of other immigration decisions. Where an administrative review is successful because there was a casework error in the original decision, the applicant will have their fee refunded.

In the context of applications under the EU settlement scheme, the right to an administrative review goes even further. An applicant who has been granted pre-settled status, but who believes that they qualify for settled status, can submit additional information that will be considered as part of their review. However, if the applicant cannot or does not wish to pay the fee for an administrative review, they have the alternative option of submitting a fresh application under the EU settlement scheme, which will be free. I therefore consider this part of the amendment to be unnecessary, because remedies that are free of charge are already available and if the administrative review is successful, the fee is refunded.

3.45 pm

The Committee has already debated appeals, and I do not propose to reopen any of those debates. Court and tribunal fees are needed to contribute to the funding of the wider costs of the court and tribunal system; without that contribution, the cost would have to be met by the taxpayer.

New clause 38 relates to visa and citizenship fees. Subsections (1) and (3) would limit the Secretary of State's power to charge a fee to EEA or Swiss nationals applying for a visa or applying to be naturalised as a British citizen to the cost of processing that application. I remind the Committee that EEA nationals do not require visit visas, and that remains our long-term intention, as set out in the immigration White Paper. The new clauses would require us to differentiate between EEA and non-EEA nationals, and that would undermine our ability to deliver a future system that does not do so.

Subsection (2) of new clause 38 would provide that all children who are entitled to British citizenship—not just those affected by the ending of free movement under the Bill—are not required to pay a fee to register. Although the subsection appears to extend more widely than just to EEA nationals, I will take it as applying only to EEA national children, given the scope of the Bill. Child citizenship is, without doubt, an important matter. We have already committed to Parliament that we will keep under review our approach to setting fees for all visa, immigration and nationality services, especially those charged to children. However, I do not consider the Bill to be the appropriate place to deal with this, particularly without considering the implications for other elements of the fees regime. The removal of this fee is unnecessary, given that becoming a citizen is discretionary and not necessary to enable an individual to live, study and work in the UK.

Stuart C. McDonald: We are talking about children who are entitled to UK citizenship, and it is wrong to say that alternative ways—long routes to settlement, costing many thousands of pounds—are an adequate alternative. We are talking about something that is

precious to those children, and I urge the Minister to give us some indication of when the ongoing review might conclude.

Caroline Nokes: I thank the hon. Gentleman for his intervention. He is aware that the Home Secretary has said that he is keen to review the situation and keep our fee structure under careful consideration, but I regret that I cannot give the hon. Gentleman a deadline.

It is right to point out that we already provide exemptions for eligible individuals who apply for limited and indefinite leave to remain in the UK. That is a reflection of the fact that in some circumstances, grants of such leave are necessary to enable an applicant to enjoy his or her human rights—for example, where a person is destitute or there are exceptional financial circumstances, often relating to the welfare and best interests of a child.

Stuart C. McDonald: Those exemptions are good and it is absolutely right to have them, but why not have the same exemptions for kids who are entitled to British citizenship and who are supported by a local authority, or whose families are destitute? They are entitled to British citizenship. Why deprive them of it?

Caroline Nokes: As I have indicated, the Home Secretary is keen to keep the matter under review. We are looking closely at it, and particularly at child citizenship fees. In summary, the requirement to pay a fee for citizenship does not disproportionately interfere with human rights, because of the exemptions I have described. The requirement to pay a fee is not contrary to a child's best interest, which is to be with their family. Not having citizenship does not prevent them from doing so. Any assessment of a child's best interests is intensely fact-sensitive, so it cannot be said, as a generalisation, that it will always be in a child's best interests to acquire citizenship. It may, for example, be in his or her best interests to preserve links to another country. As I have set out, the proposals undermine our existing statutory framework for making provision relating to fees and charges in the Bill.

New clause 45(1) raises many of the same issues about British citizenship fees for EEA nationals as new clause 38(3) did, and I refer the Committee to my earlier comments. New clause 45(2) and (3) provide that the Secretary of State may not charge the child of a person who has exercised free movement rights, which are repealed by this Bill, a fee to register as a British citizen if that child is in receipt of local authority assistance or if that child or their parents cannot afford the fee. That addresses a point similar to that in new clause 38(2). I refer Members to my previous point: the Bill is not the appropriate place to address child citizenship fees, which we are considering in the round.

New clause 45(4) would require the Secretary of State to take steps to make persons who have exercised free movement rights aware of their rights to obtain British citizenship under the British Nationality Act 1981. Information about becoming a British citizen is already published in guidance on gov.uk, and we are committed to ensuring that information of that nature is fully accessible.

It is right that, in the run-up to and immediate aftermath of the UK's departure from the EU, the Government's communications focus on the EU settlement scheme and what EEA nationals in the UK need to do to secure their status. We are launching a wide-ranging marketing campaign to encourage EEA nationals to apply. We do, however, make it clear when explaining the rights afforded by settled status that they may include a right to apply for British citizenship, provided that eligibility requirements are met. I hope that that reassures the Committee that we are taking steps to make people aware of their rights.

I turn to new clause 39, which concerns the immigration skills charge. Hon. Members may be aware that the charge was introduced in April 2017 as part of a major reform of the tier 2 skilled worker route. It is designed to ensure that UK-based sponsoring employers make a contribution to the upskilling and training of the resident workforce. Investing in skills is vital to achieving our ambition to increase UK productivity.

Data shows that, on average, employers in the UK under-invest in training compared with other countries. The Government have always been clear that it is right that employers should be incentivised to contribute to the upskilling and training of workers, and we have taken a carefully considered approach to the application of the charge. That is why we have provided exemptions for employers sponsoring migrants working in PhD-level occupations, as specified in the immigration rules; students switching from tier 4 to tier 2 to take up a graduate-level position in the UK; and the intra-company transfer graduate trainee category. Those exemptions build on the Government's strong post-study work offer for international students and are intended to protect the UK's position as a centre of excellence for education and research.

Underlying MAC's recommendation in its final report on EEA migration, which was published last September, is the importance of retaining the charge as a key counterbalance to the recommended abolition of the resident labour market test in the proposed future skilled worker route. This will ensure the continued protection of resident workers in the future system and will provide one element of control after free movement has ended. New clause 39 runs directly contrary to the advice of MAC, which believes that it would be appropriate to apply the charge to EEA nationals in the future.

It is important to note that in the future system, the charge will apply only to employers that sponsor migrant workers under the skilled worker route. It will not apply to individual migrants who may come to the UK to work temporarily under the transitional temporary work route, and who will not be sponsored by an individual employer.

As Committee members are aware, the Government are not complacent. We have set out our intention to engage with businesses and organisations over the next 12 months, and to listen to their concerns and thoughts in response to the proposals in the White Paper. Accordingly, for all the reasons I have given, I invite the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw the new clause.

Stuart C. McDonald: I thank the Minister for her detailed answers. There was a lot of helpful information in there, but there was also a lot that I do not agree with and am not yet quite persuaded about. I will certainly persist, particularly on fees for the registration of children as British citizens, but that is for another day. In the meantime, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 37

DERIVED RIGHTS

"(1) Any person who has resided in the UK with derived rights under relevant EU caselaw shall be treated for the purposes of an application for leave to remain under appendix EU of the Immigration Rules (whether for settled or pre-settled status) on the same basis as an EEA or Swiss national who has resided in the UK.

(2) In this section, 'relevant EU caselaw' means—

(a) Zambrano (Case C-34/09 of the European Court of Justice);

(b) Chen (Case C-200/02);

(c) Ibrahim (Case C-310/08) and Teixeira (Case C-480/08)."—*(Stuart C. McDonald.)*

This new clause would mean that non-EEA nationals with derived rights under EU caselaw would be treated on the same basis as EEA or Swiss nationals who had resided in the UK when applying for settled or pre-settled status under Appendix EU of the Immigration Rules.

Brought up, and read the First time.

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

I will be brief. The Minister will know that I have raised various points about non-EEA nationals and derived rights on previous occasions. The new clause would simply ensure that those people were treated on the same basis as EEA or Swiss nationals who reside in the UK, if and when they apply for settled status under the immigration rules.

My understanding is that Chen, Ibrahim and Teixeira carers are all covered by the withdrawal agreement, but Zambrano carers are not. There are also questions about what will happen to all those groups if there is not a deal. In a Westminster Hall debate, the Minister made positive noises about ensuring that their rights are protected, but I am still struggling to find detailed provisions for what will happen to each of those groups. I would appreciate an update on that.

Paul Blomfield: I will be even briefer, which I am sure will be generally welcomed. We support the new clause, which concerns an important group of people with derived rights who have been left without certainty about their position. There is a strong imperative for that to be resolved, and for us to extend the same rights to them as to others.

Caroline Nokes: I, too, will be as brief as I can. I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North for their new clause 37, which seeks to give those with a derivative right of residence access to the EU settlement scheme.

It may be helpful if I explain that a derivative right of residence is one that stems from the EU treaties rather than from the free movement directive, and it has been established through Court of Justice of the European Union judgments. The rights identified by the Chen, Ibrahim and Teixeira cases are protected by the draft withdrawal agreement. The rights of Zambrano carers are not protected by the agreement.

The Government have been clear that provision will be made in the immigration rules for individuals currently resident with a derivative right of residence. I fully appreciate that those people need certainty about their status. We are resolving the final details within Government, in consultation with other affected Departments. Subject to securing my colleagues' agreement, I expect to be able to confirm the position for that cohort in the immigration rules to be laid before Parliament shortly.

In summary, the Government agree that we need to protect the rights of those who are resident here on the basis of derivative rights. We have already committed to making provision for them in the immigration rules, and we are just finalising precisely how we will achieve that. I hope to have further positive news for the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East shortly. For that reason, I ask him to consider whether it is necessary to press the new clause to a vote.

Stuart C. McDonald: That just goes to show that short exchanges can be useful. The only thing I would add is that I hope the Home Office scheme for these groups of people is as generous as possible and does not, for example, set them off on long routes to settlement with thousands of pounds of charges in between. I hope they are offered something close to, if not exactly the same as, what is offered to EEA or Swiss nationals. I am grateful to the Minister for her answer, and I look forward to finding out more very soon. In the meantime, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 44

NO COMPREHENSIVE SICKNESS INSURANCE REQUIREMENT

"Rules in Appendix EU of the Immigration Rules, or any replacement scheme, may not include a requirement for an applicant for leave to remain (whether settled or pre-settled status) to show that they have or have ever had comprehensive sickness insurance."—*(Stuart C. McDonald.)*

The withdrawal agreement allows for certain EU nationals to be required to show they have comprehensive sickness insurance. This new clause would mean that no such requirement would be implemented.

Brought up, and read the First time.

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

Members will be aware that there were some concerns about the terms of the withdrawal agreement in relation to citizens' rights, including about the apparent requirement for comprehensive sickness insurance. I very much welcome what the Government have said about being more generous in that respect and not requiring evidence of comprehensive sickness insurance. The new clause would simply put that commitment in the Bill.

This ground was largely covered in our debate on new clause 17, including by the hon. Member for Sheffield Central, so I do not need to say much more. We simply seek reassurance from the Minister that that remains the Government's position and that they have no plans to change it, and ask whether she will consider putting that in the Bill.

Paul Blomfield: We support the new clause. The Minister wrote to me and my hon. Friend the Member for Manchester, Gorton to say that the Government have no intention of requiring comprehensive sickness insurance,

so I assume they would have no issue with putting it in legislation. If they agreed to do so, they would send a very strong signal of their intentions.

Caroline Nokes: I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North for their new clause 44, which seeks to ensure that the EU settlement scheme does not place a requirement on applicants to hold, or to have held, comprehensive sickness insurance. I welcome the intention of the new clause, but it is not necessary. The Government have been clear from the beginning that we would not be testing for comprehensive sickness insurance. We made that clear as early as June 2017, when we published our public document on safeguarding the position of EU citizens, and the Prime Minister reiterated it in October 2017 in her open letter to EU citizens.

Appendix EU to the immigration rules does not contain a requirement to have held comprehensive sickness insurance, and that will not change. Eligibility for the scheme will continue to be based on residence and not permitted activity. I therefore ask the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw the clause.

4 pm

Stuart C. McDonald: I regret that the Minister is not willing to put the policy into the Bill. It is important for the 3 million that these policies are not just left to the immigration rules, which, as we have stated, are all too often changed in the blink of an eye, with little or no scrutiny. There would be a benefit to having some of these policies, which are very welcome, written into the statute, but I will not put the new clause to the vote today. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 50

CITIZENS' RIGHTS

"A Minister of the Crown must seek to secure at the earliest opportunity a joint UK-EU commitment to adopt part two of the Withdrawal Agreement on Citizens Rights, particularly as it affects people whose right of free movement has been removed by section 1 and schedule 1, and ensure its implementation prior to the UK exiting the European Union, or as soon as possible thereafter."—*(Stuart C. McDonald.)*

Brought up, and read the First time.

Stuart C. McDonald: If I had had some foresight, I should maybe have withdrawn this new clause in advance. This is a version of the Costa amendment, which the hon. Member for South Leicestershire (Alberto Costa) very ably saw through Parliament last week. I congratulate him on achieving very widespread support.

The Chair: Does the hon. Gentleman not wish to move that the clause be read a Second time?

Stuart C. McDonald: It is now unnecessary.

The Chair: The new clause is not moved.

New Clause 51

REFUGEE FAMILY REUNION

"The Secretary of State must make rules under section 3(2) of the Immigration Act 1971 to allow any person who has exercised a right brought to an end by Section 1 and Schedule 1 and who has been recognised as a refugee in the United Kingdom to sponsor their—

(a) children under the age of 25 who were either under the age of 18, or unmarried, at the time the person granted asylum left the country of their habitual residence in order to seek asylum;

(b) parents; or

(c) siblings under the age of 25 who were either under the age of 18, or unmarried, at the time the person granted asylum left the country of their habitual residence in order to seek asylum;

to join them in the United Kingdom."—*(Stuart C. McDonald.)*

This new clause would expand refugee family reunion rules for EEA and Swiss nationals.

Brought up, and read the First time.

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

New clause 51 relates to refugee family reunions. Again, I have encountered a problem with the scope of the Bill, as my new clause would extend the scope of refugee family reunion rules to EEA and Swiss nationals. That would obviously be a fairly rare occurrence; nevertheless, I think some of these amendments and new clauses would establish a principle. As I said to the Immigration Minister not long ago, if it gives rise to inequalities and problems, the answer is for the Government to equalise the situation by raising the standards in relation to non-EEA nationals who are also refugees.

Due to the restrictive rules about who is eligible, many people are not allowed to reunite under family reunion rules. Currently, the UK immigration rules state that

"adult refugees in the UK can be joined via family reunion by their spouse/partner and their dependent children who are under the age of 18."

Those restrictions mean, for example, that parents are not automatically able to bring their children who have turned 18 to the UK, even if the child is still dependent on them and has not yet married or formed their own family. While the family reunion guidance allows some cases outside the rules to be granted in exceptional circumstances, in reality that rarely happens.

Furthermore, unlike adult refugees, children who are in the UK alone and have refugee status have no right to be reunited with even their closest family members. Again, in this regard the UK is an outlier. These are children who have often endured hardship and trauma and have been recognised by the Government as having the right to stay in the UK. They now find themselves alone in an unfamiliar country and having to navigate the immigration system themselves.

The Government argue that granting refugee children the right to sponsor family members to come to the UK would be a pull factor and incentivise or force more children to make dangerous journeys to the UK. However, there is no evidence to support that claim, and in every other EU member state refugee children can sponsor close relatives to join them.

[Stuart C. McDonald]

In the 12 months before September 2018, for instance, 811 separated children were granted asylum in the UK, more than a quarter of whom had fled Eritrea. These children have been recognised by the Government as being in need of international protection, where it is not safe for them to be returned to their home country. Where possible, and where it is in their best interest, children should be able to be with their parents. Granting separated children family reunion rights would allow that to happen. That, in short, is what the new clause seeks to put us on the road to achieving.

The other point I want to make is that Parliament of course debated all this and heard all the Government's arguments during the Second Reading debate on the Refugees (Family Reunion) (No. 2) Bill, promoted by my hon. Friend the Member for Na h-Eileanan an Iar (Angus Brendan MacNeil). Considerable effort was made to ensure that sufficient Members would be present at a Friday sitting to debate that private Member's Bill. There was a vote and there was overwhelming support for its Second Reading. There is growing frustration about the delay in bringing forward the money resolution to enable that Bill to go to the next stage—Committee. I would therefore like the Minister to explain what is happening and when we will see the Bill get to Committee, because we are running out of time and it would be outrageous if all that good work was stymied by Government use of procedures.

Afzal Khan: We support this new clause. I spoke in the Second Reading debate on the private Member's Bill that would have implemented these changes. I commend the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for once again bringing this issue to our attention through this Bill.

Caroline Nokes: I am grateful to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, along with the hon. Member for Paisley and Renfrewshire North, for raising, through new clause 51, the important issue of refugees' rights to family reunion.

The new clause is designed to allow EEA and Swiss national refugees, including those who are nationals of EEA countries that are not part of the EU, to sponsor certain family members to join them in the UK. I spoke last week about the inadmissibility of asylum claims from the EU and about the Spanish protocol and do not intend to repeat today what I said then. It is the Government's view, which I hope all members of the Committee share, that all Swiss and EEA nationals are from safe countries and are highly unlikely to suffer a well-founded fear of persecution or serious harm there, save in very exceptional circumstances. For those reasons and because we do not foresee a change in these circumstances, we intend to continue our policy on the inadmissibility of asylum claims from EU nationals, as well as treating claims from Swiss and EEA nationals as clearly unfounded, post EU exit.

I hope that hon. Members can see that treating asylum seekers from Switzerland and the EEA differently from those from the rest of the world on the grounds of their nationality would be illogical and discriminatory. It would be unlikely to comply with our equalities obligations and would offer a clear avenue of challenge on human rights grounds. I appreciate that that may not have been the intention behind the new clause, but it would be its effect. In any event, in a deal scenario, which remains the Government's priority, we will already be providing family reunification rights. New clause 51 is therefore unnecessary to secure the rights of EEA and Swiss nationals to sponsor their family members.

I know that hon. Members are keen to address refugee family reunion more broadly, and I am conscious that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked a question about the private Member's Bill promoted by the hon. Member for Na h-Eileanan an Iar. Of course, it is the usual channels that decide money resolutions. That is entirely outside my hands, but I can comment on the Government's family reunion policy. That provides a safe and legal route to bring families together. It allows adult refugees who are granted protection in the UK to sponsor a partner and children under 18 to join them, if they formed part of the family unit before the sponsor fled their country. Under that policy, we have granted visas to more than 26,000 partners and children of those granted protection in the UK in the past five years; that is more than 5,000 people a year.

Furthermore, our family reunion policy offers clear discretion to grant leave outside the immigration rules. That caters for children over 18 where there are exceptional circumstances or compassionate factors—for example, where they would be left in a conflict zone or a dangerous situation.

The types of family member that the new clause is aimed at can apply under alternative routes. Under the immigration rules, adult refugees can sponsor adult dependent relatives. That includes parents, grandparents, children over 18 and siblings over 18 living overseas where, because of age, illness or disability, the person requires long-term personal care that can be provided only by their sponsor in the UK, and that will be without recourse to public funds.

Moreover, there are separate provisions in the rules to allow extended family who are adult refugees in the UK to sponsor children to come here where there are serious and compelling family or other considerations. That is an important measure, as it enables children to join family members in the UK through safe and legal means.

It is imperative that we think carefully about this issue. Adopting new clause 51 could significantly increase the number of people who could qualify to come here, not just from conflict regions, and irrespective of whether they needed international protection. That would risk reducing our capacity to assist the most vulnerable refugees.

We must also consider community and local authority capacity. I understand that this is a complex and emotive issue, which is why we are listening carefully to calls to extend family reunion and closely following the passage of the private Members' Bills on this subject, and will continue our productive discussions with key partners. It is particularly important to me that hon. Members are reassured that we are taking this matter seriously, and I hope that I have gone some way in ensuring that. For those reasons, I invite the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw new clause 51.

Stuart C. McDonald: I thank the Minister for her answer and for stating that the Government are still listening on this important issue. The usual channels have also got the message that there is some disquiet over the lack of progress in relation to the Bill introduced by my hon. Friend the Member for Na h-Eileanan an Iar, but I beg to ask leave to withdraw the new clause.

Clause, by leave, withdrawn.

New Clause 52

ILLEGAL WORKING: EEA AND SWISS NATIONALS

"Section 24B of the Immigration Act 1971 does not apply to any work undertaken by an EEA or Swiss national." *—(Stuart C. McDonald.)*

This new clause would limit the offence of illegal working so that it did not apply to EEA or Swiss nationals.

Brought up, and read the First time.

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

The Chair: With this it will be convenient to consider new clause 53—*Illegal working: people who qualify for settled or pre-settled status*—

"Section 24B of the Immigration Act 1971 does not apply to any work undertaken by a person who qualifies for settled or pre-settled status under Appendix EU to the Immigration Rules, but fails to apply for such status by the time of any deadline put in place in relation to such applications."

This new clause would limit the offence of illegal working so that it does not apply to EEA or Swiss nationals who qualified for settled status, but failed to apply in time.

Stuart C. McDonald: These new clauses relate to the offence of illegal working, which we heard about in the evidence to the Committee. The substance of that evidence was essentially that the offence of illegal working is driving people into exploitative employment relationships. Obviously, that is complete anathema to the Government's stated anti-slavery objectives.

We heard from Focus on Labour Exploitation, whose research has clearly shown that undocumented people are unlikely to come forward to labour inspectorates about abuse if they fear immigration repercussions, which has a triple effect. First, they are not identified as victims or supported. Secondly, abusive employers can operate with relative impunity because the immigration regime effectively hands them exploitable workers. Thirdly, that serves to undercut other workers, who have legal rights, thereby dragging the whole labour market down.

I am loth to see the offence extended to EEA and Swiss nationals. This offence is a year or two old now; has the Home Office done any research on the impact of its creation? What have been the implications on the Government's efforts to tackle modern slavery? At the very least, we need to be reassured that the Home Office is alive to these concerns and will take them seriously. In the absence of such reassurance, we cannot just head off and extend the scope of those offences further.

Afzal Khan: We support the new clauses. As has been set out by the TUC and Focus on Labour Exploitation, it is essential that migrants are able to claim their rights at work. That means not being arrested for criminal offences when attempting to report abusive employers. Our labour market enforcement capacity is one of the weakest in Europe. We need to set high standards for wages and workers' conditions, significantly improve our inspection capacity, and remove the offence of illegal working. This offence makes it less likely that people will come forward to the UK national referral for trafficking and modern slavery.

We know that many trafficking victims are already in immigration detention. In her evidence to us, Bella Sankey from Detention Action provided a powerful example of a Chinese woman who was a victim of trafficking. She was picked up at a brothel after a tip-off, but instead of being treated as a victim of modern-day slavery and trafficking, she was taken to a detention centre and held for six months. Clearly, many things went wrong at many stages of that woman's journey through the immigration system, but removing the offence of illegal working would at least help to remove one barrier to her getting the help she needs.

Caroline Nokes: I am grateful to hon. Members for tabling these amendments. I also welcome the opportunity to explain how the offence of illegal working will be applied to EEA and Swiss nationals after we have left the EU, and how our approach to the EU settlement scheme will minimise any risk of those nationals being subject to the offence of illegal working post-EU exit. The Government have made clear our commitment to protecting the rights of EEA and Swiss nationals who are resident in the UK before exit. I recognise the concerns and the intention behind both new clauses, but they are unnecessary and discriminatory. They are also incompatible with our commitment in the White Paper to establishing a single, skills-based immigration system for all migrants coming to live and work in the UK.

4.15 pm

As I said, the Government established the EU settlement scheme to ensure that EEA and Swiss nationals living in the UK can obtain the status under UK law to secure their continued ability to live lawfully in the UK. I am confident that, in both deal and no-deal scenarios, the respective implementation or transition periods will give EEA nationals living here ample time to secure their status.

With those measures in place, I see no reason why EEA nationals would need to work in the UK illegally in the future system. However, it is only through the EU settlement scheme that EEA nationals will be able to secure the required immigration status in UK law to prevent them from falling foul of the offence of illegal working in the new immigration system. That is why we must do all that we can to ensure that EEA nationals are able to evidence their entitlement to live and work in the UK. The answer is not to exempt individuals from immigration offences and controls but to ensure that they can obtain the necessary status.

As hon. Members will know from my previous responses, in the event of a deal scenario, EEA nationals will continue to have, under the EU withdrawal agreement, the right to work in the UK until the future system is introduced in 2021. At that point, the offence of illegal working will apply equally to those subject to immigration control, including EEA and non-EEA nationals. In a no-deal situation, EEA nationals who arrived in the UK before 29 March 2019 would have until the end of

December 2020 to apply to the EU settlement scheme and would continue to be able to work in the UK, as now, during that transitional period.

We made a clear commitment in the draft withdrawal agreement to treat in a proportionate way members of the citizens' rights cohort who fail to apply to the EU settlement scheme. After that implementation period, our approach to individuals who have not applied to the scheme but who are eligible to do so will be to provide every opportunity and support for them to make an application. Our focus in such cases will be on encouraging compliance, rather than enforcement, to facilitate individuals obtaining the required status to prevent them from being subject to the offence of illegal working.

Furthermore, the offence of illegal working is not a strict liability offence. It requires an individual to know, or have reasonable cause to believe, that they do not have the necessary permission to work. The offence would not be committed by someone who is working illegally but does not know or does not have reasonable cause to believe that they lack permission to work. This enables us to take a proportionate approach.

The hon. Member for Manchester, Gorton raised the case of the individual highlighted to us during the evidence sessions. It is important to emphasise that victims of modern slavery are not the target of this offence. They can rely on the statutory defence in section 45 of the Modern Slavery Act 2015. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East queried whether any specific evaluation had been undertaken. There has not been any to date, but we will certainly consider that going forward.

We are moving to a new, single immigration system, and EEA nationals who do not fall within the citizens' rights cohort will be expected to meet the rules under that system like everyone else. Hon. Members must be wary of putting on to the statute book provisions that discriminate directly on the basis of nationality, which is directly contradictory to what we are trying to achieve. I hope that, in the light of those points, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will feel able to withdraw the motion.

Stuart C. McDonald: I thank the Minister for her answer. There were some helpful pieces of information in there. I again emphasise that the discrimination argument is not really an argument against the principle behind the new clause. If the new clause was accepted, we would also push for the Government to go further and remove the offence for all nationalities.

I particularly note the Minister's candid admission that no evaluation of the impact of the offence has been made to date. I hope that the Home Office undertakes such an evaluation soon. The Minister can expect to hear from me very shortly if I do not hear any evidence that it has done that. In the meantime, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 56

Recourse to public funds: EEA and Swiss nationals with children

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

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

(a) attendance allowance;

(b) carer's allowance;

(c) child benefit;

(d) child tax credit;

(e) council tax benefit;

(f) council tax reduction;

(g) disability living allowance;

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

(i) housing and homelessness assistance;

(j) housing benefit;

(k) income-based jobseeker's allowance;

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

(m) income support;

(n) personal independence payment;

(o) severe disablement allowance;

(p) social fund payment;

(q) state pension credit;

(r) universal credit;

(s) working tax credit.'—*(Kate Green.)*

This new clause would prevent EEA and Swiss families with children under the age of 18 from being given the right to remain in the UK but not being allowed access to public funds.

Brought up, and read the First time.

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

This new clause would prevent EEA and Swiss families with children under the age of 18 from being given the right to remain in the UK without being allowed to access public funds. I am grateful to the Refugee and Migrant Children's Consortium and, particularly, the Children's Society for helping me to prepare for this debate.

In light of what the Minister has been saying in response to a number of recent new clauses, I am aware that she will probably argue that this would be discriminatory. However, I point out that there is a very strong moral imperative on us to ensure the wellbeing of every child in this country. In particular, we are talking about the children of EEA nationals, many of whom will themselves be entitled to British citizenship or on a ten-year path to settlement.

I do not believe that the "no recourse to public funds" provisions in the immigration system are fair or necessary. We already have a very robust social security system with tough, stringent tests of people's need for benefits and entitlement to access them. I also think it is wrong to put people in a position where they may be working and contributing to this country, in many cases through tax and national insurance contributions, but none the less are unable to avail themselves of our benefits system, to support their families and, in particular, their children.

We can see that lack of access to support for these children is very damaging. It includes, for example, lack of access to free school meals, social security benefits, and free nursery places, which are offered to disadvantaged two-year-olds. Not only is that extremely damaging to each individual child's wellbeing, it is damaging to the

welfare of the whole country in the long term. We should bear in mind that the majority of these children are likely to stay here and continue to be part of our community.

When families have no recourse to public funds, but children are at risk of destitution, there is an immediate short-term cost, which falls on local authorities. Under section 17 of the Children Act 1989, local authorities are required to take action to prevent children from falling into destitution. The number of such children is increasing for a number of local authorities, and they simply do not have the resources to discharge their statutory obligations adequately. For example, my own borough of Trafford is already facing a substantial shortfall in its children's services budget for the future.

The significant difficulties that the section 17 provisions place on local authorities are growing and are likely to grow further after Brexit. If the Minister is not minded to accept the exact wording of my new clause, I think it is incumbent on the Government, if they continue to rely on local authorities to pick up the tab, to ensure that the local authorities involved are adequately resourced to do so.

It is extremely difficult for families subject to a "no recourse to public funds" order to have that condition removed from their immigration status. It is very difficult for them to get advice on that matter. As we heard in earlier debates, they are unlikely to be able to access legal aid to make a case for that condition to be reconsidered.

I hope that the Minister will be able to say something strong to the Committee, which will assure us that the "no recourse to public funds" condition will not be applied to children in a way that will leave them destitute. I hope that she will be able to say specifically that those who do not get settled status by the application deadline, or who only attain pre-settled status, will still be able to access all mainstream benefits and will not be subject to "no recourse to public funds" provisions.

I hope she will also be able to say that she will take forward conversations with her colleagues in other Government Departments, particularly the Department for Work and Pensions and the Ministry of Housing, Communities and Local Government, so that we can ensure that we have a proper, comprehensive and adequate system of support for families with children, and that the "no recourse to public funds" condition will not be maintained in a way that puts those children at risk of destitution.

Caroline Nokes: I am grateful to the hon. Member for Stretford and Urmston for proposing new clause 56 on recourse to public funds when granting leave to remain to EEA and Swiss nationals with children. I appreciate that the intention behind this new clause is clearly to protect the wellbeing of children. By way of background, EEA and Swiss nationals may currently access the benefits included in the new clause, broadly speaking only when they are exercising treaty rights through employment or self-employment, or where they have become permanent residents. The new clause would provide that EEA nationals here with a child, for whatever period, could qualify for benefits, thereby potentially creating new entitlements to benefits based solely on the EEA or Swiss nationality of the parent or legal guardian of the children. I am sure that that was not the intention.

As I have said before, the Government have been clear about their intention to protect the entitlements of EEA and Swiss nationals already resident here, as we leave the EU, and to introduce no new restrictions until the future skills-based immigration system is introduced. All leave issued under the EU settlement scheme does not and will not include a no recourse to public funds condition.

I should like to explain in a bit more detail. The new clause would under the future system provide a significant advantage to EEA and Swiss nationals over non-EEA nationals, who generally qualify for access to public funds only when they acquire indefinite leave to remain, subject to exceptions for refugees and other groups. We believe that that general qualifying threshold for access to benefits for migrants is the right one, as it reflects the strength of a migrant's connection to the United Kingdom and the principle that migrants should come to the UK to contribute rather than to place pressures on taxpayer-funded services.

Non-EEA migrants coming to live in the UK are currently expected to provide for any children they have without recourse to public funds. There is no reasonable justification for adopting a different principle for EEA nationals arriving in the UK when the new system is introduced.

Further, EEA nationals entering the country under the future immigration system will still be eligible to qualify for contribution-based benefits once they have paid sufficient national insurance contributions. As with non-EEA nationals, full access to our benefits system would be available under the immigration rules after settled status was granted—usually after five years, on a route that leads to settlement.

As I have said, I share the hon. Lady's concerns about the wellbeing of children. However, I reassure her and the other hon. Members who supported the new clause that the safeguards already in place for the vulnerable will be retained. For example, immigration legislation already provides that local authorities may intervene where required, regardless of the immigration status or nationality of the child or parent. However, it is only right that the future immigration system should also continue to play a part in ensuring that public funds are protected for the lawful residents of the UK, and in assuring the public that immigration continues to benefit the country as a whole.

Kate Green: The Minister is right to highlight again the role of local authorities, where support is required, but will she undertake to have ongoing discussions with her colleagues in other Departments—particularly the Ministry of Housing, Communities and Local Government—about funding for local authorities? Those that have particularly high numbers of such families face significant cost pressures, which they struggle to meet.

Caroline Nokes: The hon. Lady is right to point out the cost pressures on local authorities in relation to that role. I regularly meet not only Ministers, across Government, but the Local Government Association and the Convention of Scottish Local Authorities, which are always keen to reinforce the issues for me.

[Caroline Nokes]

I hope that the hon. Lady will agree that the Government's approach is right, and I invite her to withdraw the new clause.

Kate Green: I am grateful for the Minister's understanding of the challenge that local authorities face and the importance of protecting every child in the country from the risk of destitution. I beg to ask to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 57

SHORT-TERM VISAS

'(1) The Gangmasters (Licensing) Act 2004 is amended as follows.

(2) After Section 3(1)(c) insert—

"(d) construction work undertaken by EEA or Swiss nationals;

(e) cleaning work undertaken by EEA or Swiss nationals;

(f) care work undertaken by EEA or Swiss nationals;

(g) hospitality work undertaken by EEA or Swiss nationals."

(3) After Section 3(2) insert—

"(2A) In subsection 1 above—

(a) "construction work" means work in the construction industry;

(b) "cleaning work" means work as a cleaner;

(c) "care work" means work as a carer;

(d) "hospitality work" means work in the hospitality and services sector."

(4) After Section 4(5)(c) insert—

"(d) using or employing EEA or Swiss nationals to undertake construction work;

(e) using or employing EEA or Swiss nationals to undertake commercial cleaning activities;

(f) using or employing EEA or Swiss nationals to undertake care work;

(g) using or employing EEA or Swiss nationals to undertake work in the service industry, including but not limited to, hotels, restaurants, bars and nightclubs.""—*(Kate Green.)*

Brought up, and read the First time.

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

The new clause would extend the licensing standards of the Gangmasters and Labour Abuse Authority to more sectors. As with the new clauses that we discussed a few moments ago, I am grateful to Focus on Labour Exploitation for its help with drafting.

Currently, the GLAA licenses four sectors: agriculture, horticulture, shellfish gathering and any associated processing and packaging. The new clause would extend its licensing remit to construction, cleaning, care and hospitality. I am moving the new clause against a backdrop of Government plans for short-term work visas following the ending of free movement, as set out in the immigration White Paper, and out of concern to ensure that there is protection from exploitation for potentially vulnerable workers in sectors that have traditionally relied on migrant labour.

As members of the Committee will know, the GLAA was established in the wake of the Morecambe Bay tragedy in 2004, originally as the Gangmasters Licensing Authority. Under the Immigration Act 2016, it was renamed and its remit was increased to give it police-style powers across the labour market. Anyone who supplies labour—so-called gangmasters—to the specified sectors must have a licence and it is a criminal offence to do so without one. A licence can be granted to any kind of legal entity, such as an individual, a company or a partnership.

4.30 pm

Licensing standards include provisions on the payment of taxes, the payment of national minimum wage rates, the prevention of physical and mental mistreatment, and the restriction of a worker's movement through debt bondage, threats or the retention of ID documents. Licensing is a crucial tool for preventing human trafficking and modern slavery.

The system is widely regarded as effective in monitoring labour providers in the sectors covered and in detecting cases of abuse and exploitation. It has raised employment standards, protected vulnerable workers from exploitation and prevented rogue labour providers from gaining an unfair advantage over legitimate businesses. It is strongly supported by retailers, labour market providers, food manufacturers, trade unions and charities that represent victims of exploitation. The Association of Labour Providers' biennial survey in 2015 showed that 93% of labour providers surveyed were in favour of licensing.

The purpose of the new clause is to extend that successful licensing regime to four additional sectors in the light of a likely increase in the use of short-term labour in sectors that have traditionally been dependent on migrant labour. I stress that the majority of employers will not be exploitative. Indeed, good employers will welcome measures that prevent unscrupulous employers from damaging the reputation of their industries and from undercutting those who do not take advantage of vulnerable workers.

The Government's Brexit plans will make workers in those four new sectors more vulnerable. The proposed short-term work visa will allow those workers to stay in the UK for only 12 months, which will give exploitative employers the opportunity to take advantage of the continual churn of a disposable workforce. We think that there will be a tendency towards more precarious work contracts in those sectors, as is already the case, such as zero hours and an increased risk of agency work or bogus self-employment.

As we heard in the oral evidence sessions, migrant workers are likely to be less well educated about their rights and less likely to report workplace issues as they may not have knowledge of UK labour laws or a good command of English. It will also be harder for unions to organise among them. Extending licensing provisions to those four new sectors will be important to help to protect workers from human trafficking and modern slavery, which is in line with the Government's objectives; provide a clear guarantee to businesses seeking workers and to workers seeking employment that labour providers are operating responsibly and in line with the law; and prevent unscrupulous labour providers from undercutting responsible and legal competitors.

The licensing model adopted by the Gangmasters and Labour Abuse Authority has been commended internationally by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings, which called it an "example of good practice". Repeated reviews of its function have commended its work to protect vulnerable workers and, importantly, have not found that its licensing function creates an undue burden on employers.

One concern was alluded to by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and my hon. Friend the Member for Manchester, Gorton, which is that our labour inspection capacity is insufficient to provide the protections needed for those workers. The Employment Agency Standards Inspectorate oversees 18,000 employment agencies in the UK with a staff of 12. The likelihood of HMRC performing a proactive inspection—that is, a non-complaint-driven inspection—of a company to see if it is paying minimum wage rates is once every 500 years on average. The International Labour Organisation recommends a ratio of one inspector to 10,000 workers, but the UK rate is less than half that.

Today, the GLAA has to license four sectors and oversee the whole labour market with a staff of just 123 people. If we want a labour market that provides decent work and conditions to all in the future, the resources must be in place to enable that to happen. Although the new clause calls for effective licensing to protect migrant workers in sectors where short-term visas may be particularly prevalent, and where there is an increased risk of exploitation, it will also be important for Ministers to provide the resources needed to make such protection a reality.

Afzal Khan: We support the new clause to expand the remit of the GLAA. The GLAA performs a vital role in safeguarding the rights of workers and it is right that that should extend to the widest categories of vulnerable workers. My final point, which my hon. Friend has already made, is that the GLAA is chronically under-funded. We need to have more respect for the job it does.

Caroline Nokes: I thank the hon. Member for Stretford and Urmston for introducing the new clause and giving us further opportunity to consider the critical matter of protecting the rights of migrant workers.

New clause 57 raises an important issue and I appreciate the intention behind it. As I indicated, I share the hon. Member's concern that overseas workers—indeed, all workers—should be safe from abusive employment practices. Although I sympathise with the sentiment behind the new clause, I do not think it would be appropriate to change the Bill in the way proposed, for reasons I will explain.

First, it presumes that the employment practices for the sectors mentioned in the new clause are the same as the sectors currently licensed by the GLAA. They are not. The Gangmasters (Licensing) Act 2004 applies only to the agricultural, shellfish gathering, and food packaging and processing sectors, as that employment method is particular to those sectors. While gangmasters may be used in some cases, the practice is not prevalent in the supply of labour in the sectors covered by this new clause. In some sectors, such as construction, many workers are self-employed and in others workers are recruited directly, such as with people employed to do cleaning work.

If this new clause were to be passed, the consequence would be that many thousands of extra businesses—potentially every café or care home—would have to register as a gangmaster, with considerable expense but potentially little benefit. The new clause would in effect extend the scope of the Gangmasters (Licensing) Act 2004 to construction, cleaning, care or hospitality work, but only where that work is undertaken by EEA or Swiss nationals, and only where those individuals have come by that work through a particular route. That restriction does not sit comfortably in the existing regime, which defines scope through work sector and not through the characteristics of the individuals undertaking the work. The effect of the new clause would be to create a two-tier system, resulting in EEA and Swiss nationals receiving a greater degree of labour market protection.

The Government are fully committed to protecting the rights of migrant workers and I reassure the hon. Lady that the Government are giving active and serious consideration to these matters. I hope to be able to say more on that in the coming weeks. As I set out at length in earlier sittings, it is of the highest importance that everyone working within our economy is safe and is treated fairly and with respect. I am proud of the Government's track record on this issue, with the introduction of the landmark Modern Slavery Act 2015 and the further powers we have given to the GLAA. We will not be complacent.

Let me be clear: migrants working lawfully in the UK are entitled to all the protections of UK law while they are here, whether it is entitlement to the minimum wage, health and safety legislation, working conditions, working time rules, maternity and paternity arrangements, the right to join a trade union, the right to strike, statutory rights, holiday and sick pay, and any of the other myriad protections that exist in UK law for workers. They apply to those who are in the UK on work visas every bit as much as they do for the resident workforce. That applies to both migrant workers who are here under the current immigration system and to those who may come in the future, under the new immigration system.

The Immigration Act 2016 created a new power to extend statutory licensing of gangmasters to new commercial sectors by secondary legislation, so the proposed new clause is not necessary. Although I am loth to say it, this demonstrates yet again that we could make the changes through the immigration rules, which might provide a convenient route to do so. In deciding whether to extend gangmaster licensing, the Government would need clear evidence that that is the right course and would draw advice from the Director of Labour Market Enforcement. I hope that having further considered the wider impacts of this new clause and heard my assurance that the protection of migrant workers is at the forefront of the Government's thinking, the hon. Lady will feel able to withdraw the proposed new clause.

Kate Green: Yet again the Minister has missed the point about this new clause, as with others that apply to EEA nationals. Of course we would much rather apply such provisions to nationals of all countries, but as colleagues have said we are constrained by the scope of the Bill.

[Kate Green]

I am encouraged by some things the Minister has said, and particularly the possibility she sees of using the new immigration rules to extend the number of sectors covered by these provisions. I am not quite sure that it is right to say that some of the sectors we are talking about—construction, for example—do not make use of labour providers. I think they do. Self-employment status is often quasi self-employment in that sector. There is quite a lot of work that might be done with the Government to ensure that we have provisions that really work for the characteristics of those different sectors, whatever official names they may seek to attach to their model of labour requirement.

I am grateful that the Minister will say more about the Government's plans for further protection of all workers. I am particularly interested in how those plans will benefit non-UK workers, including those coming in under immigration arrangements in the coming weeks. I very much encourage her to continue conversations with colleagues who take an interest in these matters and with the advocacy bodies that speak for these vulnerable workers, some of which gave the Committee very impressive evidence a couple of weeks ago.

In the light of the Minister's encouraging response, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

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

Caroline Nokes: As we have now concluded the Bill's Committee stage, I thank both you, Mr Stringer, and your co-Chair, Sir David Amess, for your effective chairmanship and for keeping us all in order. It might be only me who tried your patience—I am sure other Members have a view on that. I know you have been advised throughout by the Clerks to the Committee, who have acted with a great deal of professionalism. I extend my gratitude to them.

I thank all the Committee members for their thoughtful consideration of the issues we have debated over the past few weeks. Although we by no means agreed on everything, we debated important points in a constructive spirit and considered a wide range of matters very carefully. I am particularly grateful to the Opposition spokespeople, the hon. Members for Manchester, Gorton and for Cumbernauld, Kilsyth and Kirkintilloch East—I have said that constituency name an awful lot over the past fortnight; I hope I have pronounced it correctly—for their valuable contributions on a range of important issues. I suspect those will not be their last words on the Bill.

I thank the policemen and the Doorkeepers, who kept us safe and ensured that everyone received the support they needed, and the staff of the *Official Report*, who ensured that all our pearls of wisdom were faithfully recorded. Finally, I thank my Bill team, who have been unfailingly good humoured in keeping me in line and helping me through my first Bill Committee in this role. I am very much indebted to them. I look forward to considering the Bill during its next stage.

Afzal Khan: May I add my thanks to you, Mr Stringer, and your colleague, Sir David Amess, for the excellent job you have done of steering us through the Bill? I thank the Clerks for all the help they have provided, not only here but outside this room. I also thank all the Committee members; like the Minister, this is my first attempt at a Bill Committee, so I am particularly grateful to my Front-Bench colleagues for all their help. Let us not forget all the other staff who helped us, too. I look forward to the next stage of the Bill.

The Chair: I thank the Minister and the shadow Minister for their kind words, and I thank Committee members for their good humour and for getting through the business so quickly and effectively.

Question put and agreed to.

Bill accordingly to be reported, without amendment.

4.43 pm

Committee rose.

Written evidence reported to the House

ISSB34 All-Party Parliamentary Group for Ending Homelessness

ISSB35 Focus on Labour Exploitation (FLEX)

ISSB36 The British Red Cross

ISSB37 Royal College of Nursing

ISSB38 The Public Law Project

ISSB39 Reunite Families UK

ISSB40 Supplementary written evidence submitted by Migration Watch UK