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GENERAL COMMITTEES

Public Bill Committee

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

Second Sitting

Tuesday 9 June 2020

(Afternoon)

CONTENTS

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Saturday 13 June 2020

The Committee consisted of the following Members:

Chairs: † Sir Edward Leigh, Graham Stringer

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

Anwen Rees, *Committee Clerk*

† attended the Committee

Witnesses

Jeremy Morgan, Vice Chair, British in Europe

Professor Bernard Ryan, Professor of Migration Law, University of Leicester

Jill Rutter, Director of Strategy and Relationships, British Future

David Goodhart, Head of Demography, Immigration, and Integration Unit, and Director of the Integration Hub website, Policy Exchange

Bella Sankey, Director, Detention Action

Adrian Berry, Chair, Immigration Law Practitioners' Association

Luke Piper, Immigration Lawyer and Head of Policy, the3million

Lucy Leon, Immigration Policy and Practice Advisor, The Children's Society

Ian Robinson, Partner, Fragomen LLP

Alison Harvey, Barrister, No5 Chambers

Public Bill Committee

Tuesday 9 June 2020

(Afternoon)

[Sir Edward Leigh *in the Chair*]

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

Examination of Witnesses

Jeremy Morgan and Professor Bernard Ryan gave evidence.

2.1 pm

The Chair: Good afternoon. This is the second evidence session, and it will be a mixture of people who are with us physically and people who are here virtually, so we will have to cope as best we can. Our first witnesses are a representative of British in Europe, via audio link, and Professor Bernard Ryan. We have until about 2.40 to take that evidence. I will go first of all to the Minister, then to the Opposition spokesman. Is anybody else desperate to ask a question at the moment? You can put up your hand and intimate to the Clerk that you would like to speak.

Those of you who are sitting at the back of the hall—you are very welcome, by the way—are equally members of this Committee. Apparently if you want to speak, you have to go to a microphone over there. Are we all happy to start the session? We have to ring our witnesses now, so please be patient.

We are ready to start with our first panel of witnesses. Thank you for coming today. This session will have to end at 2.40pm.

Q64 The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): It is a pleasure to serve under your chairmanship, Sir Edward. Mr Morgan, what implications do you see for British citizens living in Europe regarding the social security co-ordination provisions in the Bill?

Jeremy Morgan: The sound is not very good but I will do my best. The question was about social security provisions, is that right?

Kevin Foster: It was about what implications you see for British citizens in Europe regarding social security co-ordination provisions in the Bill.

Jeremy Morgan: May I start by thanking the Committee for asking us to give evidence, even in this rather strange way? The social security provisions are crucial for UK citizens in the EU. They govern pensions, pension increases, healthcare, other benefits, and the aggregation of the equivalent of national insurance contributions made in different countries, without which some people would fail to meet the minimum contribution period for pensions or other benefits. Those provisions are preserved in UK law by the European Union (Withdrawal) Act 2018 so there should be no impact. However, as is made clear in the briefing note that we prepared and that has, I hope, been circulated, we are worried about clause 5 because that clause creates a regulation-making power wide enough to modify rights under the withdrawal agreement. We entirely accept that in the explanatory note the Government say that they do not intend to have an impact on our withdrawal agreement rights, but we are worried about that on two grounds, and the concerns are twofold.

First, as a constitutional issue it is wrong to create a power in a regulation that might breach an international treaty. If that is to be done, it should be done by primary legislation after a proper debate. Secondly, and more practically, those social security provisions that are listed in the Bill are right up there with UK immigration law for complexity. It is Byzantine complexity, and that is no exaggeration. It would not be difficult for an unintended breach to slip through. Therefore, to prevent a breach of a treaty by mistake, it is important that any such amendment be made through primary legislation after a proper debate.

Q65 Kevin Foster: Speaking as a Minister, a Minister cannot make a regulation that breaches international law, just to be clear on that point. Would you have concerns if, for example, an agreement on social security co-ordination was reached but the legislation did not allow the Government to quickly implement it?

Jeremy Morgan: I am sorry, I am having great difficulty in hearing the question.

The Chair: Minister, I think you need to lean in to the microphone and speak loudly.

Kevin Foster: A Minister cannot breach international law in regulations. Would you have any concerns if the legislation, for example, did not empower a Minister to quickly implement an agreement in relation to social security co-ordination if one was reached with the European Union before 1 January?

Jeremy Morgan: You are talking about the future relationship beyond Brexit, effectively?

Kevin Foster: Yes. Effectively, there are negotiations ongoing, and the issue is what happens if the Government reached an agreement and wished to implement it before that time.

Jeremy Morgan: I should start by saying that we were fairly careful in the representations that we made. We are a group that represents British citizens in Europe who are affected by Brexit and were there before Brexit. We have tended not to get into policy post the end of the transition period, simply because it is not within our remit to do so. It is for others to express views on that. Clearly, if a further agreement is made for rights that extend to others beyond those who are already in the EU, it is important that the Government should be able to implement that, but whether that is by primary legislation or regulations made at the time for that purpose is a matter for this Committee to decide. I do not think British in Europe would have a strong view about it.

Q66 Holly Lynch (Halifax) (Lab): Perhaps I can come to Professor Ryan first. Thank you very much for your written submission to the Committee. Can you talk us through what you think might be missing from clause 2?

Professor Bernard Ryan: Certainly. First, I thank the Committee and the Chair for the invitation.

The Chair: By the way, I do not know how our other witness is going to hear you. The acoustics are not brilliant, and I suspect that they are quite a long way away. They are already having difficulty hearing anyway, so speak up loudly, slowly and clearly. Sorry to interrupt.

Professor Bernard Ryan: I will do my best.

I obviously welcome clause 2. I see it as addressing a longstanding gap in immigration law, which is a lack of clear provision for Irish citizens, notwithstanding the fact that there has not been a policy or practice of placing restrictions on them. As I see it, the clause addresses the legal status of Irish citizens who enter the United Kingdom from outside the common travel area, so I wholeheartedly welcome it.

There are some finer points where one might point to potential problems down the road. I identified several in my evidence. First, in regards to family migration, it is still left open a little whether Irish citizens who will have the freedom to enter and reside will be in the same position as British citizens with regard to sponsoring family members in every respect. I think that is something that could be addressed.

There is also a difficulty relating to deportation and exclusion. I certainly would not argue that Irish citizens should be exempt from those. They are citizens of another state, as it were, so it should be possible to deport and exclude, but what is the threshold is going to be? We know that the general threshold is conducive to the public good, but in practice that is not the threshold that is used for Irish citizens because of the common travel area. There is a much higher standard, so could that be written into legislation or could commitments be obtained during the passage of the Bill about how those powers will be used in relation to Irish citizens in the future?

My third suggestion would be to consider the situation of persons of Northern Ireland, to use the recent jargon. The Belfast Agreement, of course, permits people from Northern Ireland to identify as British, Irish or both, so for a focus on identifying as Irish, is there really sufficient provision in immigration law for people to do that? They are not guaranteed full equality as regards to family sponsorship, but they do not have immunity from deportation and exclusion either unless they assert British citizenship. In the grand scheme of things, it is a detailed point, but it is important in the Northern Irish context—*[Interruption.]*

The Chair: Could you hold on a moment, Professor Ryan? Can we check the line, please? Let us carry on.

Q67 Holly Lynch: In relation to deportation for Irish citizens, since 2007 the UK Government's policy position has been to deport Irish citizens, as you mentioned, only where a court has recommended deportation in sentencing, or where the Secretary of State concludes, due to the exceptional circumstances of the case, that the public interest requires deportation. Are you aware of any examples of that happening in practice in recent history, and what were the circumstances?

Professor Bernard Ryan: I am afraid I do not have an answer to that. I have been following it, as it were, in relation to the policy statements, not in relation to individual cases.

Q68 Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): May I continue, Professor Ryan, on deportation? This very same issue arose this time last year, in a previous Bill Committee. Is it right that, at that time, the Immigration Minister made a commitment to the higher threshold, even though it was not in the Bill? Do I recall that correctly?

Professor Bernard Ryan: That is correct. I believe it was in the Committee stage, in the light of the evidence, perhaps, that the Minister made that commitment. Those commitments are obviously welcome, from my perspective.

Q69 Stuart C. McDonald: That prompts the question: why not just put it on the face of the Bill?

Professor Bernard Ryan: It is obviously stronger if it is put in the Bill. If it is not, policy can always be changed. Going back to the wider clause, one strength of what has been done is that it gives clarity to Irish citizens on their position in the United Kingdom. That, in a sense, is the issue with deportation. What are the arrangements going to be? What are the standards going to be? Having things in legislation, rather than in policy, is obviously stronger, from the perspective of Irish citizens.

Q70 Stuart C. McDonald: May I ask a couple of questions about family rights? In your written evidence, you say that Irish citizens in the UK will be able to be joined by non-EEA family members, because they will be treated as settled persons, essentially. Is that right?

Professor Bernard Ryan: My main concern regards Irish citizens who are not yet resident in the United Kingdom. It is the case that Irish citizens are treated as settled once they commence residence. From that point, as things stand, they will clearly be able to sponsor, but what about the Irish citizens planning to come with their non-British or non-Irish family? They will need entry clearance. How will it work for them?

Stuart C. McDonald: Is that because the fact that they are not in the UK obviously means that they cannot be treated as settled persons? Okay. I will ask Mr Morgan a question, if he is able to hear.

The Chair: Are you receiving us loud and clear?

Jeremy Morgan: Yes. I heard very little of the other evidence, but I heard that question.

Q71 Stuart C. McDonald: Mr Morgan, I understand from your submission that there are issues with the Bill in relation to UK nationals who want to come back, with family members, to the UK from countries in the EEA. Could you explain what those issues are?

Jeremy Morgan: I would like to highlight a particular hardship that UK citizens living in the EEA will face after March 2022. The background is that, in the negotiations over the withdrawal agreement, citizens' rights were a first priority for both sides, and reciprocity was the watchword. In other words, whatever we got, they got, and vice versa. That was a clear, underlying consideration in the negotiations.

However, the right of citizens to return with their families to their country of origin was deemed outside the scope of the negotiations, and the result is a serious

inequality between UK citizens in the EU and EU citizens in the UK, in which, perhaps rather perversely, the discrimination is by the UK against its own citizens. We put forward an amendment in our briefing paper, which has been picked up as amendment 14. This is not the place to analyse the issue in great detail, but I would like to look at the comparison that we draw there between two groups in the case study—a UK citizen living in the EU and an EU citizen living in the UK.

It is a familiar story: a young UK citizen gets on their bike and goes to find work in the EU. They meet someone there, they marry and have a family, and they settle there. At the time when the UK citizen leaves, they have parents in the UK who are in middle to late middle age and are perfectly healthy. The reassurance was there, both for the UK citizen and their parents, that should either parent or both parents become infirm and need to be cared for by their child, there would be no problem about the UK citizen returning with family to look after them.

Years later, say in 2030, one parent might be by herself and need that care. After March 2022, the UK national will be able to return with their EU partner only if their partner can enter under the new points-based system—we have yet to see it, but that is likely to be quite difficult—or if they can meet the minimum income requirement, which is £18,600, as I am sure you all know. It has already been estimated that about 40% of the people living in the UK would be unable to meet that requirement, but matters are complicated for those returning from abroad by the UK rules on what income counts for such purposes. The income of the partner—let us say, in this case, the EU partner—will not count unless they are already in the UK and have been earning that income for six months. So it is a Kafkaesque situation: you cannot get in unless you have the income, but your income counts only if you have already got in.

In practice, the UK national has to earn the minimum income requirement on their own, while at the same time caring for their parent. It will simply be impossible for many people—probably most. In practical terms, the other option is to move the UK parent, who is now elderly and frail, to an unfamiliar country where, for language reasons, they will be unable to speak to the doctors or anyone else. It is well established in the literature that any move, for someone of that age, is difficult. Think how much worse it would be in such conditions; for most people, it is not a serious option.

In practice, it means that UK citizens have to choose between their parents and the family they have made in the EU—a heart-rending choice that nobody should have to make. It is not a choice that a comparable EU citizen of the UK has to face, because they have an absolute right to return to their EU country with a partner they met in the UK, and it is not a requirement that the UK citizen now living in the EU had faced when they moved, because at that time they had a right to do so. It is a case of moving the goalposts long after the event. It is a real worry for many thousands of people in that situation. Be they young or old, most people who have left the UK will have parents back there. It is a worry in the sense that people worry about it; it may not become a practical reality, because who knows what will happen in the future? But it is a real concern, which could be got rid of by passing amendment 14 and removing both the injustice and the discrimination.

Q72 Kate Green (Stretford and Urmston) (Lab): Also, Mr Morgan, if you can hear me, what do you think would be the consequences or the likelihood of British people moving to the European Union if the social security provisions that are currently in place, which allow for aggregation and recognition of contributions, were to change in the future?

Jeremy Morgan: I think it would reduce such migration considerably, because the aggregation of contribution rules are absolutely vital. Most countries, including the UK, have minimum periods of contribution: unless you have contributed for the minimum period or contributed the minimum amount, you do not get any pension at all, so you are making your contribution, possibly without any benefit. The great advantage of the social security co-ordination rules is that they enable you to aggregate periods spent in different countries in the EU, including the UK, and you therefore overcome any such barrier, provided you have worked, in all, long enough to meet the requirements. In Britain, I think, the minimum contribution period is 10 years; in Italy, where I live, it is 20 years. These are substantial barriers.

Q73 Kate Green: Would there be any concern for the UK, if it were to be less likely that people would choose to move to other European countries in the future?

Jeremy Morgan: Concerns in the UK?

Kate Green: Yes.

Jeremy Morgan: All I can say, speaking as one of the many people in Europe who have taken advantage of the ability to move, is that we feel it would be a significantly reduced opportunity for young people in the UK now. Seventy-nine per cent of UK citizens living in Europe at present are of working age or younger. It is not a case, as some stereotypes have it, that we are all pensioners. I happen to be one, but I am one of the minority. Seventy-nine per cent are of working age or younger, who have taken advantage of the opportunities that the movement that we have been able to have has given to us personally but also, in terms of cultural exchange and awareness of practice in different countries, to Britain as a whole. They have established a considerable presence in Europe and it would be a pity for that not to be continued.

Q74 Kate Green: This may not be an issue in which you are involved, but in relation to British owners of properties—second homes, for example—in Europe, the Government are obviously willing to welcome people here on six-month visitor visas but the same, as I understand it, is not necessarily true of other European countries, which would apply the 90 out of 180 days rule in the Schengen arrangements. Would that be a concern for British owners of property in Europe, in your experience?

Jeremy Morgan: Yes, it would, quite clearly. There are also questions as to whether they will be able to own property at all. Again, speaking of Italy, unless some bilateral arrangement is made, it will not be possible for British nationals to buy properties after the end of the transition unless they are resident in Italy. I am sure there are similar provisions in other countries.

Q75 Kate Green: Professor Ryan, in relation to British-born children of Irish nationals, are there any particular concerns that we ought to be aware of in relation to this legislation?

Professor Bernard Ryan: Thank you very much for bringing that up. One of the issues at present is that not only is there a lack of clarity about immigration status, but also it feeds into the lack of clarity as regards acquisition of nationality in two scenarios. One is British-born children—children born to Irish parents, and also Irish citizens wishing to naturalise. Because it is very often not clear on what basis Irish citizens are here, to the extent that it is not clear the question arises, "Are they without time limits and have they ever been in breach of immigration laws?" It is necessary also, from the perspective of the smooth working of British citizenship law, to absolutely tie down and clarify that Irish citizens are here, and on what basis. And yes, it will remove any possible question as regards children of Irish parents being British citizens and as regards access to naturalisation by Irish citizens who want it.

Q76 Mr Robert Goodwill (Scarborough and Whitby) (Con): The Dublin regulations deal with a situation where, for example, an economic migrant or an asylum seeker who present themselves in the UK can be repatriated to the country where they first claimed asylum, and indeed deal with family reunion. Professor Ryan, will this Bill have any implications for the operation of the Dublin arrangements? Could the Bill be improved to enshrine some of its obligations on that statute book, or is that completely unnecessary?

Professor Bernard Ryan: I think you are bringing us into the question of the common travel area as such and its operation. That would be my interpretation of your question. One of the things I would expect to see in the future would be, if the United Kingdom does not stay within the Dublin system with the EU, that there will be an arrangement with the Irish Republic as regards asylum seekers, because of the open border. It would be logical to do that. I personally would prefer it if the common travel area, conceived as immigration control and co-operation between the two states, were on a more transparent, and maybe more statutory, footing—but that is a much bigger question. That is to some extent a different one from the status of Irish citizens, which is what the clause deals with. So, yes, in the end I would like to see the common travel area framed more transparently than it is at present.

Q77 Mr Goodwill: I have a question for British in Europe. You talked about inequalities. Is it not the case that there is currently an inequality whereby EU or EEA citizens living in the UK have better rights than British citizens in terms of bringing spouses into the country, because the £18,600 income rule does not apply? Indeed, if a British citizen can determine that they are resident in the EU under the so-called Surinder Singh case, they can apply to have that rule addressed. Would you say that by addressing that inequality, we are ensuring that British citizens would have the same rights as everyone else, rather than the current unusual situation in which it is easier for an EU citizen to bring a spouse into the UK?

Jeremy Morgan: I did not understand the beginning of the question. I think the question was: would this equalise the rights between EU citizens living in the UK and UK citizens living in the EU? The answer is yes.

Q78 Stuart C. McDonald: Professor Ryan, while we have the opportunity, I want to ask you further about the third group of issues you addressed in your briefing paper—the provisions of the Good Friday agreement. It seems from your paper that the issue is that, in order to assert certain rights—protection against deportation, for example, or perhaps access to some family rights—people would have to assert their British citizenship, which, reading between the lines, you say is not really consistent with the Belfast agreement. Your solution is to put some sort of equivalence in the Bill for all persons of Northern Ireland. Is that a fair summary?

Professor Bernard Ryan: Yes. Actually, I am borrowing that idea to some extent from Alison Harvey, from whom I believe you are hearing evidence later on. She has written a paper for the two human rights commissions in Ireland on the birthright provisions in the Belfast agreement, and her eventual solution is that people of Northern Ireland should be granted the right of abode—the status given to British citizens—which takes away their need to identify as British in order to get the equivalent outcomes. Both the things I raised—family sponsorship and deportation/exclusion—would be addressed by that route. I come at it from thinking about Irish citizens or people identifying as Irish citizens and how they should be protected, so I would say that an alternative route is to focus on that and somehow put in additional protections for the people of Northern Ireland to address the Irish citizens within them.

The Chair: Thank you very much. That concludes our session with this panel of our witnesses, who I thank for coming here today or speaking via audio link.

Examination of Witnesses

Jill Rutter and David Goodhart gave evidence.

2.35 pm

The Chair: Welcome to our second panel of witnesses. We are going to hear oral evidence from British Future and Policy Exchange; thank you very much to our witnesses for coming today. We have until 3.20 pm at the latest for this evidence session. Can the witnesses please introduce themselves for the record?

Jill Rutter: I am Jill Rutter from British Future.

David Goodhart: I am David Goodhart from Policy Exchange.

The Chair: You are very welcome. As we normally do, the Minister will start by asking you a couple of questions, and then the Opposition spokesman, and then other Members will come in. Perhaps other Members who wish to ask questions could intimate to the Clerk that they would like to ask a question.

Q79 Kevin Foster: I have two questions, one for each witness; I will ask them both and then we can just cover them off at the same time.

The first question is to Mr Goodhart. I noticed that the January 2018 report from Policy Exchange, "Immigration after Brexit", welcomed the ending of free movement. As you will appreciate, the main provision of the Bill is to alter UK law to remove the provisions for free movement. I wondered how you saw that, and how you saw the system that will seek to replace it, which we confirmed in a policy statement in February.

My question to Ms Rutter is this: given, obviously, the area that she covers in her group's interest, I wonder how she sees the working of the European settlement

scheme, which has now had 3.5 million applications, in terms of securing the continuing rights of EU citizens in the UK, or EEA citizens in the UK to be exact, under the withdrawal agreement.

David Goodhart: A general comment on the Bill is that I think it is broadly welcome. Part of the motivation behind Brexit, and perhaps the 2019 election too, was a more moderate level of immigration. It is true that immigration has dropped down the list of things that people worry about, for obvious reasons, even before the covid crisis, but I think that was partly because people saw that the Government were actually doing something about it. And I think the Government have broadly got it right to focus very much on restricting lower-skill immigration.

I think the higher-skill immigration channels are probably somewhat more liberal even than the Migration Advisory Committee envisaged. I mean, there has been a big liberalisation both on the salary threshold and on the qualification threshold. Bringing the qualification threshold down from degree level to A-level is a big move, and it will be interesting to see whether those changes achieve the goal of an overall lower level of immigration. I think the perfectly reasonable and democratically willed goal is a lower equilibrium level of immigration without damaging the economy. That is the goal that the Government are hoping to achieve, and I think the measures they have introduced are likely to achieve that.

I think I would probably have gone for slightly tighter restrictions, perhaps keeping the degree-level qualification and then having more exemptions—the type of exemptions that we see in the agricultural sector and so on—because Governments have made promises about immigration many times in the last 15 years or so, and they have very clearly said that they want the overall levels to be lower. I think it is quite likely that in a couple of years' time they will not really be significantly lower, and then that will set off a whole—but then we will have the levers, at least, to do something about that.

Jill Rutter: I would like to make some general points before coming to your question on the EU settlement scheme. I am going to draw from the National Conversation on Immigration, which is the biggest ever public engagement activity on this subject and included a nationally representative survey and discussions in 60 locations across the UK, including a good few of your constituencies.

Although public confidence in the ability of successive Governments to manage the immigration system has been and still remains low, most people are balancers who see the pressures and gains of migration. Generally, most people want immigration to be controlled, they want migrants who come here to make a contribution and they want everybody to be treated fairly. However, control means different things to different people. It can be about UK sovereignty, controlling numbers, a selective immigration system and enforcement.

There are two further points in terms of public confidence. Immigration is a national issue that people see through a local lens, so what happens locally is quite important, and people's understanding of immigration policy is very top line. They do not know the details of our policy, such as the detail of the EU settlement scheme.

Treating people fairly is hard-wired into most people. Most people want to see fair play and humanity. They want immigration to be controlled, but that has to be fair, and you do not win support by sounding nasty. In terms of the EU settlement scheme, nobody wants people who are here to be sent home. Towards the end of the National Conversation, when Windrush was an issue, people also talked about the unfairness of the Windrush scheme.

In terms of the Bill, the devil is in the detail and policy will be set through immigration rules, but areas to look at perhaps include people who have been awarded pre-settled status being automatically granted settled status, rather than having to apply again, and also thinking about citizenship. The public find it very reassuring when people make the UK their home and then take up British citizenship. That can sound a bit counterintuitive, but there is a preference for people becoming citizens, rather than having guest-worker schemes. On immigration policy, you could look at how one can make the acquisition of citizenship smoother and easier—by reviewing the cost of citizenship, for example.

Q80 Holly Lynch: More broadly, through your work at Policy Exchange and British Future, how have you seen public attitudes towards immigration change over the past 12 months? David, may I come to you first?

David Goodhart: As I just mentioned, it has certainly dropped down in terms of priority and level of anxiety, but pretty consistently over the past 20-odd years about two thirds of the public have said that immigration is either too high or much too high. That may have come down a little bit recently. It has certainly come down in terms of priority, partly because other things have been happening, even prior to covid. It is also because of a feeling that, with Brexit finally happening and the end of free movement from the European Union, we would be in control of it again, so a source of anxiety was removed.

Jill Rutter: To echo what David said, immigration has certainly dropped down of the list of issues of public concern. It is much less salient. Ipsos MORI has also tracked the same group of people over a five-year period, and has seen a slight warming of attitudes. That is evident in other polling data, too.

I think the reason for that is, first of all, as David said, that people feel that now we are leaving the European Union, the UK has control over immigration from the EU. But also the referendum itself enabled a much more open, public debate about immigration in pubs and among groups of friends. Inevitably, in that discussion, there is a kind of moderation of our attitudes. That is a reason, too. Again, there is a displacement effect: covid-19 has pushed immigration off the news agenda.

Q81 Holly Lynch: David, you have already touched on this a little bit. Some sectors will be impacted by the end of free movement harder than others. Some of those have also been thrust into the spotlight because of the coronavirus crisis. To what extent is the MAC really able to respond to some of those workforce issues? How much more dynamic would it need to be to respond to them quickly?

David Goodhart: One third of food manufacturing's employees are from the EU. That went up from virtually nothing in 2004—it is extraordinary what has happened in food manufacturing. In hospitality the figure is about

20%. The NHS has some special exemptions, but overall its figure is about 5% or 6%—rather higher on doctors than on nurses in percentage terms. Hospitality will be in a peculiar state anyway because of covid-19, so perhaps that is not such a big issue.

Do not forget, these people are not disappearing; it is incremental as people leave over time. That will be interesting to see. It may be that covid-19 will prompt EU citizens to leave in larger numbers. I do not know, Jill, whether you know if there has been any research in the past few weeks on that. That could be a problem, I guess.

Assuming that that will not change things hugely, the whole point of ending free movement is that food manufacturers either invest more in automation or they have to make the jobs at the bottom end of the labour market more attractive to people who are already here, which does not seem to me to be a foolish goal. That means that they will have to pay the jobs better and make them more pleasant in some way. That is surely a good thing.

Q82 Holly Lynch: We have heard this morning from the MAC that it is the organisation tasked with assessing workforce shortages. That then feeds into our immigration strategy and not necessarily our domestic skills strategy. That is a problem that we need to think about how to reconcile.

David Goodhart: I don't quite get that, sorry.

Holly Lynch: If the MAC, as an organisation, is assessing where we have workforce shortages, that only informs our immigration approach. It should also be informing our domestic skills strategy.

David Goodhart: Well, there are lots of organisations that are constantly looking at recruitment problems. There is a whole industry of it, as you know.

Q83 Holly Lynch: But do the same organisations shape Government policy in the way that the MAC would have the ability to do?

David Goodhart: We do not really have a skills policy in this country. Where do we spend most of our money on education and training, post school? On sending almost 50% of school leavers to three-year or four-year residential university courses, which they choose themselves, with absolutely no bearing on the needs of the economy or their own future employment needs. There is huge investment in the university sector; universities are private bodies that compete with each other. We do not have a national skills policy. We introduced the apprenticeship levy, but still less than 10% of school leavers go into apprenticeships—this is a different subject.

One of the potential upsides of the end of free movement is that it is going to help to concentrate our minds on getting better alignment of what we spend on education and training and what people and the economy need. Obviously, the covid-19 crisis will feed into that. I have been involved in some work at Policy Exchange on reviving the idea of the individual learning account and having a more ambitious version of it for people over the age of 21 who want to train or retrain in some area.

There is a very good case for suspending the apprenticeship levy and just having a much simpler system in which you have 50% of the apprenticeship paid for by the employer and 50% by the state, and extending it to much smaller employers, too. This is a slightly separate issue, I know.

Q84 Holly Lynch: Can I put the same question to Jill Rutter? What would need to change so that the MAC was really equipped to respond to these workforce issues?

Jill Rutter: I fully agree that skills policy and immigration policy need to be much more closely aligned. Whether the MAC is the best instrument to do it, given its current remit, I do not know. There are arguments for extending the MAC and bringing in other expertise. At the moment it is very labour market economist-focused—its remit has largely focused on labour market impacts. There are arguments for expanding the MAC.

I also think it is worth looking at the migration skills surcharge, which is a very blunt instrument. It applies to non-EU migrants; employers who bring in non-EU migrants have to pay a surcharge. The money just disappears into the Treasury, and I do not think it incentivises training at all, so that is something to look at as well.

Q85 Stuart C. McDonald: Can I ask a broad question? It will be a slightly controversial one in these surroundings. To what extent are changes in public attitudes to migration over the last 10 years related to politics and the media? Is it not quite striking that towards the middle of the last decade was when public concern about migration was at its highest, and that is probably when the political debate, if I can call it that, about migration was at its height? The tailing off in public concern also tallies with the fact that, since the referendum, migration has not been on the front page of every newspaper or at the forefront of political debate.

Jill Rutter: A whole load of factors influence public opinion. Our national media and political debates obviously have a hugely important impact, but so does what happens locally and your own personal contact with migrants. If you have friends who are migrants and refugees, you have another reference point to add to what is going on and what is being played out on the internet or on social media.

Q86 Stuart C. McDonald: Does that not illustrate exactly what I am saying about personal experience? Sometimes concern about migration is lowest in places where there are significant levels of migration. If you do not have that personal experience, you must be relying much more on the media, political debate and so on.

Jill Rutter: Absolutely, and that was very evident in the polling that we did: those with no personal contact with migrants and refugees as friends or work colleagues had more negative opinions. I think that that accounts for the difference in attitudes between some of our more diverse cities and our less diverse towns, but political discourse and media stories have an impact as well.

Q87 Stuart C. McDonald: Any thoughts on that, Mr Goodhart?

David Goodhart: I see what you are getting at. I think that there is some truth in the argument that when it is on the front pages of the newspapers every day, it generates a sort of generalised anxiety that is perhaps

not justified. But actually if you look at the historic trend from the late '90s, when immigration started really taking off again, it is remarkable how anxiety about immigration and actual immigration levels really do track each other very closely, although that may have diverged a bit recently.

I also think it is not really fair how it is often said in passing how xenophobic our debate about immigration has been. I do not think that our debate about immigration has been remotely xenophobic.

Q88 Stuart C. McDonald: Really? At any time?

David Goodhart: Yes, really. Almost every time somebody talks about immigration and restricting it, they also say in parentheses how marvellous immigration is.

Q89 Stuart C. McDonald: But we are talking about a decade of "Go home" vans, the Windrush scandal—

David Goodhart: "Go home" vans lasted about five seconds—

Q90 Stuart C. McDonald: Posters during the Brexit referendum, with refugees—

David Goodhart—and that was against illegal immigration. You are not in favour of illegal immigration, are you? You are in favour of illegal immigrants going home.

Q91 Stuart C. McDonald: It was about the free movement of people. The poster that was put up had absolutely no relation to the EU referendum at all, and it was xenophobic.

David Goodhart: No, I don't think that was xenophobic.

Q92 Stuart C. McDonald: But what was the point of it? What was the point of that poster, if it was not xenophobic? It had nothing to do with the free movement of people. What was the point of putting up that picture?

David Goodhart: It was encouraging illegal immigrants to contact the authorities to get a grant in order to go home.

Q93 Stuart C. McDonald: You are talking about the "Go home" vans now. I was talking about the posters that were put up by certain political parties during the referendum.

David Goodhart: Oh, the Nigel Farage—okay, there is a sort of xenophobic tinge to some of it, but this was a very minority part even of the leave campaign. I think there is an interesting point about opinion in Scotland, which is somewhat different, partly because there has been a somewhat different rhetoric in Scotland.

Actually, I think there is a very good case for having a different visa regime in Scotland once this Bill becomes law. I know that the Government rather set their face against that at the moment, but I think it would remove a source of antagonism between the Scottish Government and the UK Government, and it ought to be perfectly easy to manage, so long as we have a proper internal status checking system—something that is sometimes called the hostile environment. It is not the hostile environment; it is a system of checking people's status. A separate system for Scotland works only if you have a reliable status checking system—by employers particularly, but also by landlords and others. There is a really good case for it but, as I say, it only works if you have a proper status checking system.

Q94 Stuart C. McDonald: I agree with you as regards employers, but we will come to that debate a little later.

Jill Rutter, may we come back to you? Is there not also an issue about the fact that, compared with other countries—Canada being a particular example—very little effort has ever been made by UK Governments on an integration strategy or on investing in smoothing over some of the challenges that arise because of migration in particular pockets of the country? We had a small fund—I cannot even remember the name—that Gordon Brown introduced, which was scrapped by Theresa May, only for her to introduce a small pocket fund called the controlling migration fund. At best, is that half-hearted compared with what other countries have attempted?

Jill Rutter: Absolutely. Our getting integration right is core to building public confidence in the immigration system. In England, we have an integrated communities Green Paper. Sajid Javid, as a former Ministry of Housing, Communities and Local Government Minister, Home Secretary and Chancellor, is a champion of that but, since his departure, unfortunately, we have not had high-level champions in Government. For a period, we had no integration Minister at all.

Much of integration, too, involves devolved powers—education and so on—and I think more needs to be done by the devolved Administrations in Belfast, Cardiff and Edinburgh. Scotland has a refugee integration strategy, but it is very much about refugees, whereas integration properly as a two-way relationship is an "everybody" issue. Certainly, more action is needed there, in all the Administrations.

As regards the Bill, making immigration and integration policy coherent is something that you should consider—making the acquisition of citizenship easier, allowing asylum seekers who have been here for a long time to integrate and work, and incentivising integration through the new points-based system. For example, more points could be awarded to people who speak English, whatever their job will be in the UK—so using the points-based system to incentivise integration.

Q95 Stuart C. McDonald: Mr Goodhart, should we all be doing more to have a strategy for integration, for citizenship?

David Goodhart: Yes. That is something I have been interested in for a very long time. We should almost have an immigration and integration Department. The problem is, integration is very easy to talk about but, in a liberal society, it is very difficult to tell people where to live or to send their children to school. There are parts of the country where integration is a real problem; there are other parts of the country where it is not at all. You mentioned Canada, but it is a slightly special case; compared with comparable European countries, we do not do too badly.

The thing that I worry about at the moment is schools. Integration in schools is going backwards in most parts of England. In other words, schools are becoming less well integrated. In any given town, you are more likely to have a school that is overwhelmingly one ethnic minority, or ethnic minorities in general, and then another,

almost entirely white school. That problem is getting worse, not better. That is something that is in our power to do something about.

We have ways of counting this, of measuring it. We have where people live and where they go to school, and we can measure that by different ethnic group. We can tell which areas are getting better, and which worse. It would be a really helpful thing, not necessarily every year, but every two or three years, to publish some kind of list of what has been happening in different places—some kind of integration/segregation list of local authorities. That would be a huge incentive for all the most segregated local authorities not to be right at the bottom—not to be the most segregated local authority in the country. There are things you can do, and I think we should focus attention on schools, because it is possible to play with boundaries and nudge people into a better school mix.

Q96 Mr Goodwill: Thank you very much, everyone. This session so far has been useful in exploring what factors influence public opinion on immigration, which of course becomes a very political issue in a referendum or a general election; in fact, that was Stuart's line of questioning. How much does the media affect that, and how much is an altruistic wish to do the best thing for the UK economy?

Jill, I note that you are a co-author of a document published in September 2018, "The National Conversation on Immigration". I wonder how much that document reflected some of the feeling in the north of England and parts of the country that maybe do not see immigration as allowing somebody to make your coffee in the morning, clean your house or work as your au pair; those that, as we heard this morning, see it more as a limitless supply of Romanians and Bulgarians who can fill your job if you want a pay rise. Do we have a north-south divide on attitudes to immigration, and do you think that was a factor in the fall of red wall seats at the last general election?

Jill Rutter: It is not so much a north-south divide as an inner city-town divide, or a city-town divide. There are some differences in attitudes between the more diverse cities and the less diverse towns, and that can be partly put down to social contact, but there are other factors. In some of those so-called red wall towns, people have relatively little social contact with migrants, and where they do, people have perhaps come to do specific jobs in specific industries. For example, the distribution sector is heavily reliant on a migrant workforce, and poor management of some of those local issues has perhaps impacted on public concerns.

In England, we have the controlling migration fund, which is quite a successful way of dealing with those local impacts: I think its money has been well spent. However, that funding will end, and no successor to that fund has yet been announced. It is vital that that fund is continued, and that its funding is increased if we can manage to do so.

David Goodhart: One of the problems with free movement was that it was so difficult to plan infrastructure: you had huge waves of immigration, and then it fell. We had that experience in 2011-12, when immigration came right down—I seem to remember that the Government almost hit their 100,000 target; net immigration was about 130,000 or 140,000—and then went whizzing up again when the impact of the eurozone crisis hit. That may not be a huge amount when spread across the whole country or lots of big urban centres, but it makes it very difficult to plan your doctors' surgeries, your school intakes and so on at a micro level. That has been one of the really big problems with free movement, and I think it ought to be more manageable in the future. That has been one of the really big problems with free movement, and I think it ought to be more manageable in the future.

Q97 Mr Goodwill: Will the Bill give us the power to do that more?

David Goodhart: It will make flows more predictable, because they will be under our control. If, as I was saying right at the beginning, it turns out that the system is, in a sense, too liberal, it can be made less liberal and the numbers can be brought down, because people coming in need to have a visa; they are not coming in willy-nilly.

This also has an impact on the integration story. If your immigration going forward is overwhelmingly skilled workers and students—there will still be areas like asylum where this does not count—you are talking about mainly highly skilled people who will, at the very least, speak English well, which is a pretty important thing when it comes to integration.

Q98 Taiwo Owatemi (Coventry North West) (Lab): My first question is to British Future. You said earlier that the public's biggest concern in immigration is ensuring that they are treated fairly. Do you believe that the Bill will allow EU citizens to be treated fairly?

Jill Rutter: This is very much a skeleton Bill, and most immigration policy is determined in immigration rules. It is an issue in itself in that there have been thousands and thousands of immigration rule changes since 2010. The rules are presented to Parliament, which can only accept or reject them. No MP—even those well versed in immigration policy—can keep up with all the changes in the rules. We need to think about root-and branch-immigration reform. I do not think the current commission on simplifying the immigration rules will come up with the answer.

Perhaps we should look at what social security does. Social security is another complex area where most policy is determined in secondary legislation. There is the Social Security Advisory Committee—independent experts who scrutinise the law and make recommendations in plain English to Parliament—but we need a proper system of scrutiny. I cannot really answer your question about the Bill itself, because most of what will happen will be determined in either the rules or the operation of immigration law in the Home Office.

The last thing to say is that you cannot have an efficient immigration system on the cheap. Britain does very well in the speed at which it processes visas and citizenship cases compared with many other countries, but it performs badly when it comes to asylum cases. We need a properly resourced Home Office and for staff to be trained and supported, too.

Q99 Taiwo Owatemi: Given that the Bill will affect a large number of EU nationals living in the UK, how can the Government ensure that those affected are aware about the effects of the Bill on their daily lives?

Jill Rutter: The Government have invested quite a lot in terms of informing people about the EU settlement scheme. However, that information campaign needs to be extended, particularly when we come close to the cut-off date, and it must be methodical. There should be an information campaign, but we should also use employers and councils, people who actually have contact with EU citizens, to disseminate information. Employers could do a lot with their work force.

David Goodhart: May I make a point on this? One thing the Government should be looking out for down the road is that it is almost certainly the case that a few thousand people, possibly even tens of thousands of people, will not be captured by the EU registration scheme for whatever reason. The truth is that we are going to have a de facto amnesty for those people. That sets a precedent, and I imagine there will be all sorts of challenges, in that people representing the interests of non-EU illegal immigrants are going to say, "Well, these people are in effect illegal now, and yet you're giving them an amnesty. What about us?" There are estimated to be about 1 million illegal immigrants in this country, so there is a potentially a legal minefield ahead of us on that one.

The Chair: Right. I think that ends our session. Thank you very much to our witnesses for coming and giving your evidence. We are very grateful.

Examination of Witnesses

Bella Sankey and Adrian Berry gave evidence.

3.17 pm

The Chair: Good afternoon and welcome to this Public Bill Committee. We will now hear oral evidence from Detention Action and the Immigration Law Practitioners Association. Thank you for coming today; we have until 4 pm. Would you like to introduce yourselves for the sake of the record, please?

Bella Sankey: My name is Bella Sankey and I am the director of Detention Action.

Adrian Berry: My name is Adrian Berry. I am a barrister and chair of the Immigration Law Practitioners Association.

The Chair: We will start with a question from the Minister, then the Opposition spokesman, and then other colleagues will come in as they wish.

Q100 Kevin Foster: I will start with a question to Mr Berry. You will be aware that the Law Commission published its report on simplifying the immigration rules. One of the places we want to go to with the changes in the Bill is having a single set of migration rules. What opportunities do you see that presenting, and what is your view so far on the response that has gone out in terms of simplifying and where you see that further work could be done?

Adrian Berry: I do not think that simplifying the immigration rules has much impact on inbound migration per se. It is obviously a good thing from the point of view of good rule making and from a user perspective. The more pressing question is how you integrate the intention to create free trade agreements with the EU and with other countries, and the migration routes there, with the Home Office proposals from January 2020. We have the Home Office paper on the future of immigration, and then we have a parallel universe where there are free trade agreements with other migration routes and mobility rates contained in them—not just with the EU, but the proposed ones with Australia, New Zealand and the United States, drawing on precedents from existing EU free trade agreements with Korea, Japan and Canada. There appears to be no joined-up thinking in Government about what impact those mobility routes have on the Home Office proposals of January 2020. It is very important and necessary and urgent to see how that joined-up economic migration regime is going to work, and I have yet to see a Government paper on that.

Q101 Kevin Foster: Perhaps slightly later we can talk about international agreement. Obviously, the other aspect of this is the social security co-ordination clauses. There are negotiations going on, and there is a range of potential outcomes. Do you have any particular views about that clause?

Adrian Berry: On clause 5, you already have powers to amend ineffective retained EU law under section 8 of the European Union (Withdrawal) Act 2018, so you can make regulations under Henry VIII powers to deal with any deficiencies in retained EU law and social security. You have given yourself additional powers under section 13 of the European Union (Withdrawal Agreement) Act 2020 to make regulations for social security co-ordination, so you already have two sets of Henry VIII powers. You are currently negotiating a third social security treaty, annexed to the draft free trade agreement. If that is agreed with the EU, you will have another Act of Parliament that you will need to implement that. Why do you need a fourth set in clause 5? If there is anything left in social security law that you have not covered under the array of Henry VIII powers that you are arming yourselves with, primary legislation and the scrutiny of MPs in this room at the highest level is required.

Q102 Kevin Foster: And do you have any view on the fact that clause 5 will be stretched into devolved competence, subject to legislative consent motions? Is that part of your consideration at all?

Adrian Berry: It is devolved because it is a devolved power under the Scotland Act 1998.

Q103 Kevin Foster: Northern Ireland as well.

Adrian Berry: Yes, of course, but there needs to be primary legislation in whatever format, in my view, and not statutory instruments using the affirmative procedure.

Q104 Holly Lynch: Bella Sankey, perhaps I can come to you first. Will you outline for us what your hopes for change are, in terms of detention, through this piece of legislation? Will you also comment on David Goodhart's remarks that those who, for one reason or another, have not applied for pre-settled or settled status through the EU settlement scheme may find themselves in a very precarious immigration position, and could find themselves in detention? What are the implications for those people, and what might need to change?

Bella Sankey: Thanks very much, Ms Lynch. For some time now, Detention Action has been working with a coalition of civil society organisations, including

the Bar Council, the Law Society, the Equality and Human Rights Commission, Stonewall and others, and with MPs across the divide—Conservative, Democratic Unionist Party, Labour, SNP and Liberal Democrat MPs—to build a consensus around the idea that there needs to be a strict statutory time limit on immigration detention.

Immigration detention is a peculiarity of our public policy, in that there is no time limit. Unlike the criminal justice system or the mental health system, you can currently be detained indefinitely for months or years, and redetained indefinitely for months or years, without any statutory time limit in place if you are subject to immigration control.

It is a sweeping power that was introduced in 1971, when a series of immigration Acts acted to limit immigration from Commonwealth countries with the explicit intention of trying to reduce black and brown migration to the UK. The system was set up then, and has not been properly amended or looked at by Parliament. From the 1970s right up until the 1990s, a handful of people were detained, but it is now the case that thousands and thousands of people are detained each year. At present, as we sit here, 12 people in immigration detention have been there for more than one year.

The system is arbitrary and cruel. There is a crisis of self-harm in the system. Every day, my caseworkers speak to people who have suicidal ideation as a result of the indefinite nature of their detention. That is what everyone who has experienced the system will tell you: it is the indefinite nature that creates psychological torture and uncertainty. That means that people begin to lose the will to go on and live. We are seeking to implement a time limit through this Bill.

The Chair: Order. Can I just say that this is a Public Bill Committee, not a Select Committee, so we have to be focused laser-like on the Bill? I remind witnesses and questioners of that very important point. We do not need any general discussion of the issues around it; we are just talking about the Bill.

Q105 Holly Lynch: Further to that, if people have not applied to the EU settlement scheme by the time it closes at the end of June next year, people will potentially be a situation where they could be in detention centre.

Bella Sankey: Absolutely, and even if there is a very small error rate and there is perfect communication in that system, which I think we can all accept given the scale of the challenge is going to be very unlikely, those people will be subject to indefinite detention under our system. The link with the Bill is that the Bill does not put in place any time limit at all for EEA nationals or anyone else.

Q106 Holly Lynch: Thank you very much.

Adrian Berry, you have already outlined some of your concerns about the sweeping Henry VIII powers in the Bill. Would it be fair to say that not only does that restrict the ability of Parliament to scrutinise further developments in immigration policy and immigration law, but that it provides a great degree of uncertainty for immigration lawyers, who are working with people in the system about what those future policies and approaches might look like?

Adrian Berry: Yes, that would be fair. What has happened—to give you an example—is that EU law has been domesticated and retained under the European Union (Withdrawal) Act 2018, and then there are clauses in the Bill that say that the law continues to apply, except in so far as it is inconsistent with immigration functions or immigration Acts. So you end up with law, which is good law in this country, but it may not apply if someone judges it to be inconsistent.

We look to the law to know what it means. We look for legal certainty and for good administration. In clause 5(5), and in paragraph 4(1) and 4(2) of schedule 1, you find the same legislative drafting technique used—retained EU law applies except in so far it is inconsistent with—and then a general statement—immigration Acts or an immigration function or regulations made. How is the ordinary person, never mind the legislator, to know whether the law is good or not in a particular area if you draft like that? You need to make better laws. Make it certain, and put on the face of the Bill those things that you think are going to be disapplied because they are inconsistent with immigration provisions. There must be a laundry list in the Home Office of these provisions and it would be better if they are expressed in the schedule to the Bill.

Q107 Holly Lynch: So the responsible thing for an Opposition to do would be to ask the Government to be explicit in putting all of those implications and those potential changes in the Bill?

Adrian Berry: Yes, because service users—us, the citizens—need to know what the law means. We are entitled to understand that. People who are affected by it need to know what it is. It is not good rule making to do it like this.

Q108 Stuart C. McDonald: Mr Berry, we have just heard some discussion about the possibility of citizens eligible for the settled status scheme not applying for it. For what reasons will people miss the deadline? Can you give us a flavour of why this might be a significant problem?

Adrian Berry: They might be leading disordered lives. They might have things happening in their lives that concentrate their minds elsewhere—family difficulties, work difficulties. They might be affected by coronavirus. They might have mental health impairments. They might be long-term sick. They might be old. They might be demented. There is a whole host of reasons that are part of the ordinary warp and weft of life why somebody might miss a deadline. Not everybody has my focus on the interests of the European Union (Withdrawal) Act and its implementing provisions. Ordinary people do not. There needs to be a benevolent regime that allows them to make late applications.

Q109 Stuart C. McDonald: How would a benevolent regime work? Do you have any ideas about how that could be done or how best it could be done?

Adrian Berry: Yes. You apply late; they grant it. It is that simple. Why would you not do that? Somebody wants to regularise their status and they have withdrawal agreement rights—why muck around?

Q110 Stuart C. McDonald: Okay. You spoke about the Henry VIII powers in relation to social security. You have touched on them a little bit in terms of immigration.

Is this just par for the course—a Government helping themselves to sweeping immigration powers—not that that makes it any better, or is this a pretty extreme example?

Adrian Berry: The Government set their own Executive policy for making immigration rules anyway; the Bill does not change that. What the Bill does do is take away your powers to make primary legislation and give them to Ministers by way of regulations. If you want to reverse the way in which powers are distributed in the constitution, that is a matter for you, but personally speaking I think it is a bad idea.

Q111 Stuart C. McDonald: As we heard earlier, immigration rules have been revised thousands of times in the last 10 years. The defence of how we do it appears to be that it allows the Government to respond quickly. Is that in any way an adequate defence? How can we marry up the need for scrutiny with the need to act quickly at times?

Adrian Berry: The Bill does not change the situation that immigration rules are laid before Parliament under section 3 of the Immigration Act 1971. That continues anyway. What the Bill is doing is something discrete and different. It gives Ministers the power to amend primary legislation and retained EU law, which are two separate things. At the moment, the Home Secretary lays immigration rules before Parliament, and they deal with executive policy, not with laws. So, although they are called immigration rules, strictly speaking they are not legislation. The difference here is that this is a paragraph on legislation.

Q112 Stuart C. McDonald: I will just pick up on what you said a little earlier about mobility routes in some of the free trade negotiations that are going on. Can you just expand a little on what you understand is being negotiated in some of those agreements and on what those mobility arrangements might look like?

Adrian Berry: The Home Office position and the UK Government position is to draw on precedent-based treaties that the EU has with Canada, Japan and South Korea, and those treaties have mobility routes that reflect General Agreement on Trade in Services mode 4 commitments for persons who are coming here as short-term business visitors, key personnel, key senior staff and specialists, and also routes in free trade agreements for independent professionals, contractual suppliers and so on. All of those routes would be for 12 to 24 months; none of them would lead to settlement or permanent residence for short-term business visitors.

The UK's ambition is that it will attract highly skilled people in that way, but only on a temporary basis, and if you are creating an economic migration regime in the Home Office paper, as was trailed in January, and you make no mention of that, it is some omission in the overall scheme, because you need to understand how it works.

The second thing that you really need to clearly understand is that the UK is like a little moon next to the planet Earth of the EU on this. There is a 450-million person territory next door to us that is setting its own economic migration rules and it is competing with us, and if you do not bear in mind what will happen in terms of economic migration in the EU—that you can come in for service provision or for work and have a route to settlement—and you are still creating this inbound regime into the UK, then you are not thinking about the impact of living next door to a much larger jurisdiction, and it is critical in the national interest that you do so.

Q113 Stuart C. McDonald: Ms Sankey, may I turn to you? You have spoken already about how rules around detention will apply to people impacted by the Bill. May I ask you about deportation powers, which became topical a couple of months back, with flights to Jamaica in particular being a source of controversy? How will the Bill impact deportation powers in relation to EU nationals, and what would you like to see changed about it?

Bella Sankey: Thanks very much for the question. The Bill will mean that, for the first time, EU citizens will have the deportation laws that currently apply to non-EU citizens applied to them. Those rules are blunt, they are harsh and they are dehumanising. In 2007, the last Labour Government brought in a power of mandatory deportation for anybody who receives a sentence of 12 months or longer. In 2014, when Theresa May was Home Secretary, the coalition Government introduced additional legislation that meant that if somebody was seeking to resist deportation on the grounds that they had a loving parental relationship with a child in the UK, or a child who was a British citizen, they would only be able to do so if the effect of their deportation would have an unduly harsh impact on that child.

The Home Office defines "unduly harsh" as "excessively cruel", so at present it is insufficient, if you are a non-EEA national, to show that the impact on your child would be cruel; you need to show excessive cruelty. The effect of that provision means that child cruelty is legislated into our primary legislation. It means that the courts, when they are making these decisions, are forced to allow a deportation to go ahead even though they may find on the evidence that serious psychological harm will be done to a child. The courts are clearly very uncomfortable about that and have said explicitly, in terms, that immigration law can no longer be reconciled with family law principles, because family law principles require the best interests of a child to be taken into account in all public decision making.

That is the situation as it stands. The impact of these laws over the past decade or more has been to cause untold trauma and pain, particularly to Britain's black community, who are disproportionately impacted because, as is well-known, they are a community that is over-represented in the criminal justice system and subject to social and economic deprivation.

The issue from earlier this year that you mention was, of course, a charter flight to Jamaica. The majority of the people booked on to that flight by the Home Office had drugs convictions—a lot of them when they were teenagers or a long time ago. The law as it stands did not allow any of that to be taken into account, because of the automatic and mandatory power to seek deportation of those individuals.

A number of our clients were victims of modern-day slavery, grooming and trafficking, but again, they found themselves in detention without an opportunity to raise the fact that they had been subjected to that, and of course the large majority of them had been in the UK since they were two or three years old and had been in

primary school here and secondary school here. I see the Minister does not seem to be agreeing with this account.

Kevin Foster: No.

Bella Sankey: But it is all there on the public record. As I say, the law as it stands has applied in a blunt and discriminatory way against the black community, and this Bill now proposes to extend those harsh provisions to all EU citizens.

I spoke only recently to a woman who was actually removed to Poland on 30 April, leaving behind an 11-year-old child here. She felt that the system had already become unbearable. She was taken into detention following a conviction for theft, and when she was in Yarl's Wood, without legal aid and without help and assistance, she decided that it would be easier for her and less traumatic for her 11-year-old son if she just went back to Poland. This Bill is going to bring about thousands more Sandras, thousands more family separations, in completely unjust circumstances.

Q114 Mr Goodwill: We have heard already that we need better law, and obviously this will be an opportunity to have better law. It is interesting to note that when the Home Office director general of immigration enforcement left his post and went public in January, he made the point that our immigration system largely fails to deal with those who are here illegally, and he pointed out that over 75% of judicial review applications made to the administrative court were for asylum and immigration matters. According to the most recent figures that he could get, only 54 of the 8,649 applications actually succeeded.

If, at the moment, the law is being used to actually frustrate the legal process of removing people who have no right to be in the UK, do we need to improve the law to make that work better? I am sure you would agree that it is not unreasonable to expect people who have committed serious criminal offences and have no right to be in the UK to be removed under the law of the land.

Adrian Berry: I believe in the rule of law. I think it is a good thing if we have judicial scrutiny of executive decisions, including deportation, removal and detention decisions, in order to ensure that they are lawful and consistent with the values that we have embedded in our Human Rights Act provisions and in our civil liberties provisions and statutes.

To answer your question directly, a lot of judicial reviews are settled on issuing, because the Home Office realises that it has made a mistake and it compromises on them. The second stage at which they are settled is when permission to apply for judicial review is granted and the Home Office realises that it has made a mistake and it compromises; it settles and pays the costs, on a polluter-pays principle. Very few judicial reviews go the distance to a substantive hearing, so you have to be very, very careful in measuring the data between the number of claims lodged and the number of claims that are determined at a final hearing.

What we do know is that judges routinely grant injunctions against removals, on the basis that they see a point in holding the ring in order to determine the true and lawful position in the situation. Whatever someone has done, all their interests—including the public policy interest in their expulsion and, on occasion, the public policy interest in their retention—are to be weighed up before a lawful decision is made. Judicial review is one check on it, in the absence of a proper full range of appeals, that allows that to take place.

Q115 Mr Goodwill: Thank you. Bella, do you want to comment on that one?

Bella Sankey: The thing that is striking about this Bill is that it is being brought forward following two previous Immigration Bills, in 2014 and 2016, that implemented the hostile environment. Since those Bills came on to the statute book, of course, the Windrush scandal has come to national attention, yet in spite of that, every single aspect of the hostile environment remains in place, and there is nothing in this Bill to address that. Worse still, the Bill now extends the hostile environment to EU citizens. The hostile environment has been found in terms, in the Court of Appeal earlier this year, to lead directly to racial discrimination. Yet, as I say, there is no effort in the Bill to deal with the fact that, as things stand, we have imported immigration control into the country—employers, bank managers and landlords are all expected to be immigration officers—and we have made this country a much less pleasant place to live if you do not look British, if you do not sound British, or if you do not have a British name.

It is quite shocking that, following the Windrush scandal, this new piece of immigration legislation has been brought to Parliament without any attempt to deal with the very clear problems in the existing immigration regime.

Q116 Mr Goodwill: Do you not agree, though, that the current EU regime that we operate in is actually very discriminatory against black people, given that the majority of people in the European Union are white people? We are going to extend the same rights to people from African countries, India, Pakistan and the developing world. At the moment, do you not agree that it is a very discriminatory system, giving rights to people from EU countries, or EEA countries, that are not extended in the same way to those from other countries, where predominantly people may have different coloured skin?

Bella Sankey: I welcome the sentiment to use this moment to level up protections for people in the UK regardless of their skin colour. Unfortunately, though, what the Bill does is level down protections. As things stand, EU citizens have protections against deportation that have not been transferred into the Bill, so will no longer apply to EU citizens and will not apply to non-EEA nationals—predominantly black and brown people.

Similarly in our immigration detention system, there is nothing in the Bill to provide the kind of safeguards that EU citizens currently have against detention. We know that the system discriminates. If you are Australian and you are detained, 90% of Australians will be released before 28 days. If you are Jamaican and you are detained, only 40% of Jamaicans will be released before 28 days. You are right: there is direct racial discrimination hardwired into our immigration system at present, but nothing in the Bill actually deals with that. It only downgrades the rights of non-British citizens in this country.

Q117 Dame Diana Johnson (Kingston upon Hull North) (Lab): I wanted to ask about the advice and assistance that is available to people who want to apply

under the EU settled status scheme, and in particular the fact that there is not a right of appeal in the Bill. Does that offend against the rules of natural justice when decisions are taken? Also, would the two witnesses like to comment on the recommendation from the Home Affairs Committee to have a declaratory system for granting settled status? Might that help to head off some of the problems that we have been identifying this afternoon?

Adrian Berry: On the right of appeal, you will be aware that in section 11 of the European Union (Withdrawal Agreement) Act 2020 there was a provision for making a right of appeal by way of statutory instrument, and that that was exercised in the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

The Chair: Order. I know it is unnatural, but you have to face us, or the microphones will not pick you up.

Adrian Berry: Sorry. There is a power in the European Union (Withdrawal Agreement) Act 2020 to create a right of appeal for those who are refused under the settlement scheme. A statutory instrument was laid and came into force on 27 January in the form of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, which covers most of the terrain but, to deal with your point, does not cover invalid applications that are made under the EU settlement scheme, because they are not considered to have been properly made. There is no appeal right for those people. That would be a welcome amendment.

Briefly on a declaratory scheme, given how many people have been registered under the EU settlement scheme, there is a need to encourage maximum compliance and to make sure that deadlines are extended, if necessary, beyond June 2020 next year. There may come a point when the full merits of a declaratory scheme, which I would have supported at the outset, become more manifest to deal with the remaining cases, but at the moment we need to ensure compliance and a full subscription take-up of the scheme.

Bella Sankey: It is deeply problematic that there is not a declaratory scheme for EU citizens. Again, the echoes of Windrush should be considered. Wendy Williams, in her report published last month, found that the Windrush scandal was entirely "foreseeable and avoidable".

At the time that the Immigration Act 2014 was passed, I worked for Liberty, the National Council for Civil Liberties, and we warned the Home Office that the Windrush scandal, and other scandals, would happen because of the hostile environment that was being introduced. I say again in 2020 that there will be a similar scandal, this time for EU citizens, because the very same problems that the Windrush generation encountered will be real and evident for EU citizens who do not manage to apply for the EU settled status scheme in time. Of course, they will often be people who are more vulnerable and in harder-to-reach groups, and will be made more marginalised by the fact that they have become essentially undocumented.

One of the other big problems with the Bill when thinking about redress and natural justice is that, at present, legal aid is not available in immigration cases. That was one of the many reasons why, during the Windrush scandal, people found themselves being detained and wrongfully deported. There was no access to lawyers for that generation that came to the UK post war to help us to rebuild. Similarly, there will be no access to lawyers for EU citizens who are seeking to regularise their status after the applications close. That is why one of the other amendments that Detention Action is proposing to the Bill is to bring civil legal aid back within scope, at the very least for article 8 cases where people's private and family lives and human rights are at stake.

Q118 Gary Sambrook (Birmingham, Northfield) (Con): Mr Berry, I sense your displeasure with clause 4, but earlier, in answer to Mr McDonald's question, the FSB said that it was actually very happy with it, because it allows a degree of flexibility and allows the Government to respond to workforce demands and so on. Do you not think that business has a point, that flexibility should be built into the system?

Adrian Berry: The flexibility that you need to make individual rules about economic migration you get from the immigration rules, which are of course not the subject of this Bill. If you want to change part 6A, which contains the current points-based system for economic migration, the Secretary of State can lay new or amended immigration rules, with the assistance of the Immigration Minister.

Clause 4 here is designed to deal with primary legislation and retained EU law, not with the immigration rules, so if the FSB thinks the clause is changing the economic immigration rules system, it is wrong in that respect. It is changing primary legislation about the administration of immigration control, not the specific rules for economic migration, which are made under the immigration rules.

Q119 Kate Green: May I return, Mr Berry, to what you were saying earlier about the draft free trade agreement that the UK published in February and the associated social security co-ordination arrangements? What exactly is it that the UK is proposing to cover in those arrangements, which presumably would potentially be introduced using the provisions of clause 5 in this Bill? What is not being covered?

Adrian Berry: The draft social security treaty is attached to the draft free trade agreement, which is available on the Government website now, from last month. It includes short-term healthcare coverage for people who are travelling for short-term purposes, such as tourism and temporary work contracts, to receive what we call the EHIC card scheme. It also includes a system for old age pensions to be paid overseas in other EU member states and uprated to be equivalent to home pension rates here.

What is missing, and what we are losing, is disability pensions being paid overseas, and healthcare, which was attached to old age pensions and to disability pensions under the EU co-ordination regime, will no longer be attached for pensioners who retire in Spain, Cyprus or wherever, from 2021 onwards. At the moment, it is a bonus ball. If you get a pension paid overseas, healthcare coverage is included under the EU co-ordination regime and the bill is paid by the UK Treasury. In the new proposed UK treaty, that is going; it is just your old age pension uprating.

The UK has split the interrelationship between healthcare and social security and pensions, which is contained in the EU co-ordination regime, into two silos: social security and pensions in one silo, in this Bill, and healthcare arrangements under the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019.

There is no draft healthcare treaty attached to the UK's draft free trade agreement at the moment, and no healthcare provisions included in this draft social security treaty. Both of those are missing.

Additionally missing is the S2 scheme, which we have at the moment, for people to make arrangements, prior to travel, to receive hard-to-find treatment in EU member states, if they cannot get NHS treatment in the UK. There is no S2 scheme for British citizens to go and receive that form of healthcare—healthcare that is unavailable here—and to get it in EU states. The cross-border health directive, which allows people to have their prescriptions and pick them up in EU states, will effectively be repealed. There is no provision for that in the draft social security treaty.

Who loses out? The disabled. They will not be able to get private health insurance to travel on holiday. It will have a direct and differential impact on people with physical and mental impairments. It will also have an impact on anybody who thinks they are going to be retiring to Spain, Italy or France. They will not have healthcare insurance there, even if they get their pension uprated. It is a big loss.

Q120 Kate Green: In relation to disabled people in particular, is it your view that it would be directly discriminatory to people to treat them in that way?

Adrian Berry: It is, but it would be in an international treaty arrangement. The problem is that it is certainly differential treatment. It impacts on them directly because something that they would have had, which has been protected under EU law and under the withdrawal agreement, will not be available to them. New movers—disabled people who move for the first time in 2021, at the end of the transition period—will not have that. Travel for them will become very problematic.

It is interesting that even for the new EHIC card scheme in the draft treaty, the really expensive stuff is now carved out. In the new EHIC card arrangement, which is in the draft treaty, if you want chemotherapy, dialysis or oxygen therapy, you have to get prior authorisation from the UK Government now, even if you are going on holiday. You do not have to do that at present. It is clearly a rationing device that will further impact on British citizens with long-term health needs who, frankly, deserve a holiday. They will find it very difficult to have that because they will not be able to have the necessary insurance and comfort that they need, in order to travel in safety.

Q121 Kate Green: May I ask you about schedule 1, paragraph 6, which appears to be quite a wide provision that allows Ministers to make changes to what can be covered by free movement arrangements? It appears to be widely drawn and, as I read it, could allow for changes, for example in relation to the treatment of asylum seekers or people who have been trafficked to the UK. Is that your reading of it? In any discussion that you have had, do you think that would have been the Government's intention in the Bill?

Adrian Berry: It is interesting. In part 1 of schedule 1 they repeal some retained EU law, which is to be expected in the provisions on the workers regulation. That is a political choice. What is more unclear is that other retained bits of EU law, which relate to victims of trafficking or victims' rights where people are victims of crime, remain on our statute book, but may be disapplied by this provision, if they are judged to be inconsistent with the provisions that are to be made in respect of immigration. We do not know whether they are or they are not. We do not even know the exhaustive list of these parts of retained EU law that help vulnerable people, such as victims of trafficking, because they are not spelled out on the face of the Bill.

At the very least, there needs to be a schedule spelling out the parts of retained EU law that may be affected by paragraph 6. Better than that, if you are going to repeal these parts of retained EU law, because you think they are inconsistent with the Immigration Acts, say so and put it in primary legislation, if that is your choice. Make a better law.

The Chair: Thank you for coming this afternoon. We are very grateful.

Examination of Witness

Luke Piper gave evidence.

3.55 pm

The Chair: Good afternoon, Mr Piper. I am Edward Leigh, Chair of this Public Bill Committee. The Minister and the Opposition spokesman will ask questions. We have only 15 minutes. Minister, would you like to begin?

Q122 Kevin Foster: As you appreciate, Mr Piper, the Bill ends the provisions for freedom of movement in UK law, but we have the European settlement scheme set up to protect the rights of those covered by the withdrawal agreement. Given that we have had 3.5 million applications and 3.2 million decisions, how do you think the process is going?

Luke Piper: First, thank you for allowing me to attend by telephone. In general, it is true that the EU settlement scheme is there to provide people with their status and their rights to live in the UK under the terms of the withdrawal agreement. It is a great achievement of the Government's to set the scheme up. Our concern is about those that do not apply in time and fail to acquire the status by the deadline of June next year. The worry is that those that miss the deadline will face the problems that some of the previous witnesses have spoken about—the risks to jobs and homes, and access to healthcare, welfare and so forth. Although there have been over 3 million applications to the scheme, it is not a reflection of the numbers of people that have applied or have succeeded, or of the types of status that are under it. This is more about an issue of recognising that there is a potential problem here. Yes, freedom of movement will end and there is a new status that people can acquire, but it is about creating safety mechanisms and ensuring that there is a safe passage for people to move from their old status to their new one. That is what we would like to see amended in the Bill to ensure that that security is there.

Q123 Kevin Foster: Just to be clear, I used the figure of 3.2 million in terms of decisions as well as the figure for applications. Coming on to the social security co-ordination parts of the Bill, do you have any thoughts on those? Are you concerned about the Government perhaps not being able to promptly implement any agreement that we might be able to reach with the European Union on those areas?

Luke Piper: I will defer to the points that Mr Berry made in his presentation previously on the issues of social security co-ordination. Our central concern is that at this stage much of the rights-based provisions of the withdrawal agreement, both under title II and title III, have been delegated away by the Bill and the previous European Union (Withdrawal Agreement) Act to various Ministers, and there is a lot of legislation and regulations that we have still to see to fully understand how those rights and obligations will be implemented.

Q124 Holly Lynch: Luke, your organisation and a number of your members have been clear that you would like some sort of physical proof of pre-settled or settled status. Can you explain to the Committee why that is?

Luke Piper: Yes. There are clear points as to why we feel physical documents will help people in their day-to-day lives. First, it is the No. 1 ask of our members and people that we speak to who are EU citizens in this country. They would like physical proof of their status to live here. It is something that unfortunately has not been followed through.

Indeed, the House of Lords European Union Committee made the point that there are real worries that those without physical proof will face similar problems to those faced by the Windrush generation; there is a risk that they will face discrimination because they do not have physical proof of their status. We also had concerns about the availability of an online status; there may be instances when the status is not available for IT reasons. Also, online systems can be hacked. There are real security risks.

Finally, we also have concerns about the newness of the digital-only scheme. It is essentially being tested on over 3 million people. A digital-only identity system like this has never existed before in the UK, and it is being rolled out for a massive cohort of people. We had rather hoped that there would be an opportunity to trial the scheme substantively before people were pushed into a digital-only set-up. Those are the key reasons why we desire a physical document.

Q125 Holly Lynch: Thank you. Your organisation asks for clarity about what people's status and rights will be between the end of the transition period and the closing of the settlement scheme at the end of June. What are your members' anxieties about that period?

Luke Piper: The Bill brings freedom of movement to an end at the end of this year, but it is not clear what legal status people will have between the end of the transition period, which is at the end of the year, and the end of June—the end of the grace period. There has been no clarity about, or understanding of, what legal rights people will have. We have simply been told that certain checks, such as on the right to work, will not be undertaken, but it is not clear to us or our members how people will be distinguished, both in practice and in law.

Q126 Stuart C. McDonald: Mr Piper, we have heard from the Home Office on the number of applications. We, like you, congratulate the Home Office on achieving significant reach. The problem, of course, is the number of people who will not apply in time. Are you able to give the Committee any indication of the scale of that problem, and who can we expect to be in that number?

Luke Piper: I caught the majority of the question, but let me repeat what I think you are asking: do we have an understanding of the number and type of people who will not apply on time? Is that correct?

Stuart C. McDonald: Exactly.

Luke Piper: Much as with the number of people due to apply for the scheme, we do not know. We have no idea of the exact number of EU citizens who need to apply under the EU settlement scheme, so we will not have an understanding of the number of people who miss the deadline. An illustration is the way we look at Bulgarian citizens in the UK. Their population has been estimated at 109,000; however, as of the end of March, over 171,000 Bulgarian nationals had submitted applications. It looked as though Bulgarian residents had already applied, yet more applications keep coming. We do not have a clear indication of the exact number of people who will not apply on time.

As for the type of people, we know that those most at risk and who are marginalised and disenfranchised are very likely to not apply, purely for the reasons that Mr Berry set out—various issues to do with connection to society, disability and so forth. Our concern is that the most marginalised and vulnerable in our society will be at risk, and that has been corroborated by a lot of organisations. You will hear from a representative of The Children's Society after me, who will set out the particular risks for children and young persons. Conversely, we have significant concerns about older people, particularly those with issues such as mental ill health and dementia.

Q127 Stuart C. McDonald: Coming back to the scale of the problem, looking at international, or even UK, examples of where Governments have tried to encourage citizens to sign up for a scheme, how close to 100% do they tend to get? Do you have any idea?

Luke Piper: That is a very important point. The most successful UK scheme that involved people signing up to certain policies was the digital-only scheme—the switch by everyone to digital TV. That was successful, as 97% of people had signed up by the time analogue TV was switched off. If you place that projection over the estimated population of EU citizens, and say that a remaining 3% will not switch, you are looking at more than 100,000 people who will lose their legal right to live in this country and will face all the problems that we talked about of not having a home, losing their job, and potentially facing detention and removal from the UK.

Q128 Stuart C. McDonald: That is a huge problem, in terms of scale and the nature of the rights that those people would lose. One proposal that has been rejected in previous debates is a declaratory system. Are there other options to try to protect as many of these people as possible?

Luke Piper: The declaratory model is what we have advocated for. If we follow through with a constitutive system, which is what is being proposed, simply improving awareness of the scheme will not be sufficient, as is demonstrated by even the most successful campaigns, which do not achieve 100%. There have to be legal mechanisms in place to ensure that people have the safety that they need to transition to their new rights.

In particular, we suggest that amendments be adopted, including amendments setting out clear definitions of who cannot apply after June 2021, as opposed to who

can. We feel that it will assist both Parliament and the Home Office if we can clearly pin down exactly who we do not want applying after the deadline. Furthermore, we could introduce mechanisms through which we could extend the grace period if necessary. We should understand what extending the grace period may look like, and what factors will be taken into consideration. We need to recognise that those who apply after June 2021, who will have no legal basis to be here, will need some form of retrospective mechanism, so that when they do secure their status, their previous periods of unlawful residence are secured.

Q129 Stuart C. McDonald: So your first choice to resolve these issues is a declaratory system. In response to that, the Government tend to argue—if I understand them correctly—that making the system declaratory will mean that people will not apply for proof of status, and that will leave them exposed to the hostile environment and so on. What do you make of that argument?

Luke Piper: I think that unfortunately misrepresents our proposal. The declaratory system is a safety net. We are not advocating for a system where people should not have a deadline by which they must register. Indeed, we believe that there should be incentives and encouragement for people to register. The problem is the consequences for those who do not register in time. Under the current model, if you do not apply, you essentially become illegal in the UK, and you face immense amounts of problems, whereas under a declaratory model, the consequence is that you face inconvenience.

Q130 Stuart C. McDonald: Finally, do you have any concerns about the number of people who appear to be getting pre-settled status, as opposed to settled status, and the implications that that has for them?

Luke Piper: You were a little muffled there, but I think you were pointing to the issues surrounding having pre-settled status, as opposed to settled status. Is that right?

Stuart C. McDonald: Yes.

Luke Piper: On the ratio of those acquiring pre-settled status to those with settled status, the trend is not looking great. The estimates that we have been working to suggest that the number of people acquiring settled status is a lot lower than it should be, and indeed the number of people getting pre-settled status is too high. That will, in effect, mean that rather than there being one deadline—June 2021—there will be lots of deadlines for lots of different people, at the various periods when their pre-settled status expires.

Q131 Stuart C. McDonald: Does that have implications for people's rights—for example, to social security—in the meantime?

Luke Piper: It does, yes. It has quite significant implications for a person's rights. Those with settled status have complete access to welfare benefits and housing support, which is vital at a time when a lot of people are struggling to retain their employment and their home. Those with pre-settled status do not have an automatic right to access those services and that support; they have to go through further tests and bear further burdens to access that help. This is causing significant problems for people whom we represent; we have seen a significant increase in the number of people experiencing problems in getting help and support because they have pre-settled status as opposed to settled status.

Q132 Rob Roberts (Delyn) (Con): You mentioned that you are worried about people missing the deadline. The scheme opened on 21 January 2019, and the deadline is 30 June next year—nearly two and a half years after that. How far away do you think that deadline needs to be, if two and a half years is not long enough? Is three and a half, five or 10 years preferable? As I recall, there have been advertisements in the national media—in the press and on TV—explaining how to go about obtaining settled status. What would happen before your extended deadline that would make people any more able to hit the deadline?

Luke Piper: We would like a deadline, but want the consequences of missing the deadline minimised, hence our preference for a declaratory system. Of course there needs to be some kind of deadline by which people need to have put in an application; the issue is more what the consequences are for people who miss it.

Let me paint a picture for you of the inevitable problems with missing deadlines. Some people are under the misapprehension that they are fine—that everything is sorted. In my practice, and in speaking to many organisations and colleagues, I regularly come across people who believe that they are "safe"—that there is nothing else that they need to do. After the deadline, when the hostile environment bites, it is they who will feel the problem the most. It is a mis-characterisation to say that we are talking about permanently extending the deadline; we are looking at this in a holistic way to identify clearly, through good evidence and with the Home Office, what the groups are, what the issues are, and what can be done to the law to make it as safe as possible for people to get their new status.

The Chair: I think that concludes our evidence. Thank you for joining us online.

Luke Piper: You are welcome. Thank you for your time.

Examination of Witness

Lucy Leon gave evidence.

4.15 pm

The Chair: I take it that we have on the line Lucy Leon, immigration policy and practice adviser for The Children's Society. Minister, you have a question.

Q133 Kevin Foster: In your briefing, you suggest two amendments to the Bill related to granting an automatic status. How do you suggest that a child, who may need to rely on a status in some decades' time, would be able to evidence the status that had automatically been created?

Lucy Leon: I am sorry; the line is really unclear. I heard that you were trying to ask me a question about automatic status. Would you be able to repeat the second part of the question, please?

Kevin Foster: You talked about automatic status—granting something under a piece of legislation to someone. Under your suggested system, how, in decades to come, would an adult evidence the status that they were granted as a child?

Lucy Leon: The line is not very clear, so apologies if I have misunderstood the question, but are you asking what it would be like in decades to come if we granted children automatic status?

Kevin Foster: Yes. If they had to evidence their status many years later, how would they do it? How would they be able to define their status, as against someone who arrived in March 2021, for the sake of argument, and was not entitled to that status?

Lucy Leon: We have put forward an amendment about automatic status for vulnerable children, particularly those who are in care or are care leavers. We are not just looking to give them automatic settled status; we want local authorities to be given a duty to identify those children, and a timeframe in which they need to be identified and offered settled status. This would enable a financial burden to be lifted and pressure to be taken off the overstretched local authorities that are struggling right now.

We are not suggesting that children do not go through the scheme. We are saying that they still need to go through the scheme, but should be given indefinite leave, as opposed to pre-settled status, because children are falling through the net and social workers are struggling to understand their roles and responsibilities under the scheme. They do not know the processes, and they are struggling to locate documents for young people.

Q134 Kevin Foster: To be clear, your suggestion is that these children should go through the European settlement scheme to get the evidence they need, and in essence, your point is about how local authorities apply.

Lucy Leon: Sorry, it is really hard to hear you. The line is really not very clear.

Kevin Foster: Okay, we will leave it there. I think you have made the points that are needed.

Q135 Holly Lynch: On the same subject, perhaps you could explain what engagement The Children's Society has had with local authorities about this. What problems are local authorities reporting to you that would be overcome if they had an ability to provide those names to Government, with some assurances that those children would be eligible?

Lucy Leon: At the moment, this is a significant burden on social workers. We welcome the guidance that has been issued, the funding that has been put in place, the prioritisation of this issue, and the fact that the Minister has taken time to write to council leads to ensure the issue is seen as a priority. However, we know—because we see it in our frontline services—that the information is not trickling down, and many social workers are unclear about what they are meant to be doing and how to help young people.

In the current pandemic, with helplines and embassies being closed and people being unable to travel, it has become even harder for social workers to support young people in locating the right paperwork to help them through this process. Social workers are also not always aware of who needs to apply, and some of the cases are very complex. Some children and young people are entitled to British citizenship, and the struggle to access legal advice and helplines at this time has made that very problematic for social workers. We see the proposal as not only taking the pressure off local authorities, but taking the stress off young people.

We see young people who have been incorrectly given pre-settled status, when they are entitled to settled status. We want to enable automatic settled status at this pivotal moment in young people's lives, when they are planning their future, thinking about their education and thinking about pathways to work, so that they know that they can have indefinite leave to remain and can stay in this country, which is their only home. We are talking about children in care who would have had a history of abuse and neglect. It is imperative that, as corporate parents to those children, we give them as much stability as possible in the long run.

Q136 Holly Lynch: This would apply to children who have had a very difficult start in life. If they were granted settled status through the process, that would come with the electronic status that the Minister mentioned, and that applies to everybody else who goes through the system. If, in addition, there was physical proof, that would resolve the conundrum that the Minister has just presented you with. Would it be fair to say that? *[Interruption.]* Are you still with us? I am not sure how much of my question you got.

Lucy Leon: I didn't at all. I'm sorry, Ms Lynch; you cut off.

Holly Lynch: No problem. The Minister had presented a conundrum, but we are saying that if those children—bearing in mind that they have had a very difficult start in life—were granted settled status in a declaratory system through the local authorities, and they had both digital confirmation of that and physical proof, it would resolve the problem that the Minister put to you.

Lucy Leon: Yes. We are very much in agreement. That is why we support the 3million recommendation on physical documents as well.

Q137 Stuart C. McDonald: Thank you for calling in, Lucy. You are proposing that the status of these kids is set out in law, but they should apply in order to get proof of that status. Is that right?

Lucy Leon: Yes, that is what we are suggesting.

Q138 Stuart C. McDonald: Perhaps a user-friendly comparison would be British citizenship. Lots of children are born in this country with the status of British citizen. They obviously do not have a document, but whenever it becomes convenient for them, they apply for a passport or another means of proof. Is that a fair parallel?

Lucy Leon: Sorry, I did not get that full question.

Stuart C. McDonald: I was just trying to draw a parallel with the status of kids who are born British citizens. Their rights come from a statute, just like you are proposing with these kids getting their rights in a statute, but they still end up—at some point, if it is convenient for them—applying to have proof of that status. But the rights come from a statute.

Lucy Leon: I am sorry. I cannot hear the question; the line is not very clear at all.

Q139 Stuart C. McDonald: Sorry about that. We will leave that for debates later in the week.

The Bill may mean that we end up with EU citizens and children stuck with "no recourse to public funds" conditions on their visas in years to come. How difficult do "no recourse to public funds" provisions and conditions make life for children and their families?

Lucy Leon: Sorry. It seems that the microphones are now moving around. Were you asking how difficult the NRPF conditions are for children and their families?

Stuart C. McDonald: Yes.

Lucy Leon: We have worked with children and families with no recourse to public funds for well over 10 years. We have a lot of experience through our services, and recently published a policy report called "A Lifeline for All", which highlights the impact of this condition on children and families. One of the key issues is that families with no recourse to public funds have no access to mainstream services, or to housing and local welfare assistance schemes. Many of those who are fleeing domestic violence cannot access most safe accommodation either.

The policy has been continued under successive Governments, but that really does not mean it is the right one. It is hugely detrimental to children's welfare to have a childhood characterised by deep poverty throughout, with the family stuck in a cycle of poverty, vulnerability and abuse, and the child at real risk of exploitation because they have no other lifeline to turn to. We also see the hugely detrimental impact that it has on children's and young people's mental health and emotional wellbeing to grow up in such long-term poverty.

In terms of educational opportunities and chances, we also see a higher prevalence of special educational needs among those children in families with NRPF that we have worked with. It is more than just financial support that these families need and are missing out on; it is the access to wider services and support.

Q140 Stuart C. McDonald: Finally, in your briefing you speak about the significant fees and the NHS charge, for example, that families have to contend with. This Bill will mean that in future, European economic area families will face significant visa fees, NHS surcharges and so on. Can you say a little bit about your concerns on that?

Lucy Leon: We have significant concerns about those families. They are families who are already paying into the system. Most of the families we work with are single parents, often in jobs that are now seen as key worker jobs—working in hospitals, in cleaning, in catering or as delivery drivers. They are working families already; it is just that their income does not meet their family's needs. They are also paying immigration application fees and the immigration health surcharge, so on top of living with no access to any mainstream benefits or extra support, they continually have to try to save up for the next tranche of fees that they will have to pay every two and a half years. They are stuck in an ongoing cycle of debt.

We have seen families lose contact with their social networks because they have had to borrow money, because that is their only means of survival. We are calling for a reduction in immigration fees to at least cost price, and for citizenship fees for children to be waived, because we are doubly penalising children in those families by increasing the levy charged on them, on top of their restricted access to public funds.

Stuart C. McDonald: Thank you very much.

The Chair: Thank you very much for your evidence. I am sorry that the sound quality was not very good, but thank you for making the time and effort to come.

Lucy Leon: That is fine. I apologise for missing some of the questions. We are more than happy to submit further documentary evidence on the questions that I have been unable to answer.

The Chair: I think you should do that. You will be able to see the record, and if you have missed any question, you can always put in supplementary evidence. Thank you for joining us on the line.

Lucy Leon: Thank you for the opportunity.

Examination of Witnesses

Ian Robinson and Alison Harvey gave evidence.

4.30 pm

The Chair: Good afternoon and welcome to our session. We have until 5 o'clock. Would you like to introduce yourselves for the record?

Alison Harvey: My name is Alison Harvey. I am a barrister at No5 Chambers in London.

Ian Robinson: I am Ian Robinson. I am a partner in Fragomen, the immigration law firm.

Q141 Kevin Foster: I should like to ask both witnesses this. Part of the process of moving to a single migration system, which the Bill sets the framework for, is to simplify the immigration rules. Do either of you have any thoughts about how it goes towards doing that?

Alison Harvey: Essentially, it does not have anything to do with that. There has been a lot of talk about the Bill setting up the new points-based system. It does not; it gets rid of the free movement law, and that is all it does. Although I have not sat on it yet, the Bar Council has appointed me its representative to the simplification committee on the rules, and I gave evidence to the Lords Constitution Committee about this a while ago.

If you look at what the Law Commission and the Home Office have published on the rules, it is simpler but not simple. We will not get to a simple system or anything like one until we consolidate the primary legislation. Let us remember that our immigration legislation is built on the Immigration Act 1971, which came into force on 1 January '73, when we joined the EU. Before that, we had only had four years in this country, in all its history, without free movement. If you go back to 1066 and beyond, you have everyone within the King's allegiance and dominions moving freely within the allegiance and dominions, subject to the limitations in place in 1066, but they were not legal limits. The passport that you have from Hull is the same as the passport that you have from Bangalore.

We then had the Commonwealth Immigrants Act 1968, which cut off free movement, but we were bigger then. As well as our current overseas territories, we had the associated states in the Caribbean, from which people came. That period of March 1968 to 1 January 1973 is the only period in our history when we have been as small as we are going to be from June, so the change is massive.

We are managing with a rickety old Act that desperately needs changing. The problem with immigration law is that every time you change it, you have to deal with the people under the old regime and make transition provision, so change always results in complexity.

Ian Robinson: The simple answer is that we are going from two immigration systems to one. Right now, we have reasonably simple arrangements for free movement and complex arrangements for non-Europeans. We will have one complex arrangement for everybody. In some areas, it will become slicker, I suppose, but it will remain complex.

In an international context, my clients will quickly recognise that the UK has a simpler, more transparent immigration system than many countries. That is great if you are a multinational, but if you are a small or medium-sized enterprise dealing just with the UK immigration system, that does not really help you, and the complexities can still trip you up. Likewise if you are an individual.

Q142 Kevin Foster: Do you have any particular thoughts on how businesses will engage with this system?

Ian Robinson: In terms of the skilled part of the system, we will have one of the better skilled immigration systems in the world, in terms of much of the policy and the speed as it relates to skilled people. Where that falls down is the cost. I suspect that there will be more questions about that later, and I can cover them. We are wildly more expensive than other countries. What businesses want is speed. Singapore and one or two central African countries aside, no one can issue visas as quickly routinely as the UK does. We are very good at that. There are on-entry arrangements in Canada, but we are very good at issuing visas.

If I were talking to an American or Canadian audience, they look for predictability. We can offer certainty. It is a fairly tick-box, prescriptive list for a work permit, which is good. In that respect, it is a good system. It becomes more difficult again when you look at cost. It becomes difficult when you look at lower-skilled workers and the fact that the tap will be turned off, unless we have a youth mobility scheme.

My clients are not quite sure where they stand on that at the moment. On the one hand, if you had asked me three months ago, they were very concerned. Covid changes things, but they are nervous about taking the gamble now that there will be enough people in the labour market after the pandemic is cleared.

The final point that I would make is that if you are an established user of the system, used to working with Indian, US and other non-European migrant workers, you are going to experience a much better immigration system when we have a lower skill level, marginally lower salary, and one or two other changes, particularly when the new technology comes in for sponsorship.

But if you have never used the immigration system in that way before, and if you do not already have a licence, there is a real risk that you will have no idea and no time at the moment to apply for a licence. You probably will not have before the end of the year, so you will realise you need to too late, at which point, unless a concerted effort is made not only by the Home Office, but by trade bodies to push employers to apply for licences, we will be back to six-month delays before a company can even begin to make a visa application, which is not great. Steps need to be taken to make sure that employers know what will be expected of them, and that they can, as easily as possible, get the tier 2 sponsor licence.

Q143 Kevin Foster: I have a brief question for Ms Harvey, given the provisions in the Bill about Irish citizens. We are providing a clear provision for Irish citizens. I note your own background and work on that area, so I wonder whether you have any particular comments on those provisions.

Alison Harvey: You have heard this afternoon—I did not manage to hear his evidence—from Professor Ryan. He has a grasp of the issue that is second to none. Clause 3ZA is very useful and important. I do think that it lowers the protection from deportation for the Irish. The Irish do not deport Brits at all. I think we ought to address that.

My own work has been around giving effect to the Good Friday agreement in the work I have done for the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission about looking at the Good Friday agreement. I would like to see, as a bedrock that would deal with some of the concerns about deportation and the question of identifying solely as Irish, a right of abode given to all the people of Northern Ireland, whether they identify as British or Irish or both.

A right of abode protects you from deportation. It is as close as you get to citizenship. You get the whole packet of rights. From the point of view of the Administration, the Government, the country, and the people in benefits offices, if you know that if you were born in Northern Ireland, you have a right of abode in the UK, it becomes much less problematic whether you identify as British or Irish or both. You essentially know what your social security entitlements and your health entitlements will be. I think that is the bedrock on which we build the flexibility in identification.

Kevin Foster: Briefly, because I am conscious that others want to come in, there has been mention of the deportation of Irish citizens. Can you think of an example—not of an extradition, I have to say, because that is a different provision?

Alison Harvey: An example where someone was deported?

Kevin Foster: An example where an Irish citizen has been deported from the United Kingdom or Northern Ireland.

Alison Harvey: I was looking at this recently for an article and I think there were examples at the time. I think they fall parallel with the Prevention of Terrorism (Temporary Provisions) Act 1974, where we were confining people to Northern Ireland or to Britain or not letting them in, so you have rules on third-country nationals, but they also have the potential to affect citizens of the two countries. It was in that period, and there was an overlap between the security powers that were being used at the time with the roll-over of the Prevention of Terrorism Act and the control orders and deportation—

Kevin Foster: They are historical pieces of legislation.

Alison Harvey: Yes, they have totally gone now.

Q144 Holly Lynch: We have heard evidence this afternoon from other witnesses regarding their concerns about some of the Henry VIII powers in the Bill. May I ask

you to share your thoughts on those, and what they mean not only for parliamentary democracy, but for practitioners of law? Do you have concerns about them?

Alison Harvey: Very much the concerns that Mr Berry expressed about certainty. If it is said that provisions of retained EU law are not compatible with the Immigration Act, please can we have a list? Tell us what they are. You must know, Home Office, otherwise you are not going to be able to operate the system. As he said, we had the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, both of which essentially give us powers to save EU law. They also give us powers to knock out retained EU law bit by bit, so what is the point of the Bill at all, in substance terms?

I think the point must be, because immigration is a sensitive area and because it involves people, to give you the opportunity to put in place safeguards. I suppose the Bill goes beyond the European Union (Withdrawal) Act and the European Union (Withdrawal Agreement) Act in that it would allow you to build a new system. There are wider powers of delegated legislation. I think most of the repeals could have been done under those Acts. If you want to test that, you go back to March, when the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 were passed. Look at some of the things that they do: "Let's give all Gibraltarians a right to apply for British citizenship." There are big chunky powers in those regulations that are not in the Bill.

The Bill is an opportunity to put some brakes in. What is astonishing is that the Bill looks almost the same as it did last time it appeared; yet last time we did not have a withdrawal agreement. All the wait and see markers that justified not putting something in primary legislation have gone. Similarly, although the Home Office delegated powers memorandum has got longer it has produced, for example, absolutely no more substance on why the powers on fees are needed. The Delegated Powers and Regulatory Reform Committee said that this is so unsubstantial you cannot even say it is a skeleton.

There really is no justification to explain why there possibly need to be those powers. It creates tremendous uncertainty. It certainly creates lots of opportunities for litigation; to go in and argue that, no, something is not incompatible. That does not seem to me helpful at all.

Ian Robinson: Alison has said everything that I could and more.

Q145 Stuart C. McDonald: Alison Harvey, may I first go back to the idea that Professor Ryan was speaking about earlier: the notion of persons of Northern Ireland? The reason that would be useful would be to explain who has certain rights, in terms of family immigration rules or protections against deportation, for example, without having to claim British citizenship or to identify as a British citizen under the Belfast agreement.

Alison Harvey: We have two groups. Proposed new section 3ZA to the Immigration Act is about the Irish in Britain, wherever born—all the Irish; anyone who holds an Irish passport—and it gives them protection wherever they enter the UK, so that if they come from Belfast and go for a weekend in Paris they have not lost all their rights just by spending a weekend in Paris, which technically in law at the moment they have.

The other group are the people of Northern Ireland, who are the people born on the soil of Northern Ireland. Those people, under the Belfast agreement, have the right to identify as British, Irish or both. The question is how you give effect to that right, because at the moment it is argued that you give effect to it by going through a renunciation process, which costs money and makes it very difficult for somebody to identify solely as Irish.

We have provided in the EU settlement scheme for the people of Northern Ireland—those who are born there—to be treated in the same way for family immigration purposes as EEA nationals. That is a fairly short-term right—not a short short-term right, but obviously one that is on the way out because we are leaving the EU and that advantage will disappear over time; it will not apply to new arrivals and it will not apply to the people of Northern Ireland who form subsequent relationships.

So we have said that we will make it not matter whether you are British or Irish, or both, because you will not be at a practical disadvantage. But what people would like to be able to do is identify as Irish without having to give up a British citizenship they never felt they held. That was a point made by Emma DeSouza in her litigation. That litigation ended because it was a case brought by her partner about his EU law rights. So although their arguments were about her ability to identify as Irish, that was not the crux of their case; their case was an EU case, so it died with the changes.

I have put forward in my paper a series of proposals as to how we could fairly simply amend the law to give effect to that aspiration, without in any way damaging the aspiration of those in Northern Ireland who say, "I in no way want to be treated any differently from anyone else anywhere else in the UK". I think we can square that circle.

Q146 Stuart C. McDonald: You spoke earlier about how new immigration legislation always leads to challenges around transition and the need for transitional protections. Were you speaking then about EU nationals who are already here in the settlement scheme, or were you talking about a wider set of transitional concerns?

Alison Harvey: With any change, you have to decide what you do; it takes five years to get to settlement. What perhaps worries me most when I look at the points-based paper and those proposals is that rather than saying, "This is where we want to end up—how do we get there?", they are all about what we are going to do next. Therefore, the fear is that we will never get where we want to end up, because we are rushing things, in a way.

As I say, this is a massive change. When Vivienne Stern of Universities UK gave her evidence to the Committee, she said, "Universities will recover from this. The question for us is, what is going to happen in the short to medium term?" I think it is very similar for the immigration system. In the short to medium term, maybe the recessionary effects of covid will mean that there is less need for people, but the short to medium term is the bit that that paper does not even regard as a problem; it just says that this is what we want, and I think that is not realistic. The attention has been focused, for good reason, on the stock of EU nationals—the people who are here—but what will really hurt business is the flow, or the cutting off of that flow.

Mr Robinson has made the point that our system is quicker than that of many countries, but employers are used to it being a lot quicker, and the employers who have the least difficulty are the global multinationals, which have the persons already employed in one part and can move them across. The solely British business, which does not have an overseas branch, has the most disadvantages. It is a bit like the recovery after the pandemic, and the supermarkets have actually done really well during it and the corner shop has closed. It is that sort of thing—this change will advantage the very people who you would have thought, given the Brexit ideology, were the people who were supposed to face a bit more competition from the Brits.

Q147 Stuart C. McDonald: Is that a fair point, Mr Robinson, that those companies that are already tier 2 will have a significant head-start—they may find that processes slow up a bit, but at least they are well established and know these procedures inside out, and it will be the many, many thousands of businesses that have no experience of employing from outside the EU that will face a huge challenge?

Ian Robinson: Yes, that is spot on. If I were to have two conversations,

one with an established tier 2 sponsor and one with a new employer using the system for the first time, the first conversation would be to say, "Okay, the systems that you have will become simpler and quicker, because there will be no advertising, no cap and so on. You will be able to bring more people through sponsorship, because skill level is going down." It will be more expensive and it will be slower than free movement, but overall, frankly, they can absorb it.

If I then pick up the phone to an employer who has never used the system, they will probably spend between two and four weeks collecting documentation in order to put together an application. The application right now is typically taking four to six weeks, against an eight-week service standard. If we have a rush of employers applying for licences, it seems quite possible that, towards the end of the year or the beginning of next year, that lead-in time will become much longer, during which time they could miss out on an opportunity or a worker.

Then you get to the kicker: if you are sponsoring Stuart, who is single and coming in for three years, for an SME that would cost about £4,000 and for a larger employer it would be about £5,500. If you were coming in with a partner and three children for three years, that would be £17,000 in Government fees, not including the other associated costs.

Q148 Stuart C. McDonald: I daresay that some of the larger companies you may work for will absorb quite a lot of those costs themselves, but if you are running a small business with limited margins, you may not be able to pay the health surcharge that bringing somebody in entails. You will then be left in a place where you are offering a job to somebody, but it comes with a £5,000, £10,000 or £15,000 price tag for that individual, whereas they might have a job offer from Dublin or anywhere else in the EU that involved no such difficulty.

Ian Robinson: Yes, that is fair. If you are coming in as a single person and you are covering your own fees, it is broadly £600 for a three-year visa. You will be paying an extra £624 a year for the health surcharge. You get to indefinite leave to remain, which is about £2,200 or £2,300, and then citizenship is about another £1,200. If you add that up, as I am about to attempt to, it would be not far off £10,000 just to get through to citizenship. If we assume that you are on £26,000 a year and clearing however much of that, it is a hell of a cut. If you also have children, you have to pay another £10,000 each.

Q149 Stuart C. McDonald: All things being equal, the job in Dublin seems significantly more attractive. You will not be surprised if I turn to the issue of Scotland. I should explain to the Committee that a few months back, I and Westminster colleagues instructed Fragomen to produce a report on behalf of the Scottish National party, looking into what other countries do about having a differentiated system for different parts of the country, and looking for options that might work for Scotland and, indeed, other parts of the UK. Would you be able to summarise that work and its conclusions as best you can in a few sentences?

Ian Robinson: We made several suggestions on simplifications for employers and individuals in Scotland: lower salary requirements, faster routes to settlement and so forth. The headline finding was that if the political will were there, it would be quite possible to continue free movement in Scotland after free movement ended for the rest of the UK. I appreciate that that may seem counter-intuitive to some people in the room, but the rationale is that, if you were to continue to operate free movement in Scotland, people would be able to move there and live and work on the structure of their European passport. The obvious challenge is what happens if they subsequently want to move to the UK, as some may, because at that point they would need to have permission to live and work in the UK, just as any other migrant would.

One of the challenges we have had is whether that would turn Scotland into a back door for England, Wales and Northern Ireland. It is hard to make that argument when you consider that the front door is open, given that there will be no visit visa requirement for Europeans coming to the UK. If you were a German who wanted to work in the UK and were content to do so illegally, there would be no incentive to go through Scotland first. You would jump on an easyJet flight into Stansted, maybe not even see an immigration officer and start work if you were so minded.

Q150 Stuart C. McDonald: I suppose the broader point is that we operate a land border and a common travel area with a country that has free movement and a completely independent immigration system.

Ian Robinson: Yes.

Q151 Stuart C. McDonald: And so it would not involve borders at Berwick or whatever else.

Ian Robinson: No. The Government is content that the compliance environment/hostile environment measures that we have in place are sufficient to stop illegal migration and working from tourists. It would be equally capable of stopping that sort of migration from Scotland.

Q152 Stuart C. McDonald: Alison, any thoughts on the notion that you could have different rules for Scotland or Northern Ireland, which will face significant challenges as it shares a land border with an area that is still part of the free movement landscape?

Alison Harvey: It is partly that and partly that we are small, so you can travel a long way quickly. If you give someone a visa for one part of Australia, it works very differently. I remember asking the Australian Minister about that, and he said that it was salary that glued people to the Northern Territory.

In our current points-based system, a tier 2 skilled worker works for a particular employer, so it is not that much of a leap to say, "You must work for the employer in X, Y and Z offices." Applying it generally may be more complicated, but applying it to workers who work for an employer—whether they are highly skilled or low skilled does not matter—is easier. If you are someone who is on a payroll, it is easier to envisage it working. It becomes more complicated to stop people moving around outside the paid employer—they must be employed by that person.

Ian Robinson: A very quick point: right now, you sponsor a particular person to work for a particular employer in a particular location. If that location changes, the Home Office must be notified. I could not say how much scrutiny they give to that—I do not think it is a great deal—but employers are already reporting on that sort of thing.

Q153 Stuart C. McDonald: I have a final question. Alison, you have obviously been critical of the nature of this Bill. Politicians would say that it gives the Home Office a blank cheque. As you say, last year, the answer appeared to be, "Wait and see. We have to be ready for whatever the outcome of the negotiations is." This year, it seems to be, "Well, we have to move quickly." How should we be going about making immigration policy in a way that gets the balance right between allowing some degree of flexibility and speed, and getting a significantly greater degree of scrutiny that does not allow thousands of changes to be made to the immigration rules without an MP batting their eyes?

Alison Harvey: I think Wendy Williams has given you an excellent blueprint in the Windrush lessons learned review. Although those recommendations emerged from Windrush, what she is saying is that you get a Windrush when you have a lack of understanding of your own laws. Complexity makes that understanding so difficult to achieve, as happened with Windrush. She recommends the consolidation of legislation. It is obvious. We need to do that through a consolidation Bill.

We have to have a self-denying ordinance so that no one is trying to change it—not the Government, not the Opposition—and we just get in and consolidate what we have got. Then we go in and change it afterwards. It is difficult enough to consolidate it. It can then go through the consolidated Bill procedure in Parliament, which is the only way you would ever get a consolidated Bill through Parliament without abandoning all other business in the Session to deal with it.

If the Immigration Act 1971 was our "going into the EU" immigration Act, we now need to start again and build up from the top. We need to think much more teleologically about where we want to be and what we want to achieve, rather than start with the how. The problem with the current paper is that it starts with the how and ignores where we are. It cannot cope with pressure such as from the pandemic and its effects on the economy. It is a rigid system full of teeny little routes. We do not need that; we need an idea of what the end result looks like, and then we can look at how to get there. We need a lot more sensitivity to regions, so we need to devolve down a great deal to regions such as Scotland, where immigration is needed. In Somerset, where I come from, the agricultural crisis is going to be huge.

The Chair: Thank you very much. I am afraid that it is 5 o'clock, and the rules state that I have now to ask the Whip—it is his moment of glory—to move the adjournment motion.

Ordered, That further consideration be now adjourned. *—(Tom Pursglove.)*

5 pm

Adjourned till Thursday 11 June at half-past Eleven o'clock.

Written evidence reported to the House

IB01 English UK
IB02 Royal College of Nursing
IB03 Lift the Ban Coalition
IB04 Families Together Coalition
IB05 The Children's Society
IB06 Equality and Human Rights Commission
IB07 Professor Bernard Ryan