

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT IMMIGRATION (EUROPEAN ECONOMIC
AREA NATIONALS) (EU EXIT) ORDER 2019

Monday 11 March 2019

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The Committee consisted of the following Members:

Chair: IAN AUSTIN

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| † Bruce, Fiona (<i>Congleton</i>) (Con) | † Maynard, Paul (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Coaker, Vernon (<i>Gedling</i>) (Lab) | † Nokes, Caroline (<i>Minister for Immigration</i>) |
| † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † Smith, Eleanor (<i>Wolverhampton South West</i>) (Lab) |
| † Duffield, Rosie (<i>Canterbury</i>) (Lab) | † Swayne, Sir Desmond (<i>New Forest West</i>) (Con) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Syms, Sir Robert (<i>Poole</i>) (Con) |
| † Johnson, Diana (<i>Kingston upon Hull North</i>) (Lab) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| † Jones, Mr Marcus (<i>Nuneaton</i>) (Con) | † Whitford, Dr Philippa (<i>Central Ayrshire</i>) (SNP) |
| † Khan, Afzal (<i>Manchester, Gorton</i>) (Lab) | Medha Bhasin, <i>Committee Clerk</i> |
| † Maclean, Rachel (<i>Redditch</i>) (Con) | † attended the Committee |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | |

Third Delegated Legislation Committee

Monday 11 March 2019

[IAN AUSTIN *in the Chair*]

Draft Immigration (European Economic Area Nationals) (EU Exit) Order 2019

6 pm

The Minister for Immigration (Caroline Nokes): I beg to move,

That the Committee has considered the draft Immigration (European Economic Area Nationals) (EU Exit) Order 2019.

It is a pleasure to serve under your chairmanship, Mr Austin. The Government's priority is to protect the rights of European economic area and Swiss citizens living in the UK. Deal or no deal, they will be able to stay and apply to the EU settlement scheme, which will be fully open from 30 March. Delivering a deal with the EU remains the Government's priority; nevertheless, we are preparing for a range of scenarios.

In a no-deal scenario, we will end free movement as soon as possible after exit, subject to parliamentary approval of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. Once free movement has ended in a no-deal scenario, our intention is that transitional immigration arrangements will be put in place until the new skills-based immigration system is introduced in January 2021. Let me be clear: the arrangements would not apply to EEA and Swiss nationals who were here by 29 March this year. They would apply to people seeking to come to the UK after we had withdrawn from the EU. Under the temporary arrangements, EEA and Swiss nationals would be granted three months' leave to enter automatically, with no restriction on their ability to work or study. Their experience at the border would be unchanged, including their use of e-gates.

Michael Fabricant (Lichfield) (Con): I am delighted with the idea of the motion, particularly as Iceland and Norway were two of my biggest clients when I was in business selling radio stations—that is not relevant, I know. What I would like to know is whether the measure is reciprocal. Will we have similar rights for United Kingdom citizens hoping to work in, say, Ríkisútvarpið or in the Norsk rikskringkasting in Oslo?

Caroline Nokes: Which is easy for my hon. Friend to say. In a deal scenario, it is certainly intended to be reciprocal, but, with no deal, it is a unilateral offer that we are making, because we value the contribution EU citizens can make.

If EEA and Swiss nationals wished to stay for longer than three months, they would need to apply for a 36-month European temporary leave to remain, beyond which they would need to apply under the new skills-based immigration system.

The draft order supports the approach I have just described. First, it provides the mechanism by which, in a no-deal scenario, EEA and Swiss citizens arriving after free movement has ended will automatically be granted three months' leave to enter. Secondly, it makes changes to support the EU settlement scheme in both a deal and a no-deal scenario.

Vernon Coaker (Gedling) (Lab): If someone is automatically granted entry, there will be no stamp or visa in their passport, so how will we know when the three months are up and they have to apply to stay on?

Caroline Nokes: The hon. Gentleman makes a point. I gently remind him that they receive no stamp in their passport now; they travel through e-gates with no stamp, and the order extends that right.

Vernon Coaker: Will the hon. Lady give way again?

Caroline Nokes: If the hon. Gentleman stops chuntering from a sedentary position, that will allow me to finish responding to his first intervention. Those citizens will come through the e-gates and receive their automatic three months' leave to enter, but beyond that it is important to reflect that we will have left the European Union and there will indeed be a change.

Vernon Coaker: I apologise for chuntering; I do not normally chunter—I normally shout. My question is: how will we know when the three months are up? Currently, they have the right to stay, but they will presumably have to leave after three months unless they apply to stay for longer. How will the enforcement authorities know that the three months are up?

Caroline Nokes: The hon. Gentleman is right to point out that we will be transitioning to the new system, so there will be very light-touch enforcement. It is important to reflect, however, that the process is changing until the point at which we introduce the new immigration system in 2021.

Nic Dakin (Scunthorpe) (Lab): Would the Minister like to clarify what "light-touch enforcement" looks like?

Caroline Nokes: As we have always said, we will take a proportionate approach to EU citizens. It is important that people have the right to be here, but they must apply for temporary leave to remain. That is an important distinction. It is not our intention to have a robust enforcement process, but from 2021 people will be expected to have leave to be here. It is important that we reflect that, once the Bill that we took through Committee last week is on the statute book, free movement will have ended.

The order also provides that the settlement scheme leave granted to a Crown servant who is an EEA national, a member of Her Majesty's forces or somebody accompanying them will not lapse because of an overseas posting.

Dr Philippa Whitford (Central Ayrshire) (SNP): The Minister is obviously moving on to the exceptions, which I am sure most people will welcome. On the three-month period, the order says that people will be granted leave to enter for a limited period where specified circumstances are met. How will anyone know whether those specified circumstances are met if there will be no application, limit or checking? Is she implying that people can simply come in and stay for three months without any interaction?

Caroline Nokes: It is absolutely the Government's intention that EEA nationals and Swiss nationals should be able to come through the border in the same way that they do now, using their passport either at an e-passport gate or a passport control point. There will be no checking; it will be the same process. We recognise that, until 2021, when the future borders and immigration system comes in, there will be a transitional period. It is absolutely our intention to facilitate the movement of EEA nationals so they can come and go without the requirement of a visa. Should they wish to stay for longer than a three-month period, the expectation is that they will have to apply for temporary leave to remain.

This order also facilitates overseas applications to the settlement scheme, and clarifies that scheme applicants will not need to pay the immigration health charge. These are important measures to support the delivery of the EU settlement scheme and our no-deal contingency planning. I commend the order to the Committee.

6.7 pm

Afzal Khan (Manchester, Gorton) (Lab): It is a pleasure to serve under your chairmanship, Mr Austin.

This statutory instrument covers broadly two groups of people: EEA citizens who are already living in the UK, who will need to apply for settled status, and EEA nationals who wish to come to the UK after free movement has ended, who require leave to enter. Although it contains some measures that we welcome—for example, the extension of the settled status scheme to other EEA countries and Switzerland—we will vote against it because the Government should be doing those things in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which is currently before Parliament.

On the same day that Members received an invitation to this Committee, the Secretary of State published a statement of changes to the immigration rules, totalling 296 pages. It covers topics ranging from the EU settlement scheme to the new investor visas. Compare that with the immigration Bill that we have just finished discussing in Committee, which was just 16 pages long. That absurdity is a perfect illustration of the need for greater scrutiny of immigration law. The Government give themselves broader powers in Bills and use immigration rule changes and unamendable statutory instruments to build our immigration system.

I turn now to the SI. I will first discuss the settled status provision. The explanatory memorandum states:

“Free movement will be brought to an end, subject to Parliamentary approval of the Immigration and Social Security Cooperation (EU Withdrawal) Bill currently before Parliament.”

Directly afterwards, it says:

“However, appropriate provision needs to be made to ensure that that EEA nationals who are resident here before the UK's exit will have their rights protected and will continue to be able to reside in the UK.”

As the Minister knows, Labour has called for the rights of EEA nationals already resident in the UK to be on the face of the immigration Bill. Otherwise, they will go from relying on supranational EU laws on free movement to relying on a scheme to be set out entirely in secondary legislation. Their rights will be significantly more fragile and open to amendment, and even revocation, by the Government.

The House recently passed the Costa amendment, which called on the Government to seek an agreement with the EU to ring-fence part two of the withdrawal agreement. Can the Minister tell us whether that is consistent with the explanatory memorandum, which says:

“In a ‘no deal’ scenario, the Government intends to protect these rights by making regulations under clause 4 of the Immigration and Social Security Co-operation (EU Withdrawal) Bill, once enacted.”

Why is it that if there is a deal, EU citizens' rights will have the protection of an international treaty, but if there is not a deal, they will be protected only by an easily amendable piece of secondary legislation? EU citizens need certainty about their rights to live, work and study here after free movement has ended. If we know that, deal or no deal, EU citizens will have the same rights to settled status, why does the Minister not put those rights on the face of the immigration Bill?

Michael Fabricant: The hon. Gentleman is absolutely right to go on about the rights of European citizens here, but he has not mentioned the rights of British citizens in Europe. I am wondering what his view is. Does he not think it would be proper for Europe to give the same rights to British citizens?

Afzal Khan: I absolutely agree with the hon. Gentleman. It is right that there should be a reciprocal understanding that we should be given whatever rights they are given. We want EU citizens, and British citizens in the EU, to be able to carry on with their life.

It is good that this SI makes clear that EEA citizens can spend five years outside the UK, and that time spent with the British Council or the armed services will not count. However, why are Swiss nationals allowed only four years and why, again, is that provision not included in the primary legislation? The SI allows EEA nationals and their family members to apply for settled status from outside the UK. Can the Minister confirm that they will be able to do so under exactly the same conditions as if they were applying from the UK?

I move on to the topic of EEA citizens who arrive in the UK after free movement has ended. The Government have proposed that, in a no-deal scenario, EEA nationals will be granted three months' leave. Again, the Opposition's overriding objection to that proposed scheme is that it was not included in the immigration Bill. These measures are due to come into effect when the Immigration (European Economic Area) Regulations 2016 are revoked, which is exactly what the immigration Bill does. The timelines are identical, so the Government have no grounds for saying that this SI is more urgent than the Bill. If that scheme were part of the Bill, Committee members would have been able to table amendments to it, whereas a statutory instrument is only subject to a straight yes or no vote, which the Government are bound to win. Does the Minister have any reasons for setting that proposed scheme out in secondary legislation, apart from a desire to avoid scrutiny?

I have many questions and concerns about the proposed three-month leave scheme. Some are taken from the “Free Movement” blog, to which I am grateful for its thorough analysis of the scheme. First, the explanatory memorandum says that the proposal is to provide leave “in a ‘no deal’ scenario”.

[Afzal Khan]

Is it the Government's intention that this scheme, or a similar one, will operate if the UK leaves the EU with a deal at the end of the transition period?

Secondly, I am concerned about the potential for discrimination against EU citizens. What proof will people have of their three-month limited leave? Will that proof be in a physical form, as we have called for with settled status? How will employers, landlords and banks be able to tell the difference between someone who has been in the UK for years and not yet applied for settled status, and someone who has come in under the three-month limited leave scheme? If we are not careful, this scheme will lead to confusion and to discrimination against all EEA nationals, no matter when they came to the UK.

The Home Office has said:

"we will not ask employers or other third parties, such as landlords, to start distinguishing between EU citizens who were resident before exit and post-exit arrivals"

until 2021. However, the requirement to check the immigration status of employees and tenants is in primary legislation; the Government cannot exempt such third parties from that requirement through a policy document. The explanatory memorandum sets out that people granted leave will be able to work in, study in or visit the UK, but it is very unlikely that employers would hire someone when they do not know if that person will be able to stay in the country for more than three months.

Thirdly, I am concerned about how workable limited leave will be. There will be many EU citizens who stay longer than three months and who will be unaware of the need to apply for leave. How will the Government raise awareness so that we do not have hundreds of thousands of people unknowingly in the country illegally? What is to stop someone coming to the UK for three months, leaving and then re-entering to start another three-month period, rather than applying for leave?

Fourthly, I am concerned about the long-term future of EEA citizens who come to the country after March. The Home Office has said outright that there might be some who do not qualify under the new arrangements and who will need to leave the UK. What type of leave will people be required to apply for after three months, and how will that work? There have been media reports that applying for a visa to extend the three-month limited leave will cost £100. Can the Minister confirm that that is the case?

As I said before, it is good that the SI makes it clear that EEA citizens can spend five years out of the UK and that time spent with the British Council or armed forces will not count. Why is it four years for Swiss nationals? The SI would allow for EEA nationals and their family members to apply for settled status from outside the UK. Can the Minister confirm that this will be under the exact same conditions as if they were applying within the UK?

6.16 pm

Dr Whitford: I declare an interest: my husband is German and has been a GP in the NHS for over 33 years. Like other EU nationals, he will have to apply to stay with his family and in his home. The Minister talks about how the Government have always made it

clear that EU citizens are welcome. If they were welcomed and valued, they would not have been described as playing cards and bargaining chips in the early phases of the negotiation.

As the Minister mentioned, this order is not the means that protects the rights of EEA citizens; it is largely about changing the function of the border. In a no-deal situation, the rights of EU and EEA citizens will be protected by clause 4 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, but some EU citizens are already losing out. Among my colleagues, we have 11 cases of people who have been refused universal credit because they do not have a method of proving that they have the right to remain, even though the UK is still inside the EU. They seem to be predominantly women who might not have their name on a gas or electricity bill and who do not have an unbroken HMRC record because they are carers. That is accentuated among women who have left abusive relationships and therefore cannot return to ask for papers that go back five years. We are still in the EU, and this will clearly be an issue for the very same women under settled status.

Alison Thewliss (Glasgow Central) (SNP): Some of my constituents have been affected by this. Does my hon. Friend agree that this is a pernicious policy? People who do not know their rights are losing out and are not well placed to challenge the decision.

Dr Whitford: I absolutely agree. The issue of discrimination was mentioned by the Labour spokesperson. I am someone who has worked on the frontline in the NHS. How are doctors or nurses expected to know whether someone is required to pay or register in order to be treated? Are we meant to go on colour, accent or foreign-sounding names? That is really pernicious from the point of view of breaking down the doctor-patient relationship. We already have patients who are not going to the doctor because they are afraid of NHS England reporting data to the Home Office, which can result only in missing conditions that should be treated. If they are infectious conditions, it increases the risk to others.

I am also aware of cases in which some EU countries—particularly Belgium—do not pay disability pensions or state retirement pensions outside the EU. I am aware of two cases of people in Scotland forced to consider leaving now, because they are afraid that they will have no income whatever beyond 29 March. What discussions are the UK Government having on, and what consideration have they taken of, the rules of other countries, to ensure that people who have worked and lived here and contributed to the UK are not suddenly left destitute or having to leave their homes?

Obviously, in a deal situation, people will be expected to navigate appendix EU of the immigration rules, which is an enormous document, to apply for settled status. However, I welcome the fact that settled status will be provided to EU citizens whether there is a deal or no deal. The test version for applying has been open since 21 January, but it will be fully operational only on 30 March. People have tried to interact with it but do not have the right phone or materials, or have to pay and reclaim, so most people will actually wait until afterwards, meaning that more than 3 million people will have to be registered in just over a year and a half. Will the Minister to reassure us as to how she thinks the Home Office will cope with the sheer scale of that challenge?

Another issue raised by EU citizens with me is the small print at the bottom of the settlement scheme, which says that somebody going forward with it has to agree to their data being shared with public or private bodies in the UK or overseas. Will the Minister clarify who the Government will share that data with—it might be shorter to clarify who they will not share it with—and what protections there will be? That does not sound like it meets general data protection regulation rules, with people expected to sign up to a blanket sharing of their data.

The draft instrument obviously changes the function at the border, with people able to come here as visitors for only three months. They will not be able to come and spend as long here as they like. That is particularly relevant where people have settled here but still have family in Europe. Family members may tend to come for longer seasons, such as over the summer, to visit children or even to help people manage in the school holidays. This is still a loss from where we are now.

The Minister says that the longer leave to remain of three years will allow people to work or study. Scottish university courses are honours courses and last for four years, so it is clear that there has been absolutely no consideration of visas that allow people to stay long enough to study an honours degree at a Scottish university. That will inhibit our universities, limiting the number of people coming to them.

Like the Labour spokesperson, I of course welcome the fact that the period of absence has been extended; the original proposal of two years would have been laughable. Anyone going from the UK to study in Europe would have lost their right to remain. Having spent almost two years in the middle east as a volunteer, I know that many people who spend a lot of time overseas for perfectly good reasons, whether in industry or voluntarily, would then lose their home and their base here in the UK.

I also welcome that the draft instrument removes the immigration charge. The health immigration charge currently hits a lot of non-EU nationals who actually work for the NHS, which is absolutely ridiculous. It should be removed across the board. It says that people can apply from overseas and may have to provide fingerprints, as well as photographs. Again, I am sure that people would like to know how safe their biometric data will be.

The draft explanatory memorandum talks about the common travel area and how there will not be routine immigration checks, although it does say that those moving within the common travel area would benefit from leave by order. That implies that European citizens who live in Ireland may indeed find themselves suddenly challenged if they travel to the UK. The Secretary of State has the right to give or refuse entry on the grounds that a person's exclusion could be conducive to the public good. That sounds like a vague phrase, so I would be grateful if the Minister gave us a definition of what that could be and what the safeguards are that it will not simply be used randomly, particularly given the Windrush scandal and that the number of removals of citizenship has gone up in five or six years from 50 to more than 100 last year.

People want to know what the goalposts are and to have some stability. If people are actually going to live somewhere, they need to know that they are secure. It is said that people who are given leave under article 3 of the order may be examined by an immigration officer to

see whether there are grounds for cancelling that leave. It does not list any of those grounds—so again, there is insecurity.

At the end of the explanatory memorandum, it says that the Secretary of State did not organise any consultation because he could not think of anyone to consult. I find that rather surprising, because the order has a significant impact on many people. There was also no impact assessment, as the order is not expected to have an impact on business. Well, there are more than businesses in the UK, and more than businesses should have been looked at. Even if we just focus on businesses, however, I would have thought that there will be a significant impact from the fact that they will have to apply to bring people in when they move staff across supply chains.

The explanatory memorandum repeatedly says that people will be able to continue their lives “broadly as now”—but no, they will not. I mentioned the women who are being refused universal credit even now, which, obviously, is likely to get worse when we leave. It is not described as a registration, but an application, which implies that people may fail. Although Ministers have stood at the Dispatch Box and said that no one has been refused, significant numbers of people have actually been refused. They may have succeeded on their second attempt, but they were turned down on their first attempt. The order also limits the ability to bring family members in after the transition period, if there is a deal, or after we leave the EU, if there is no deal. To say that it is not changing how European citizens live here is, frankly, not paying attention.

It is tragic that we are losing freedom of movement, which is one of the biggest benefits that we have had from Europe. Everyone from Germany east knows the value of freedom of movement. For them, it is a “heart and soul” measure, because they were trapped behind an iron curtain and a Berlin wall for so many years. The fact that the Government do not understand what freedom of movement means in a country such as Germany, or in eastern Europe, is exactly why they have not even been talking the same language. For me, the order is not something to celebrate, because that was one of the greatest benefits.

Scotland is one third of the UK. We know that we need more people, and we would welcome them. We find it a major issue that the Immigration and Social Security Co-ordination (EU Withdrawal) Bill is determined to shut down immigration to tens of thousands and to set limits that will cause huge problems for our public sector, our businesses and our economy.

6.28 pm

Vernon Coaker: It is a pleasure to serve under your chairmanship, Mr Austin, and to follow the hon. Member for Central Ayrshire, who, with my hon. Friend the Member for Manchester, Gorton, has made several important points. I say to the Minister, and the Committee, that this measure is hugely important. Statutory instruments are not regarded as being on the Floor of the House, but they are important pieces of legislation that have a dramatic effect and impact on people's lives.

As I say in virtually every statutory instrument Committee—I will repeat myself—we all often get people coming to our surgeries who say, “This has happened. Why did you pass it?”, and we then have to trawl back through the

[Vernon Coaker]

statutory instruments to find the regulation that implemented it. One of the processes that I think Parliament has a problem with is that, even if it is a good idea, an SI cannot be amended—it is a case of take it or leave it. That causes all of us, across the House, great problems at times, and is perhaps something that we should address on another occasion in a different forum.

The order is one part of a complex set of arrangements about the status of non-EU nationals, EEA nationals, EU nationals—people leaving, staying or short-term working, and also students. I cannot keep up with those arrangements, but on the particular issue in question, the Minister should give us some clarity about the points made by the hon. Member for Central Ayrshire. All of us want people to be clear about what it is they have to do in order to stay here. To be honest, when I was doing research to prepare for the Committee, I found it difficult to unpick the various websites and understand things myself.

This is not just a matter of the various Opposition parties, whether the SNP or ourselves. The House of Lords Select Committee that looks into SIs has written to the Home Office to raise certain concerns about the practical implementation of the policy. The European Union Sub-Committee in the Lords has written to the Home Secretary about the matter.

There are very specific concerns that I ask the Minister to address. First, at the end of free movement, for three months somebody can automatically come into the country. The Minister says that the normal processes will apply, but when somebody has come in automatically—they will have come through customs and immigration—how on earth will the Government know when the three months are up? There is no system because such people will automatically come in. It is not right for the Minister to say that the normal process will apply, because there is no process. What is the process? There is no stamping.

I am not saying that the policy is wrong or right. It is good that people can come in, but the law says that after three months they have to either get indefinite leave to remain or go. That implies enforcement action. What is that enforcement action? How will the authorities know when to start enforcement action? There is no form to tell them that the three months are up. The Minister needs to explain that to all of us. Otherwise, whether it be in north Cornwall or other parts of the country, we will have people turning up at our surgeries after seven or eight and a half months—or, as sometimes happens, after a couple of years—saying, “I’ve been here for years and my kids are going to school, and now the Home Office is banging on the door saying I’ve got to go.” That causes huge problems. Irrespective of the rights and wrongs of the policy, if its bureaucratic implementation is not right, how can it work?

Rosie Duffield (Canterbury) (Lab): Does my hon. Friend agree that our backlog of casework and constituency problems will be added to with this huge load of additional legislation and bureaucracy that we have to try to understand, and that our case workers have to understand? Does he share my concern about whether the Home Office itself, as well as us MPs, will be fully educated on how the whole new system will work in the first place?

Vernon Coaker: I agree absolutely. That is the point I am making to the Minister. By the way, I agree with the hon. Member for Lichfield about reciprocal arrangements. The Opposition Front-Bench spokesman made the same point, and the Government will no doubt be arguing the point with other EU countries. Irrespective of the rights and wrongs of the policy, however, the least that the public can expect is that it will be bureaucratically cohesive. My point and that of the House of Lords is this: how can it be when we have no idea about how the three months will be judged? Will it be guessed? Will the employer, the university, the college or somebody in the family have to say? I say honestly to the Minister that nobody has a clue and that she needs to have a better answer about how enforcement will take place.

Let me ask another point about the bureaucracy. How long will the process take if somebody thinks, after a couple of months, that they might need to stay? What happens if they go beyond the three months but they are applying for indefinite leave to remain? Does that stop the enforcement action? I am saying this because sometimes I contact the Home Office and it takes months to get a reply. Again, the issue is the bureaucracy. I am not saying whether the policy is right or wrong, but what will happen? Is the enforcement action automatically put on hold if somebody has applied and they go beyond the three months? Is the enforcement action automatically stopped? I hope that I have made sense.

The Minister has confirmed that the application is free, but how long will it take? It would be helpful if she explained to the Committee what will happen with respect to all that process. Can she explain what “enforcement” means? Is it gentle persuasion, or what? Enforcement sometimes means people going round and forcibly removing individuals. Is that what we expect to happen in the worst circumstances? Is it a possibility?

Let me move on from the three months. If somebody gets indefinite leave to remain, is that forever? Does indefinite leave mean that they can stay? If somebody then leaves the country—

Caroline Nokes: I want to make to the hon. Gentleman a really important point of clarification. He has repeatedly used the phrase “indefinite leave to remain”. That is not what we are discussing: we are discussing temporary leave to remain.

Vernon Coaker: So after the three months, somebody has temporary leave to remain. Then they go back—outside the country. The Minister, in the measure, extends the period from two years to five years, when that temporary leave presumably stays—the Minister will have to explain that, because there is confusion. The explanatory note talks about this, and the House of Lords Committee has written about it. In relation to the temporary arrangements, if the period for which somebody can be outside the country is extended from two years to five years, how will they prove that they have that entitlement if there is no stamp in their passport, or no document?

Caroline Nokes: It is important to make this distinction. The five years for which somebody can be outside the country does not relate to the European temporary leave to remain; it relates to the EU settled status scheme. Those are two quite separate things.

Vernon Coaker: I take the point that the Minister has made, which is perfectly fair, but the point that I am trying to make—and probably have not made very well—is that I accept that this is under the EU settlement scheme, but the period for which somebody can be outside the country is extended from two years to five years. Again, it is the House of Lords asking this; it has written to the Government about it. The Minister needs to explain not only to this Committee, but to the House of Lords. The House of Lords is expressing concerns.

How will somebody who has been outside the country for four or five years, and then decides to come back, prove to the Home Office that, because the period is now five years, they have the right to return? What document is available that will demonstrate to the Home Office authorities that they have the right to come back into the country and remain here? That is the point that the House of Lords Committee makes. Again, it is wondering about the documentation.

This is the point that I am making to the Minister. In every area, whether we look at the EU settlement scheme or the temporary arrangements, the bureaucracy is unclear. It does not matter which part we are talking about—if the bureaucracy and documentation are not clear, we will be in a really difficult situation. Each and every one of us, including the Minister, will have individuals coming to our constituency surgery. We will be writing to the Minister, saying that we have real problems with this temporary leave because there is no way of providing proof; somebody is telling us that they have been here, but there is nothing to prove whether they have or they have not.

It is ludicrous to pass the order when I honestly believe that, bureaucratically, it cannot work. Why are we passing it? I will finish, because I am repeating myself.

This is ludicrous. We have no way of demonstrating whether somebody has been here for three months. The Minister cannot explain it, yet, according to the regulations we are passing, people will be chucked out with enforcement action. However, we will not know whether they have been here for three months, because there is no document in their passport to tell us, unless they put their hand up and say, “By the way, I have been here for three months—I need to go.” I say to the Minister, in all honesty, that we have to have greater clarity.

I have been in this place for a little while, as you know, Mr Austin. Regulations passed when they clearly have faults cause immense problems down the road. This is not about whether the policy is right or wrong; it does not stand up bureaucratically. It is a nonsense for us to pass it.

The Chair: Order. Before I call the next speaker, I am afraid that I will have to suspend the sitting for a couple of minutes.

6.41 pm

Sitting suspended.

6.43 pm

Michael Fabricant: May I say what a pleasure it is to follow the hon. Member for Gedling? I think that was one of the best speeches from a Back Bencher I have ever heard in a delegated legislation Committee. Normally, people give their opinion and assert the usual set view. To actually question the Minister about the practicalities of legislation is something we should do more often. I congratulate the hon. Gentleman. I will also say, not

meaning any offence to anyone on the Government Front Bench, that it demonstrates the paucity of talent—there are so many able people on the Back Benches, too. *[Interruption.]* I am on the Back Benches by choice, I hasten to add. *[Interruption.]*

The Chair: Order. Let us listen to Mr Fabricant.

Michael Fabricant: Thank you, Mr Austin. The real reason for my wishing to rise is the speech made by the hon. Member for Central Ayrshire. I listened to her with great interest, but growing concern. I was working with Zweite Deutsche Funk in Cologne and Berlin when the wall came down, so I do not need to be lectured about freedom of movement. I have welcomed freedom of movement generally within what I would call the western EU.

I simply want to say that many of the problems that exist now in Germany, with Alternative für Deutschland and all the other right-wing organisations, and the near collapse of the Merkel Government, are due to the fact that they had open borders. I have great sympathy with the asylum seekers and those wishing to come into Germany to expand the economy of their lives—something we all aspire to do—but there was also mass immigration of people from eastern Europe, who were not necessarily prepared to adapt to German life. So to imply that having an immigration policy is somehow xenophobic, is somehow racist—*[Interruption.]* The hon. Member for Central Ayrshire says from a sedentary position that she did not use those words, but I would argue that the implication was there, and to imply those things is wrong and false and, as such, inaccurate.

Dr Whitford: Will the hon. Gentleman give way?

Michael Fabricant: In a moment. As someone who has travelled and worked extensively in Europe, who speaks half-decent German, French and Dutch, and who has worked with broadcasting organisations there, which tend to be very much on the liberal side of things, I support the motion—albeit with some reservations, because of the points made by the hon. Member for Gedling. At the end of the day, many of the 52% of the population of the United Kingdom who voted leave did so because they wanted to see some control of immigration.

This was not my reason for voting leave, which I did. I welcome immigration. The hon. Member for Central Ayrshire mentioned foreign names: Fabricant is a French name, meaning weaver. Most of us on the Government Benches do not need to be told that immigration is a good thing. This country is a tolerant society; I am not practising but I am of Jewish extraction and, God knows, my far-back ancestors must have come here because Britain was such a great place. However, to keep society working and functioning well, there has to be some control. That is why I support the motion, and why I say to the hon. Member for Central Ayrshire that she should please just think before saying some of the things she says.

Dr Whitford: Will the hon. Gentleman give way?

The Chair: Have you finished, Mr Fabricant?

Michael Fabricant: I have finished.

Dr Whitford: I am sorry, but that was an accusation of something I did not say. This is important. The hon. Gentleman said he would give way to me before he finished, and I allowed him to come to a close.

The Chair: In the end, it is up to the hon. Gentleman whether he wants to give way. I am sure that Alison Thewliss will allow the hon. Lady to intervene.

6.48 pm

Alison Thewliss: It is a pleasure to see you back in the Chair, Mr Austin, after a brief interlude.

I first want to pick up on what my hon. Friend the Member for Central Ayrshire said. It is absolutely without any basis or substance that anyone could make any accusations of racism about anything she said in her speech. That is simply not the case.

I argue very strongly that immigration is a good thing. It has been a good thing for Scotland and for the rest of the UK, and it has been a good thing for Glasgow. One of my members of staff said to me earlier that if it were not for immigration in Scotland it would just be mince and tatties all the time. We have the world to thank for coming to Glasgow and giving us the benefits of their cuisines and cultures, and all they have brought to our wonderful city through immigration.

Immigration is undeniably a good thing, but services in some parts of the UK have ended up not keeping pace with it. Austerity has caused more problems in more communities across these islands than immigration ever has. The services that ought to have supported people to integrate and become part of their communities are no longer there. The irony is that a lot of the services that people depend on, wherever they come from in the world, depend on people who have chosen this country as a home propping them up, as the husband of my hon. Friend the Member for Central Ayrshire does, and as she did as a surgeon. Many of our people, wherever they live across the UK, depend on those who have done us the great honour of choosing to come to this country, to work, live, love and make their lives here. We owe them a great deal of thanks for that.

Dr Whitford: I will not go back into the discussion prompted by the hon. Member for Lichfield, but we have a 90% drop in European nurses coming here, and NHS England has 41,000 nursing vacancies. Does that not exemplify the contribution that people have made to this country, and the danger of turning that off? People are simply put off; they do not feel welcome.

Alison Thewliss: My hon. Friend is correct. It is already the case that people who apply to the Home Office to work here are having their lives ruined by the process. I have constituents who worked in care services who are no longer able to work. They would love to be working in the care home that they were working in before, but the Home Office says no. I have a gentleman who is a surgeon, who is not being allowed to work due to delays in the Home Office. He has been told that he just has to wait during the process, but his job will have gone by the time it concludes. It is absolutely unacceptable, and the Home Office needs to look at its processes.

It is my contention that the Home Office will not be able to cope with processing an extra 3 million EU nationals. It certainly will not be able to do anything with this absolute shambles of a statutory instrument. People are being allowed three months' leave to enter. That is fine. As the hon. Member for Gedling said, we do not know what will happen once they get here—whether they will be processed in a particular way—because no system under which they will be processed is set out in the legislation.

There is no reason why somebody could not come in for three months, leave for a day or an afternoon, and come back in again for another three months. That is perfectly allowable under the system. I do not think that that is what the Minister intends, but that will be the result. I am perfectly happy with people coming in and out; that is no problem for me. Freedom of movement, as I said, is a great thing. However, I am pretty sure that that is certainly not the Minister's intention with the legislation.

There is no indication whether there will be any restriction on the three months. Under visitor visas, people who are non-EU citizens get six months, and there is then a bit of a restriction regarding when they can come back in, so they are not encouraged to get continual visitor visas. Again, I have constituents in this situation who have had to apply for exemptions on compassionate grounds in order to get back in because relatives have been dying. Nothing within the system in the regulations says that somebody will have any kind of restriction after the three months. The regulations are very vague on that.

The regulations are also vague on specified circumstances. People should be allowed to come in and work and study—that is a good thing—but, as the hon. Member for Manchester, Gorton asked, how will that be checked? Will it be subject to the immigration checking service, and on what basis? How will employers have confidence in the system? At the moment, the employers I speak to have no confidence in the system, due to many errors and issues. How will the employers' checking service interface with the people who are coming in for three months or so?

Will those people be able to have bank accounts? I have sat on statutory instrument committees in this House in which we restricted the ability for people to have bank accounts in this country. Will they be subject to the ongoing mess that is the Government's right to rent policy? Will they be able to go and rent somewhere while they are here, and on what basis?

Why is it that, if somebody is applying for a more permanent status, they will be subject to the £30,000 threshold, which will affect many of my constituents who do not earn anything like that, but who still carry out hugely important and vital roles within my constituency and across Scotland? The people who are coming in for three months will presumably not be subject to the £30,000 threshold, so the system is an absolute mess.

As my hon. Friend mentioned, there is the issue of universities and colleges, of which I have many in my constituency. I have the University of Strathclyde, Glasgow Caledonian University, the Glasgow School of Art, the Royal Conservatoire of Scotland and the City of Glasgow College, all of which are significant educational institutions. Will people be allowed to take up courses on the basis

of being able to be here for three months, and then leave for a day and come back? People are making plans, and they need to know what they are able to do.

If people are able to work, are they able to come and give lectures at those universities? Will they be able to come and hold events and seminars? Will they be able to come and contribute to the great cultural activities within the city of Glasgow? It is not clear within the regulations, because there appears to be nothing underpinning the three-month promise.

How has the information been communicated to people? There has been a series of events across the UK with the Home Office and DExEU talking to people about their rights once the UK leaves the EU. A member of my staff attended one of the meetings and the Home Office talked about the withdrawal agreement and what the rights would be. DExEU gave no-deal information. Has that been part of the briefings and have people going to the meetings been able to get that information as well?

Finally, what happens if somebody stays over the three-month period because of some issue? For example, if somebody gets knocked down and has to stay in hospital for a couple of extra days; somebody cares for someone who is ill; or somebody simply forgets the date that they came, because people sometimes forget things like that, will they be termed as an overstayer? Will they be subject to immigration removal and dawn raids? Will any error or overstaying for whatever reason be counted against them should they wish to make a permanent application in future? If there is very little paperwork to say when they came, when they left and what they did when they were here, I do not see how something like that could be counted against them. Again, that might not be the Minister's intention—I have different views on that—but it is incredibly unclear as to what will actually happen to people caught up in the system, who cannot see for themselves what the rules will be, how they will be applied and what the future will look like.

6.56 pm

Sir Robert Syms (Poole) (Con): I want to make a few brief comments. The Government's objective is to prepare for all scenarios. The point of today's order is to keep people flowing for the job market, for businesses, for education and for all those things, so the order is a good-news piece of delegated legislation. The Minister has already said that it is light touch. We will not have teams of people with batons kicking down doors and kicking people out. It does not matter whether they overstay slightly. What matters in the short term is to have a workable system.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill and various laws will come in, and things will slowly start to get a little tighter in due course. Hopefully, we will leave at the end of the month and we need something to get us through. It needs common sense and practicality. *[Interruption.]* Opposition Members seem to think it is somehow a terrible thing. The Government are trying to be pragmatic, practical, sensible and reasonable. They put information on websites, so it is possible to find out what the situation is. All I am saying is that the measure is light touch to get us over a few months, perhaps a few years, until the proper legislative framework can deal with the new realities. I have confidence that the Minister, the Home Office and the team will be able to work the system.

Afzal Khan: Does the hon. Gentleman accept that when citizens came from the Commonwealth, it was also light touch? There were no restrictions and they were allowed to come, but we ended up with Windrush.

Sir Robert Syms: We set off as an imperial power letting people in with a limited amount of documentation. The same thing happened with British kids who were sent out to Australia because they were in homes in this country. They have the same problem. Immigration policy has generally strengthened over the years and that is why that issue occurred. These days we all have credit cards and phones. We have an audit trail when we move in. It is not beyond the wit of man or woman to find out when someone arrived and when they left. The point is to keep the wheels of commerce, travel, education and everything else turning until the Home Office gets a better system in due course. If you are going to eat an elephant, do you do it one bite at a time?

Dr Whitford: Will the hon. Gentleman give way?

Sir Robert Syms: I will, and then I will sit down and let the Minister reply. The measure is reasonable. Let us chill out. *[Interruption.]* It will all be fine.

Dr Whitford: Is the hon. Gentleman seriously suggesting that surveillance of people's credit cards and mobile phones will be the method of monitoring whether they have been here for three months? I think people would not find that very attractive.

Sir Robert Syms: Again, the hon. Lady is overreacting. We have smart passport systems. People book with airlines. There are records. If someone is challenged about how long they have been in the country, it is quite easy, if they travelled in on easyJet or British Airways, or if they paid for a ticket with a credit card, for them to say, "I arrived here, and I have been here this long." We do not need to stamp people's passports.

But that is not going to be a problem. The draft order is just to get us over a few months or years and to keep the wheels of commerce turning so the British economy grows, tax revenue comes in and we are all happy citizens. The point about having a more robust immigration system is that we do not need to do it on day one; we can work towards it. I would rather have a robust, fair, sensible system, slowly implemented, and just have measures to get us over the immediate problem, than to try to have everything implemented, wham bam, from day one. The Minister's approach is perfectly reasonable, and I look forward with great joy to hearing what she has to say.

7 pm

Caroline Nokes: I am very grateful for the Committee's contributions—not least the suggestion that I am about to eat this elephant one bite at a time. A number of specific issues have been raised, and I will try to address each in turn.

The hon. Member for Manchester, Gorton asked whether the draft order should have been included in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. I gently point out that these vital protections as part of the EU settled status scheme can

[*Caroline Nokes*]

be put in place now, before that Bill gets Royal Assent. If we had waited for the Bill, we would not have been able to open the EUSS fully by 30 March, which I am sure Members will agree is a significant priority.

The hon. Gentleman mentioned the Costa amendment, which of course the Government agreed to the week before last. Both we and the EU have been very clear that providing certainty for citizens is a priority, and of course—Members might expect me to say this this afternoon—the best way to do that is to secure a deal with the EU. Reaching an agreement remains the Government's priority, but we did accept the amendment tabled by my hon. Friend the Member for South Leicestershire (Alberto Costa), and we have written to the EU to seek clarification on its position on ring-fencing the citizens' rights part of the withdrawal agreement. The Foreign Secretary has written to all his counterparts, and we are holding further urgent discussions with EU member states to seek assurances on the rights of UK citizens in those states.

The hon. Gentleman asked why Swiss nationals are permitted only four years' absence, as opposed to the five years we have indicated for EU nationals. For those granted settled status as Swiss citizens and their family members, the period of absence will be up to four consecutive years, which is in line with the citizens' rights agreement negotiated with Switzerland and the reciprocal arrangements that will apply to UK nationals in Switzerland under that agreement. He sought assurance that resident EEA nationals who apply to the settlement scheme from overseas will be treated in the same way as those who apply in the UK. I confirm that that will be precisely the case.

I now turn to the knotty issue of European temporary leave to remain, which has occupied the concerns of many Members this evening, and what leave people should apply for after three months. I hope to be able to clarify that. In the event of no deal, and following the end of free movement, EEA and Swiss nationals would need to apply for European temporary leave to remain if they wished to stay longer than three months. There would be no restriction on their ability to work or to study. That would apply only in the event of no deal—as I said a few moments ago, we very much hope that there will be a deal—but it would allow EEA and Swiss nationals to stay in the UK temporarily for 36 months.

I absolutely heard the representations by the hon. Member for Central Ayrshire and others about the important issue of those studying at Scottish universities and those studying longer courses at universities in the rest of the UK. That issue is important, and I am listening very closely and considering advice on how we can best adapt the scheme to reflect that there may be people studying medicine, for example—as we all know, that course is a significantly longer than three years—or, of course, studying for PhDs.

Dr Whitford: I thank the Minister for coming to that subject, which is of particular concern. It says in the explanatory memorandum that there was no consultation, and it is very clear that there was no consultation with the Scottish Government or Scottish universities. Will the Minister undertake to explore this issue, both with

respect to longer courses such as medicine and taking into account the fact that the norm in Scotland is a four-year honours course?

Caroline Nokes: The hon. Lady may be aware that as part of the future immigration system, I am consulting on specific issues, along with Home Office colleagues and officials across the whole United Kingdom. The 36-month temporary leave to remain is uppermost in the minds of organisations such as Universities UK, and representations were made about it in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee's recent evidence sessions. Home Office officials and Ministers are very much alive to the issue.

The hon. Member for Manchester, Gorton mentioned the fee level for the European temporary leave to remain. He will be aware that we do not comment on leaks, but the announcement on fees will be made shortly. The European temporary leave to remain scheme is being developed, and would be delivered, using infrastructure already in place for the EU settlement scheme. In the event of a deal, we will not need the temporary leave to remain scheme; in the event of no deal, we would not expect the inflow of EEA citizens to be any greater than the number of people arriving during the implementation period between exit and 31 December 2020 in a deal scenario, who would otherwise have been eligible for the EU settlement scheme. We are therefore confident that we will have sufficient capacity to process applications.

Hon. Members asked about the EU settlement scheme, which is in its third public testing phase. I would like to give an update: there have now been more than 160,000 applications under the scheme, of which the vast majority have been settled within three days. We are pleased with the progress made, but of course we continue to keep it under very close observation.

Vernon Coaker: For the benefit of the Committee, that is 160,000 out of how many?

Caroline Nokes: The hon. Gentleman will be very well aware of the figure used: 3.5 million. I am sure that he cannot be unfamiliar with that figure, because we mention it a lot of the time.

As I said, the scheme is still in a testing phase. It is important to emphasise that it is still not fully open; if the draft order is approved, the scheme will open on 30 March and will then be free. I am sure that hon. Members will be relieved to hear that last week we laid before Parliament the statutory instrument that will enable us to make the scheme free and effect refunds to those who have already been through it. Individuals will not have to apply for refunds; they will be made automatically to the card originally used to pay the fee. In the relatively few instances in which the card has expired in the meantime, we will make provision to contact the relevant individuals and ensure that they are refunded.

Dr Whitford: The Minister says that in a deal situation, those who come for longer, such as students, will apply for settled status. They will not have been here for five years, so on what basis will they be able to apply? Someone who comes as a student will still require a visa to stay for a number of years, whether they stay permanently or go back after their time as a student.

Caroline Nokes: In a deal situation, an individual who comes here as a student will be perfectly entitled to apply for the EU settled status scheme. They do not have to have been here for five years; they can be granted pre-settled status and then accrue the five years over their stay in the UK. Some students may well not want to do so, because they may intend to leave after their period of study, but in a deal scenario, that option will be open to them.

Dr Whitford: May I ask the Minister to clarify that point? If students or people coming for a circumscribed period do not want to apply for settled status, will the temporary leave to remain still exist? She suggested that it would exist only in a no-deal scenario.

Caroline Nokes: The hon. Lady is right to pick up that point. Temporary leave to remain is a mechanism that we intend to use in a no-deal situation, not in a deal situation. In a deal situation, people will have exactly the same rights as they have now to come, apply for the settled status scheme and stay for the duration of their studies. She is right to highlight the issue of those who may be here for longer; these are matters on which we are in intense discussion, both with our EU counterparts and with the Department for Education.

Several hon. Members asked about right to work and right to rent checks. In our December White Paper, the Government made it clear that there will be no changes to the system of right to work or rent checks until the future border and immigration system is introduced at the start of 2021. In the meantime, European economic area nationals will continue to be able to demonstrate a right to work or rent by using a national passport or ID card. Alternatively, they may use the online checking service if they have been granted status under the EU settlement scheme. Non-EEA family members will use Home Office documentation. We have made it clear that we will not require employers to conduct retrospective checks on their existing EEA workers when the future border and immigration system is introduced.

Alison Thewliss *rose*—

Caroline Nokes: I want to cover some more ground, because I am conscious that if I do not complete my comments, there will be a vote at 7.30 pm without my having responded to many of the points that have already been made.

The hon. Member for Central Ayrshire raised the issue of how individuals would know whether they had met the conditions to qualify for automatic leave. The draft order sets out the conditions that need to be met to qualify for automatic leave. They include a person being an EEA or Swiss national; holding an EEA or Swiss passport or national identity card; requiring leave to enter—that is, not having been previously resident in the UK before it leaves the European Union; and being entitled to apply for the EU settlement scheme.

A number of Members raised the issue of enforcement and how we would establish whether people had been here for more than three months. Those EEA and Swiss nationals who arrive after free movement has ended, in a no-deal scenario, should apply for European temporary leave to remain if they wish to stay longer. I am clear on

the importance of clear communication, so that individuals understand their status. Upstream communications would seek to ensure that individuals are aware of the requirement to apply for European temporary leave to remain if they wish to stay longer than three months.

The Home Office is working closely with other Departments on communicating the immigration arrangements in a no-deal scenario to key sectors and stakeholders. That includes information on gov.uk to reassure inbound travellers, which went live on the 4th of this month. In addition, preparations are under way for a comprehensive communications campaign in two weeks. As I mentioned, the EU settled status scheme has so far received well over 160,000 applications. I have referred to the SI that will ensure that the scheme fee is lifted and that refunds will be possible.

A number of Members mentioned Windrush; the scheme's design anticipates many of the Windrush issues. EEA nationals will have plenty of time to make an application. There are dedicated caseworking teams. Support is available for the vulnerable on the phone, in local libraries, in a dedicated call centre, and even in people's homes. The Home Office has made available £9 million of grants to organisations working with the vulnerable, to enable them to assist those people in the process.

It is important that we provide clear communications on the rights of those in the UK before the UK leaves the EU, and on the requirements for those who arrive after the UK leaves. If EU citizens in the UK prior to exit fail to apply under the settled status scheme, they will not be here actively unlawfully in the same way as clandestine entrants or overstayers. We will give those who have reasonable grounds for missing the deadlines further opportunities to apply.

There was mention of entry via Ireland. We do not operate routine immigration controls on journeys from within the common travel area to the UK. However, EEA and Swiss citizens entering from Ireland will benefit from the leave by order provisions. Those entering from the Crown dependencies will already have leave granted by the islands, recognised by the UK under our integrated legal framework.

The hon. Members for Central Ayrshire and for Glasgow Central raised the subject of women who might be in abusive relationships. We accept a wide range of documents to evidence five years of residence, and dedicated casework teams will help applicants to prove their residence. As I said, we are providing £9 million of funding to help those with vulnerabilities, which is important to ensure they can access the support services we have targeted specifically at them.

I was asked in which circumstances leave would be cancelled at the border. The automatic leave to enter provision will ensure that we can continue to smooth the passage of legitimate travellers through the border, while maintaining the security of the borders. The ability to cancel leave is therefore a key element in making sure we maintain the correct balance.

A question was raised about whether the EU settled status scheme was compliant with the requirements of the general data protection regulation. We take our data protection and security responsibility very seriously. All our data activity must be compliant with the data protection legislation. We want to reassure applicants

[Caroline Nokes]

that we do not allow access to their information by any unauthorised person or body, and can share data only where it is absolutely necessary and where we have a legal basis for doing so.

There are some good examples of where the ability to share data has been of benefit, not least in the settled status scheme's ability to share information with HMRC and the Department for Work and Pensions; that has enabled a significant majority of those going through the process to have achieved settled status already, without having to provide any additional information. The hon. Member for Gedling spoke about the complexity of the immigration rules, and I have some sympathy with his view. He may not yet be aware of the Law Commission's consultation on the immigration rules, which is specifically designed to make them simpler and more straightforward, but I urge him and all hon. Members to participate in it.

Vernon Coaker: I wish them luck!

Caroline Nokes: The hon. Gentleman wishes them luck; on my first day as Immigration Minister, I made the point that the more than 1,000 pages of immigration guidance and rules was excessive, and asked what steps we could take to simplify them. I very much hope that this process with the Law Commission and, indeed, the future borders and immigration system will be simpler and more straightforward than our current system, which of course has evolved over many decades.

Questions were raised about how long the European temporary leave to remain applications would take. As I have said, we intend to use the architecture of the EU settled status scheme and for the applications to be similarly streamlined. Some 75% of applicants in the most recent phase of the EU settled status scheme received their decision within three days.

There were also questions raised about the automatic leave provisions allowing individuals to travel into and out of the UK, and to be granted leave to enter for three months at a time on each arrival. This arrangement is absolutely intended to avoid a cliff edge and to smooth the passage of legitimate travellers across the border after the end of free movement. My hon. Friend the Member for Poole stressed the importance of avoiding cliff edges and allowing ourselves time to transition to the new borders and immigration system, which of course will not be introduced until January 2021.

The arrangements are, as was intended, similar to the status quo under EU law. EU nationals can live here for three months, but their right to stay in the UK for longer than three months is conditional; they must be a worker, a student or self-sufficient. Temporary leave to remain, just like settled status, will have a digital status, so people will be able to provide evidence of their right to be here. Non-EEA dependants will have biometric immigration cards.

The hon. Member for Glasgow Central mentioned allowing EEA nationals to travel into and out of the UK frequently. That is absolutely our intention. We want them to be able to travel smoothly and easily. Some of her other comments related more broadly to the immigration White Paper, which she will be aware we are engaging on over the course of this year, and not necessarily to the statutory instrument before us.

Dr Whitford: Has there been any discussion between the Minister's Department and the DWP about the fact that women are being disenfranchised from benefits such as universal credit, as they are struggling to provide the necessary proof, even though the UK is still in the EU? She mentions that temporary leave to remain will be like settled status, but the three parts of settled status are the passport, the HMRC check and the criminal check. If someone has only been here three months, there will be no significant HMRC or criminal records.

Caroline Nokes: The suggestion would be that European temporary leave to remain should be about identity and declaration of any criminal convictions, as with the EU settled status scheme, and that it would omit the HMRC check—although the issue is not necessarily an HMRC check, but evidence of residence. The Government will take as evidence of residence a wide variety of proofs; it does not have to be an HMRC check.

The hon. Lady raised the question of conversations between the Home Office and the DWP; I must say that they occur on a regular basis. I am conscious, and not only from matters raised with me by right hon. and hon. Members across the House, that there have been occasional incidents to date, and those are problems we are working hard to iron out with the DWP.

Alison Thewliss: The reason I mentioned the £30,000 threshold was to ask whether it would apply to people who are coming in for three months at a time and working.

Caroline Nokes: As I said, the hon. Lady is confusing this with the future borders and immigration system, which will enter service in 2021. We are engaging on that threshold over the course of this year. It is absolutely not part of the order and does not apply to European temporary leave to remain, but to the future borders and immigration system; I hope that the hon. Members have understood that. With that, I commend the order to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 8.

Division No. 1]

AYES

Bruce, Fiona	Maynard, Paul
Fabricant, Michael	Nokes, rh Caroline
Jones, Mr Marcus	Swayne, rh Sir Desmond
Maclean, Rachel	Syms, Sir Robert
Mann, Scott	

NOES

Coaker, Vernon	Khan, Afzal
Dakin, Nic	Smith, Eleanor
Duffield, Rosie	Thewliss, Alison
Johnson, Diana	Whitford, Dr Philippa

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Immigration (European Economic Area Nationals) (EU Exit) Order 2019.

7.21 pm

Committee rose.

