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GENERAL COMMITTEES

Public Bill Committee

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

Fourth Sitting

Thursday 11 June 2020

(Afternoon)

CONTENTS

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not later than

Monday 15 June 2020

The Committee consisted of the following Members:

Chairs: Sir Edward Leigh, † Graham Stringer

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

Anwen Rees, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 11 June 2020

(Afternoon)

[Graham Stringer *in the Chair*]

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

Clause 4

Consequential etc. provision

Amendment proposed (this day): 2, in clause 4, page 2, line 34, leave out "appropriate" and insert "necessary"—*(Stuart C. McDonald.)*

This amendment would ensure that the Secretary of State may only make regulations which are necessary rather than those which the Minister considers appropriate.

2 pm

Question again proposed, That the amendment be made.

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

Amendment 3, in clause 4, page 2, line 34, leave out ", or in connection with,"

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee in connection with the equivalent Bill introduced in the last session of Parliament.

Amendment 20, in clause 4, page 2, line 35, leave out "this Part" and insert "Schedule 1"

This amendment seeks to limit the scope of the power in Clause 4 to matters concerning the ending of retained EU law rights that currently preserve free movement and immigration-related rights.

Amendment 21, in clause 4, page 2, line 35, at end insert—

'(1A) The power to make regulations under subsection (1) may only be exercised within the period of one year from the day on which this Act is passed.

(1B) Regulations made under subsection (1) shall cease to have effect after a period of two years from the day on which this Act is passed."

This amendment would restrict the use of the Henry VIII powers contained in Clause 4 to a period of one year from the date of the Act being passed; and would prevent any changes to primary legislation made by exercise of these powers having permanent effect unless confirmed by primary legislation.

Amendment 4, in clause 4, page 3, line 6, leave out subsection (5).

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee in connection with the equivalent Bill introduced in the last session of Parliament.

Amendment 15, in clause 4, page 3, line 8, at end insert—

'(5A) The Secretary of State may make regulations under subsection (1) only if satisfied that the regulations would have no detrimental effect on the children of EEA and Swiss nationals resident in the United Kingdom.

(5B) Before making regulations under subsection (1) the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (5A)."

Amendment 22, in clause 4, page 3, line 8, at end insert—

'(5A) Regulations under subsection (1), in relation to persons to whom the regulations apply under this Act, shall be made in accordance with the following principles—

(a) Promotion of family life, particularly that between children and their parents and that between partners;

(b) That persons in the United Kingdom should have a right of appeal to the First-tier Tribunal against any decision to refuse leave remain, to curtail leave to enter or remain or to make a deportation order;

(c) that where leave to remain is given—

(i) on account of a person's long residence in the United Kingdom; or

(ii) to a person whose continuous residence in the United Kingdom includes five years of that person's childhood; or

(iii) to a child who has lived in the United Kingdom for a period of seven continuous years;

that leave is given for an indefinite period;

(d) that leave to enter or remain given to a person for the purpose of establishing or continuing family life in the United Kingdom is not subject to a condition restricting work, occupation or recourse to public funds; and

(e) ensure that no change to immigration rules or fees is made—

(i) unless sufficient public notice has been given of that change to ensure any person affected by the change who is already in the United Kingdom with leave to enter or remain has reasonable opportunity to adjust their expectations or circumstances before the change takes effect; or

(ii) that would require a person given leave to enter or remain for the purpose of establishing or continuing family life in the United Kingdom to satisfy more restrictive conditions for the continuation of their stay than were required to do so at the time the person was first given leave for this purpose."

This amendment seeks to ensure that exercise of the delegated powers in clause 4(1) is guided by certain principles.

Amendment 12, in clause 8, page 5, line 40, at end insert—

'(4A) Section 4 and section 7(5) expire on the day after the day specified as the deadline under section 7(1)(a) of the European Union (Withdrawal Agreement) Act 2020."

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): It is a pleasure to serve under your chairmanship this afternoon, Mr Stringer. This group of amendments raises important issues about the scope of the regulation-making power in clause 4. I would like to thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for speaking to his amendments and for the effort he has put into them. I know that he has a strong interest in the use of the power in clause 4, as he had when the Bill was previously in Committee, in 2019. However, despite the explanations given to him then, he appears still to be misinformed about how the Government are planning to use this power, and I hope that my response will help. A lot has been said today and in the evidence sessions about this power granting Ministers a blank cheque. That is not the case, and if you will permit me, Mr Stringer, I will set out how we intend to use the power and respond to the hon. Member's amendments as I do so.

The power is intended to enable three broad things via regulations. The first is to ensure that our laws operate coherently once freedom of movement ends and the relevant provisions in schedule 1 are repealed. There are references across the statute book to EEA citizens, their free movement rights and their status under free movement law, which need to be addressed through regulations made under this power.

For example, regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002 list the documents that must be provided in support of various types of immigration application. One type relates to applications under the Immigration (European Economic Area) Regulations 2016, which implement the free movement directive. That reference needs to be removed because those regulations are revoked by schedule 1, so there will no longer be applications under them. It is therefore important that the power is wide enough to ensure that all references to the EU and free movement rights in primary and secondary legislation can be amended appropriately as a consequence of, or in connection with, the ending of free movement.

That is why the Government do not and cannot accept amendments 2 and 3, as they would prevent us from meeting our manifesto commitment of ending free movement and introducing a new, fairer points-based immigration system. We also do not want the provision drafted so narrowly as to lead to challenge and uncertainty about whether an amendment is "appropriate" or "necessary" "in connection with" or "in consequence of" the end of free movement. Such an amendment would enable those who oppose the principle of ending free movement, which I accept the Scottish National party does, to seek to achieve that through the courts by challenging these regulations, since they were not able to achieve it at the ballot box in December.

The second reason that the power is important is to align the immigration treatment of EEA and non-EEA citizens for those who arrive from 1 January 2021, after the end of the transition period. That will enable us to deliver the new global points-based immigration system under which everyone is treated equally—for example, by removing EEA citizens' exemption from the immigration skills charge. We also intend to use the power to align the rules on access to benefits, so that EEA citizens and non-EEA citizens are treated the same under the new global points-based system. It is worth me clarifying that the detailed requirements for the future points-based immigration system will be set out in the immigration rules made under the Immigration Act 1971 and subject to parliamentary scrutiny of those changes, not through regulations made under clause 4. Control has been taken back by Parliament and will be there.

Thirdly, the power will enable savings and transitional provisions to be made—for example, to protect EEA citizens' existing appeal rights under the EEA regulations. That is in addition to the protections to be delivered for EEA citizens resident in the UK by the end of the transition period through statutory instruments, which the Government will bring forward under the European Union (Withdrawal Agreement) Act 2020.

I understand that clause 4 is a complex, technical power. That is why the Government have already produced information to help the Committee understand the power, through the factsheet published on gov.uk. I have also given examples of changes that we intend to make under the regulations. It is absolutely right that Parliament pays close attention to delegated powers such as these. I noted the recommendations of the Delegated Powers and Regulatory Reform Committee in the report on the Bill in the previous Parliament.

Amendment 4 would remove the provision to make changes in relation to fees and charges. Regulations made under this power may only modify legislation relating to the imposition of immigration fees and charges where that is as a consequence of or connected with the provision in part 1. That enables the application of fees and charges to EEA citizens, who are currently exempt from them, such as the immigration skills charge, which is paid by the employer.

Amendments 20, 21 and 22 would further limit the scope of the regulations made under clause 4. Let me set it out again that we need this power to ensure that our laws operate coherently once free movement ends, to align the immigration treatment of newly arriving EEA citizens and non-EEA citizens from 1 January 2021, and to make relevant savings and transitional provisions for resident EEA citizens that cannot be made under powers in the European Union (Withdrawal Agreement) Act 2020.

Amendment 20 would prevent the regulations from being used to make amendments that are in consequence of or in connection with clause 2, which protects the unique position of Irish citizens in the UK once free movement ends. I understand the queries about that point. To be absolutely explicit, we intend to use that power in a very limited way to amend provisions in the Immigration Act 1971 that cover entering the UK via the common travel area. We will not use them for wider changes. As I said this morning, the Belfast agreement is fundamental international law, as well as a fundamental part of our constitution.

Amendment 21 is intended, first, to sunset the power in clause 4 by setting a deadline for its use of one year after the Bill is passed and, secondly, to ensure that regulations made under the power expire after two years. As the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is, I suspect, aware, regulations will need to be made under clause 4 to coincide with the repeal of free movement law by part 1. We have endeavoured to ensure that they make all the changes required by primary and secondary legislation, to come into effect by the end of the transition period. Beyond that, I assure him that we would make further changes under the power only if that were required, and Parliament will be fully engaged whenever it is used.

The power cannot be used to make amendments relating to the consequences of exiting the EU more generally; it can be used only in consequence of or in connection with ending free movement and the clarified status of Irish citizens. Changes cannot be made indefinitely, as they would not be in consequence of or in connection with that purpose. For example, the powers cannot be used to amend future primary legislation or general immigration policies.

The second limb of amendment 21 provides that any regulations made under clause 4 would expire after two years. That would mean that the legislation that had been amended reverted to its former state, creating confusion for the public and leading to a partial revival of elements of free movement, which I suspect is the outcome that the hon. Gentleman is partly hoping for. This is not an outcome that we can accept.

[Kevin Foster]

Amendment 22 would require that regulations made under the power in clause 4 complied with a specified set of principles. It would have the effect of continuing to treat newly arriving EEA citizens differently from non-EEA citizens. That is not consistent with establishing a new global points-based immigration system focused on the skills and contributions that people have to offer the UK, not where their passport is from.

Amendment 12, which was tabled by the hon. Member for Torfaen (Nick Thomas-Symonds), is also intended to sunset the power in clause 4 by setting the end date for its use as the day after the end of the grace period, on 30 June 2021, by which time EEA citizens and their family members resident in the UK by the end of the transition period must have applied for status under the EU settlement scheme unless, as we constantly repeat, there are reasonable grounds for missing the deadline.

I hope that I have reassured hon. Members concerning the important limitations on the use of the power in clause 4. I emphasise that it cannot be used to make amendments that relate to the consequences of exiting the EU more generally, but only in consequence of or in connection with ending free movement and the clarified status of Irish citizens provided by clause 2.

We will endeavour to make all the changes required to primary and secondary legislation in the forthcoming regulations to be made under clause 4 later this year. However, should we identify the need to make further regulations related to part 1, it is important that we have the power to do so, subject to the full scrutiny and approval of both Houses.

When a power to make regulations expires, so do any regulations made under it, so if the amendment were passed legislation that had been amended would revert to its former state, creating confusion for the public and leading to a partial revival of elements of free movement, which may have been the intention. However, that is not an outcome that the Government can accept.

Amendment 15, which was tabled by the hon. Member for Stretford and Urmston, would ensure that children of EEA and Swiss citizens resident in the UK were not adversely affected by the ending of free movement rights. She asked specifically about numbers, and I had an opportunity over the break to get the figures for the period up to 31 March 2020—they are published quarterly. Of the under-18s who have applied to the European settlement scheme, and where a decision has been taken, by 31 March, 261,880 were granted settled status and 150,940 were granted pre-settled status. That compares with just 20 refusals of applications from applicants aged under 18. Those refusals may well be on grounds purely of eligibility—that is, not having proof of living within the United Kingdom.

Given the hon. Lady's specific query, I thought it would be helpful to give that clarity. It is not possible to say exactly how many people may be eligible, because free movement rights and rights relating to those who become eligible to apply to the European settlement scheme still operate up to 31 December. It is impossible to say exactly who will arrive tomorrow, for example, and be entitled under the withdrawal agreement to apply to the European settlement scheme. I hope that gives her some reassurance on where we are. It is worth saying that the overall level of applications to the European settlement scheme is now over 3.5 million and the number of decisions taken is over 3 million, which puts the numbers we are talking about into context.

Amendment 15 would create a two-tier system of family migration, with one set of requirements for the children of EEA and Swiss citizens and another for children of non-EEA citizens. It would lead to EEA citizens potentially being given preferential treatment inconsistent with the new points-based immigration system and with our aim of having a new single approach to migration rules, regardless of where a passport comes from.

The Home Office has, as the hon. Lady touched on, a very clear statutory obligation to take into account the need to safeguard and promote the welfare of children in the UK when carrying out immigration functions. That extends to all children, not just the children of EEA or Swiss citizens. This is contained in section 55 of the Borders, Citizenship and Immigration Act 2009. That, together with article 3 of the UN convention on the rights of the child—part of international law, as she pointed out—means that consideration of the child's best interests must be a primary consideration in immigration decisions affecting them.

The amendment could create a separate and preferential family migration system for the family members of EEA or Swiss citizens compared with the family members of non-EEA citizens. The proposed condition under clause 4—that the Secretary of State is satisfied that there would be no detrimental impact on the children of EEA or Swiss citizens—could lead to non-EEA citizens with children and the children themselves being treated less favourably for no reason other than their nationality and with no justification for that, given that the United Kingdom has now left the European Union. This is not a basis on which a new global immigration system can be founded.

The Bill's core focus is to end free movement. The design of the new points-based immigration system will be developed consistent with our international and domestic obligations to safeguard and promote the welfare of children. For that reason, as set out in our published policy equality statement on the immigration measures in the Bill, we have committed carefully to consider all equalities issues, including the impact on children, as these policies are being developed, but not on the basis of a two-tier approach between non-EEA and EEA children.

It is important to debate the appropriate use of delegated powers, and I welcome this, but the Government are committed to ending free movement now that we have left the EU and this clause is an essential part of delivering that. It will be used to deliver a clear and coherent statute book and level the playing field for future migration by removing the preferential treatment of EEA citizens and their family members under EU freedom of movement rules.

In future, the UK's immigration system will be firmer, fairer and global, rather than one based on where someone's passport comes from. I suspect that I might not have been able to fully reassure Opposition Members on the power under clause 4, but I ask them not to press their amendments, which the Government cannot accept.

2.15 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to see you in the Chair, Mr Stringer. I am grateful to the Minister for his extensive response, but he is right in one thing, which is that he has not fully satisfied me about the need for these powers. Much of what he said related to how the Government propose to use these powers or what they are planning to do, but that is not how we should go about assessing whether the scope of the powers is appropriate. We need to assess what the scope of these powers would, in theory, allow the Government to do, and that goes way beyond what he set out.

We do not hand powers to the Government on the basis of assurances that they are going to do only a, b and c. Listening to the list of proposals the Minister made, I am utterly unconvinced that that could not be done very simply with a much more narrowly drawn clause and power. Nothing in any of these amendments would stop the Government bringing free movement to an end—sadly.

The Minister alluded to the fact that some of this is about trying to limit the scope for judicial oversight. I am trying to keep MPs in a job here scrutinising legislation, but I am also trying to make sure the judiciary is not excluded from the proper review of the use of Executive power. The House of Lords Delegated Powers and Regulatory Reform Committee said that these are "significant" powers and also used the word "disturbing" at one point, so I am afraid I cannot accept the Minister's explanation that they are justified.

On amendment 22, I am disappointed that the Minister did not engage with the principles themselves, because other amendments have been tabled with respect to the principles of immigration law and we are constrained by the scope of this Bill to limiting these amendments to dealing with EU, EEA and Swiss nationals. Although that does not mean we think we should be confined in this way to them, it is in the Government's gift to extend this much more broadly, so I am very disappointed that he did not engage with what those principles are. I hope we will have a fuller debate when we come to other amendments. On that basis, I shall press amendment 2 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 4]

AYES

Elmore, Chris	Lynch, Holly
Green, Kate	McDonald, Stuart C.
Johnson, Dame Diana	Owatemi, Taiwo

NOES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Holden, Mr Richard	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

Question accordingly negatived.

Holly Lynch (Halifax) (Lab): I beg to move amendment 13, in clause 4, page 3, line 8, at end insert—

"(5A) Regulations under subsection (1) must provide that EEA nationals, and adult dependants of EEA nationals, who are applying for asylum in the United Kingdom, may apply to the Secretary of State for permission to take up employment if a decision at first instance has not been taken on the applicant's asylum application within six months of the date on which it was recorded."

May I say what a pleasure it is to serve under your chairmanship again this afternoon, Mr Stringer? The amendment would give European economic area and Swiss nationals who apply for asylum in the UK the right to apply to the Secretary of State for permission to work if a decision has not been taken on the applicant's asylum application within six months of the date on which it is recorded as having first been made.

The amendment is the legislative outcome of the Lift the Ban campaign, a movement headed up by Refugee Action and with the support of more than 200 organisations, including the likes of Oxfam and the British Red Cross; trade unions, including the National Education Union, Unison and the TUC more broadly; industry players such as Ben & Jerry's and the Confederation of British Industry; and organisations such as the Adam Smith Institute. We worked on the drafting of the amendment with Refugee Action, as well as with legal professionals, and we are of course truly grateful, as ever, to the Committee Clerks. The proposal is limited to EU nationals to ensure that it falls within the scope of the Bill.

This amendment was tabled by my hon. Friend the Member for Stretford and Urmston in the Bill Committee on the previous version of this Bill during the 2017-19 Parliament. At that point, the Government argued that the UK is allowed to treat an asylum claim made by a citizen of an EU country as automatically inadmissible unless exceptional circumstances apply, and that a claim made by a non-EU EEA national would be considered on the basis that it is likely to be clearly unfounded. The implication was that there would be no one who would benefit from the amendment, and in any case treating asylum seekers from the EEA differently from those from the rest of the world on the grounds of their nationality was not only illogical but discriminatory.

The Minister and I know, though, that the amendment sets out the proposal in principle, within the bounds of what is permissible in respect of the scope of the Bill. It gives us the opportunity and the platform to outline the case for change, and I am delighted that it also has the support of SNP Members.

In August and September 2018, the Lift the Ban coalition conducted a survey with a group that had direct experience of the asylum process and found that 94% of all respondents said they would like to work if they were given permission to do so. We have all met asylum seekers: they are people not dissimilar to ourselves who have often had to flee their own countries when faced with immediate danger. They are often skilled, able to work and want to work. Rose is one example. She is currently in the asylum system, so I appreciate that she is not an EU national, but hers is the experience that we could start to change and transform if the Government accept the merits of the amendment.

Rose has been waiting for a decision on her asylum claim for three years. Not having the right to work while she waits for a decision on her asylum claim is not only putting pressure on her family life but damaging to her children, who are unable to understand why she cannot work. She said:

[Holly Lynch]

"Not being able to work, it cripples you…As a parent, you feel that you are not good enough…When you have kids, their daily needs—there are things that you need to give them. If I were working, I would not have to go to charity shops all the time to get hand-me-downs for my kids."

Rose wants to be given the opportunity to be productive and show what she is capable of. She said:

"I want to work so I can prove myself to my children."

The amendment would give people in the future asylum system from EEA countries the opportunity to use their skills and make the most of their potential. It would improve the mental health of people such as Rose in the asylum system by giving them a sense of worth and purpose, and it would enhance the opportunities for integration into their new communities, as well as allowing them to satisfy the strong work ethic that Rose clearly has and wants to pass on to her children.

The impetus for this change has only been intensified by the coronavirus pandemic. The brilliant campaigning and advocacy from the group Freedom from Torture has shone a light on the pittance that asylum seekers receive in support rates. At present, people in the asylum system receive a little over £5 a day per person in allowances. While at the onset of the crisis the Chancellor increased universal credit by £20 a week to "strengthen the safety net", no proportional measures have yet been introduced for asylum support rates.

The uncertainty and rise in demand for specific items due to the pandemic has only exacerbated the difficulty faced by asylum seekers in finding the supplies they need to keep themselves and their families healthy and safe. Even before the onset of coronavirus, 52% of Refugee Action survey respondents reported having to use a food bank at some point within the last 12 months. If the Government are not minded to increase asylum support rates, it is both moral and logical to grant asylum seekers the right to work after six months. To forbid both options is to back some of the most vulnerable people in our society into an unescapable corner.

The Government could transform the financial health of a vast number of asylum seekers by accepting the amendment. Additionally, it would allow asylum seekers to play an active role in getting the British economy moving again, following the immense disruption caused by the pandemic. Refugee Action estimates that this change in policy could benefit the UK economy through net gains for the Government of £42.4 million. This would also be an overwhelmingly popular policy. Refugee Action carried out a survey of the public where 71% agreed that people seeking asylum should be allowed to work.

Accepting the amendment would help to fix the structural and deeply entrenched problems that exist with the current system. People seeking asylum in the UK can only apply for the right to work after they have been waiting for a decision on their asylum claim for over a year. The UK is the global outlier in time taken to give people in the asylum system the right for work. Ireland, Hungary, France, the United States and Poland, to name just a few, all have a much swifter process.

Even then, the few people who are granted such permission are rarely able to work in practice because their employment is restricted to the list of professions included on the Government's shortage occupation list. This is the equivalent of putting square pegs in round holes, and disregards the skills and potential of many people in the asylum system. Refugee Action found that 74% of survey participants had secondary level education and 37% had an undergraduate or postgraduate degree. People in the asylum system can and should work in a wide variety of jobs that are hugely beneficial to both the UK economy and public wellbeing.

My involvement with the campaign is largely thanks to two amazing women in my own constituency. I pay tribute to Veeca Smith and Florence Kahuro, who set up the wonderful and incredibly effective local campaign group Sisters United. I am sure they would be delighted to meet the Minister in the not-too-distant future—I am sure he would struggle to get a word in edgeways. They are absolutely brilliant. They both sought asylum in the UK and founded the group to offer peer support to others in their situation and campaign for simple things such as accommodation that is not plagued by health and safety issues, and the right to go out and earn for themselves.

I hope that the Minister will appreciate the broad consensus that exists behind this amendment and accept the multitude of benefits that adopting the amendment would bring. It is time we treated people in the asylum seekers with dignity and as people with unrecognised potential to contribute to our society.

Taiwo Owatemi (Coventry North West) (Lab): It is a pleasure to serve under your chairmanship, Mr Stringer.

I rise in support of amendment 13 and lifting the ban. As with any legislation, there is a requirement to strike a balance between addressing the issue at hand, in this case our withdrawal from the EU, while also being practical and compassionate to ensure that people are not hard done by. The reality is that thousands of asylum seekers in the UK who came here for refuge are unable to work—unable to properly provide for themselves and their children and possibly loved ones, and unable to make what has been a difficult life a reasonable and normal one. Instead, as the Refugee Council highlights, these people must live on as little as £5 a day, which many of us here in this Room could not even countenance. That is £5 a day to feed themselves and loved ones, buy toiletries, pay for transport to go about their everyday lives, and do any other thing that a normal person would do.

2.30 pm

The Government's own statistics show that the number of people waiting for more than six months for a decision on their asylum claim has hit a record level, and these are not small numbers. Last year alone, 29,218 asylum seekers had been waiting more than six months to receive an initial decision. That is almost 50% of all claims for asylum, and that is up on 16,555 the year before, a staggering 77% increase, and that is before mentioning the errors that could be made in coming to a decision on their claim. That is nearly 30,000 people who, particularly during this pandemic, are likely to be even more hard done by; people who are more likely to live in poverty, and more likely to suffer poor health, be it physical or mental. Put simply, for a lot of these people, they are more likely to suffer.

We must remember that they are talented, skilful people; some are doctors, teachers, academics or labourers, and even some are in the IT profession. They are people

who are able to contribute what they can, within the rules, but they must wait over six months before they can even get a decision on whether they can lead a relatively normal life. Lifting the ban would allow them to work, should they not receive a decision within six months. A service standard set by the Home Office would be a small step in addressing this, and is the right and humane thing to do. This is the one opportunity we have to take a small step towards making these people's lives that little bit more bearable.

The Government used to say that work was a route out of poverty, and that is popular. Some 68% of the public—over two thirds—agree, according to British Future. Our neighbours across Europe have even taken this step, and although we are leaving the EU, we are consistently told that we are not leaving Europe behind. So what is stopping us? Let us take this practical step, support amendment 13 and lift the ban, to allow these people to work if a decision is not made within six months. Let's just do the right thing.

Stuart C. McDonald: I echo entirely the comments of both Members who have spoken so far, the hon. Members for Halifax and for Coventry North West. In short, people who apply for refugee status in this country should not as a result be trapped in poverty for months on end, if not years, simply because they made that claim, but that is the situation that far too many asylum seekers find themselves in.

All the arguments in favour of lifting the ban have been set out very well. We all know that an absence from the job market for several months, if not years, can be hugely detrimental to people's long-term prospects, regardless of all the other challenges that asylum seekers face in terms of integration. This change would provide a route out of poverty, saving money for the Government, given the savings that they would make on asylum support. It is a popular proposal among the public as well and would bring this country into line with many other countries in Europe and beyond.

This proposal should also be popular with MPs right across this House, and I think there are MPs in every single party who support it. While I do not expect the Government to make any major announcements today, I would be interested to hear the Minister say at least something about his thinking on this issue and whether he and his colleagues are giving serious consideration to doing something to stop people being left for months on end without any prospect of work or being able to get themselves out of poverty.

Kate Green (Stretford and Urmston) (Lab): I, too, endorse the speeches we have heard in relation to this amendment. I only want to make two points to the Minister. First, the long delays in processing asylum applications and then appeals is, I think we can agree, a real concern for everybody in this House. The problem with having a ban on asylum seekers working is that there is very little incentive for the Home Office to make rapid progress in dealing with those cases. Indeed, given that 45% of appeals now succeed, it seems that we are taking a very long time to fail to give the chance to work to people who will ultimately obtain it.

Secondly, I want to ask the Minister a question that follows on from the one asked a few moments ago about his personal attitude towards lifting the ban on asylum seekers' right to work. In the last Parliament, the previous Home Secretary, the right hon. Member for Bromsgrove (Sajid Javid), undertook to carry out a review of the policy and to give consideration to whether it needed to be revised. I do not think we ever heard the outcome of that review. It would be helpful to know whether the Home Office continues to conduct that review, when we might hear the outcome of it and whether evidence to support such a review is being sought from civil society and from parliamentary colleagues who might wish to submit ideas. It has been a long time since that commitment was made to the Home Affairs Committee, and it would be good to hear the status of that review.

Kevin Foster: I could make this a very quick response by saying that EEA citizens' asylum claims are inadmissible, but given the constructive nature of Opposition Members' speeches, I will respond more fully than the strict wording of the amendment allows me to. To my knowledge, there is literally no one with an outstanding asylum claim from an EEA country because they are inadmissible and therefore would not have to wait six months for a determination.

To be clear, our rules on the inadmissibility of asylum claims from EU citizens derive from the so-called Spanish protocol—part of the treaty of Amsterdam, dealing with this specific issue—which allows EU member states to treat an asylum claim by a citizen of another EU country as automatically inadmissible, unless exceptional circumstances apply. Those will, by their nature, be very rare. Claims from EEA citizens who are not part of the EU are considered by the UK, but on the basis that they are likely to be clearly unfounded. All EEA citizens, including those not in the EU, are considered to be from safe, democratic countries and are highly unlikely to suffer a well-founded fear of persecution or serious harm there. For those reasons, and because we do not foresee a change in these circumstances given the nature of the countries concerned, we intend to continue our policy on inadmissibility for EU citizens and rules regarding EEA citizens post the transition period. As a consequence, amendment 13 would be inconsistent with our broader policy on asylum claims from EU and EEA citizens.

Turning to Members' wider remarks, our current policy allows asylum seekers to seek permission to work in the UK if their claim has been outstanding for 12 months through no fault of their own. Those permitted to work are restricted to jobs on the shortage occupation list—to use one example cited by the hon. Member for Coventry North West, a doctor—which is based on expert advice from the independent Migration Advisory Committee. We have recently commissioned the MAC to advise us on the shortage occupation list under the new points-based system. As Members will know, the required skill level is going from RQF6, graduate, to RQF3, A-level, which will potentially expand the number of posts that are available. Given the type of countries and education systems, it is likely that we will have more, for example, skilled chefs, who would be considered to be at level RQF3 and not RQF6.

Holly Lynch: I am grateful to the Minister for the constructive tone of his response. We heard in evidence from the Migration Advisory Committee earlier this week that there is quite a significant delay in determining

[Holly Lynch]

which jobs are on the shortage occupation list. We may well have skills that could be put to good use but have not yet found themselves on that list. Is there not a more dynamic way that we can have another look at that?

Kevin Foster: I appreciate the sentiment. Traditionally the MAC has only operated on commission, when the Home Secretary or the Immigration Minister asks it to look at something. We are in the process of appointing a new chair of the Migration Advisory Committee, and we are looking at how it can work on a more predictable cycle. The call for evidence on the shortage occupation list is open, and with the skills threshold changing, we need to update the list for 1 January 2021. I would certainly encourage any organisations that the hon. Member is in contact with to make submissions, given the quite significant change, which will allow a wider range of practical skills, not just the purely academic skills that the list inevitably reflects by setting the bar at degree level. Senior careworker is a good example of a position that we expect to be between RQF3 and RQF6, rather than not qualifying, and it is worth remembering that that list will apply on a global basis.

Returning to the amendment, it is important to distinguish between those who need protection and those seeking to come here to work, who can apply for a work visa under the immigration rules. Our wider immigration policy could be undermined if there was an incentive for individuals to try to bypass the work visa rules by lodging wholly unfounded asylum claims in the United Kingdom.

Secondly, unrestricted access to employment opportunities may also act as an incentive for more people to choose to come here illegally, rather than claiming asylum in the first safe country they reach, particularly within the European Union. We cannot have a policy that increases that risk, even though it has to be said that clearly an EEA citizen would not be fleeing war or persecution.

Kate Green: I understand the fear that the Minister is expressing, but does he accept that all meta-analysis of countries that offer asylum seekers a right to work shows that they experience no increase in asylum-seeking, or no relatively higher rate of asylum-seeking, than countries that do not offer such a right?

Kevin Foster: As I touched on, there is some ability to work for those whose claims have been delayed for a significant period of time, but we are not satisfied, given what we have seen with past attempts to use parts of the migration system to avoid the restrictions or avoid having to come through the appropriate process to work here, that what the hon. Lady said would not be the case. We cannot readily dismiss the impact that removing such restrictions would have, nor its impact on our capacity to support genuine refugees who are in need of our protection, given that our system also has to deal with those claims that are unfounded and are more about intending to acquire a right to work in the United Kingdom.

I will take this opportunity to make it clear that I acknowledge the well expressed concerns of Opposition Members. The Government are committed to ensuring that asylum claims are considered without unnecessary delay, to ensure that individuals who need protection are granted asylum as soon as possible and can start to rebuild their lives. As the hon. Member for Halifax will know, once someone is granted asylum they are given immediate and unrestricted access to the labour market.

I heard the points that were made eloquently by the hon. Members for Coventry North West, and for Stretford and Urmston about the time that it can take to make some of these decisions. That is also a concern for me as a Minister and for the Government, because if people have a founded claim, we want it brought to a resolution as quickly as possible, so that they can move on and rebuild their lives. Similarly, if a claim is wholly unfounded or based on—if I might put it this way—inaccurate information being provided by the applicant, we want to come to a speedy decision to facilitate their removal from the United Kingdom, to ensure that our system is fair as well as firm.

The new service standard for asylum applications, which is intended to try to bring back some balance to the system, is currently being developed. UK Visas and Immigration is engaging with stakeholders as part of these plans and considering any insight that those stakeholders offer as it tries to shape a new service standard, which was touched on by the hon. Member for Coventry North West, as a start in attempting to tackle some of these issues.

Finally, the hon. Member for Stretford and Urmston asked about the review commissioned under a previous Home Secretary. We are in the process of reviewing the right-to-work policy, with officials looking at the body of evidence available. Therefore, it would be inappropriate for me to comment further until that review is complete, other than to say that that process is ongoing.

Having made those comments, the Government cannot accept the amendment and we hope that it will be withdrawn.

2.45 pm

Holly Lynch: I am grateful for the Minister's constructive response, but as I am sure he will appreciate, I am also a little disappointed by it.

I pay tribute to my hon. Friend the Member for Coventry North West and congratulate her on what I think was her maiden Bill speech, which was an excellent contribution. [Hon. Members: "Hear, Hear."] Very well done.

We accept that the spirit of the amendment would not be able to be delivered as intended through this particular measure. However, we will continue to work with Members across the Benches, in coalition, to move towards the change that we would very much like to see. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 15, in clause 4, page 3, line 8, at end insert—

"(5A) The Secretary of State may make regulations under subsection (1) only if satisfied that the regulations would have no detrimental effect on the children of EEA and Swiss nationals resident in the United Kingdom.

(5B) Before making regulations under subsection (1) the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (5A)."—*(Kate Green.)*

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 5]

AYES

Elmore, Chris	Lynch, Holly
Green, Kate	McDonald, Stuart C.
Johnson, Dame Diana	Owatemi, Taiwo

NOES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Holden, Mr Richard	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

Question accordingly negatived.

Stuart C. McDonald: I beg to move amendment 5, in clause 4, page 3, line 9, leave out subsection (6).

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

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

Amendment 6, in clause 4, page 3, line 14, leave out "other".

This amendment is consequential on Amendment 5.

Amendment 9, in clause 4, page 3, line 14, leave out from "(1)" to "is".

This amendment, along with Amendment 8 will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Amendment 8, in clause 4, page 3, line 18, leave out subsection (8).

This amendment, along with Amendment 9 will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Stuart C. McDonald: We are back to the nuts and bolts of delegated legislation. This time, rather than considering the scope of the powers, we are looking at the procedures that should be used when they are exercised. Amendment 5 is designed to keep MPs in a job: we should be ensuring that we maximise our role in scrutinising what the Government do with their power to make laws.

Clause 4(6) to (10) sets out the procedures for making these regulations. I apologise in advance, Mr Stringer, if I get some of the terminology wrong. Even after five years in this place, I still regularly confuse my made affirmative, affirmative and negative procedures. As I understand it, the most extreme made affirmative procedure is allowed for the first set of regulations that would be made under the clause. That means that the Government would be able to bring rules into force immediately, before MPs had the chance to scrutinise the proposals. MPs would then have 40 days to pass an affirmative resolution to keep the rules in place. No good parliamentarian should ever be comfortable allowing the Government to bring rules into force before we even have the chance to look at them.

The more usual affirmative procedure would apply to subsequent draft statutory instruments through which the Government were amending Acts of Parliament. That too is a really drastic power, but it would mean that nothing came into force until we positively approved it. Although I object to Henry VIII powers for rewriting Acts of Parliament, if they must exist, that should be the method for regulation making here.

Other regulations that do not directly impact on Acts of Parliament would use the much less satisfactory negative procedure. Although a draft of those regulations would still be tabled before they came into force, they would almost inevitably do so unless, exceptionally, Parliament prayed against that negative resolution. All these amendments do is ensure that MPs have their say, and have a proper role in scrutinising the Government before regulations come into force, which is important given the very important subject, and the effect that these provisions could have on immigration law. I hope the Committee will be sympathetic to what we argue for.

Holly Lynch: As the SNP spokesperson says, this group of amendments, like most of those in the previous group, continues to seek to limit the transfer of powers to the Executive and away from Parliament. We have gone over the arguments against such sweeping Henry VIII powers in principle at length, so I will not repeat those. This group largely seeks to ensure that regulations made under clause 4 are subject to the affirmative procedure, and to leave out subsection (6).

Martin McTague from the Federation of Small Businesses was I think the only witness who said in his evidence on Tuesday that he actually did see some merit in the powers in clause 4, yet when asked further, he was keen to stress that

"the Home Secretary will be answerable to Parliament about the decisions that she or he has made. That would be a way in which Parliament could ensure there was proper scrutiny."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Bill Public Bill Committee,* 9 June 2020; c. 14, Q29.]

However, as the Bill stands, proper scrutiny will be missing.

As has been said, proper scrutiny is exactly what we are in the business of in this place. It is why the Government say they have thrown caution to the wind in returning to a physical Parliament when we could have been undertaking our duties from home, as is still the public health advice. If the Leader of the House is such a big fan of parliamentary scrutiny, why are we going to such lengths to avoid it with these powers? Putting changes through the affirmative procedure has to be the way forward if we are to shape legislation for the better and deliver on parliamentary democracy. That is why we support this group of amendments.

Kevin Foster: I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for speaking to his further amendments on clause 4. Amendments 5, 6, 8 and 9 deal with the parliamentary procedure for regulations made under the clause 4 powers, as has been outlined. The made affirmatory procedure is needed in the event that there is a short window between the Bill's Royal Assent and the end of the transition period on 31 December 2020. This is why the provision for the affirmative procedure that the hon. Gentleman and the hon. Member for Halifax have suggested would not work. Free movement must end on 31 December at the end of the transition period, and it is important to ensure that regulations

[Kevin Foster]

made under this power align the treatment of European economic area and non-EEA citizens who arrive in the UK from 1 January 2021.

To clarify, under the made affirmative procedure, Parliament will be asked to approve the regulations within 40 days of their being made to enable them to continue in force, so Parliament does have scrutiny of the use of this power. If either House does not approve the regulations, they will cease to have effect, but subsection (10) preserves the effect of anything done under these regulations before that point to ensure legal certainty—in essence, for someone who is granted immigration leave after applying under a rule that would come into effect on 1 January.

Using this power does not mean avoiding parliamentary scrutiny. The secondary legislation to be made under this power is still subject to full parliamentary oversight under the established procedures, although I expect the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East may actually be disappointed at just how limited and benign they end up being. It is important to debate the appropriate use of delegated powers, but the Government are committed to ending free movement now that we have left the EU, and this clause is an essential part of delivering that and ensuring that it can be done, with the new system in place, on 1 January 2021. We therefore cannot accept these amendments.

Stuart C. McDonald: I am grateful to the Minister for his explanation. I am not convinced that there will be a time problem between the Bill coming into force and the end of the transition period, so I insist on pressing amendment 5 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 6]

AYES

Elmore, Chris	Lynch, Holly
Green, Kate	McDonald, Stuart C.
Johnson, Dame Diana	Owatemi, Taiwo

NOES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Holden, Mr Richard	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

Question accordingly negatived.

Stuart C. McDonald: I beg to move amendment 1, in clause 4, page 3, line 28, at end insert—

"(11) Regulations made under subsection (1) must make provision for admission of EEA nationals as spouses, partners and children of UK citizens and settled persons.

(12) Regulations made under subsection (1) may require that the EEA nationals entering as spouses, partners and children of UK citizens and settled persons can be 'maintained and accommodated without recourse to public funds' but in deciding whether that test is met, account must be taken of the prospective earnings of the EEA nationals seeking entry, as well as an third party support that may be available.

(13) Regulations made under subsection (1) must not include any test of financial circumstances beyond that set out in subsection (12)".

This amendment would ensure that UK nationals and settled persons can be joined in future by EU spouses and partners and children without application of the financial thresholds and criteria that apply to non-EEA spouses, partners and children.

The Chair: With this it will be convenient to discuss new clause 34—*Visa requirements for certain family visas: coronavirus*—

"Section E-LTRP.3.1 of Appendix FM of the Immigration Rules will not apply to persons who have lost free movement rights under section 1 and schedule 1 until the Coronavirus Act 2020 expires as set out under section 89(1)."

This new clause is designed to ensure EEA and Swiss nationals are not prevented from qualifying to remain in the UK as partners, merely because they cannot meet financial requirements in the Immigration Rules during the coronavirus pandemic

Stuart C. McDonald: I have put amendment 1 at the top of my list because the subject is very close to my heart. It is on a huge issue with our so-called family migration rules. I call them anti-family migration rules, because they have been responsible for splitting apart tens of thousands of families; they have some of the most draconian requirements in the entire world. I cannot believe that most Conservative MPs are not at least uncomfortable with the rules, if not downright embarrassed and ashamed. Theirs is the party of the family, for goodness' sake.

By imposing the financial threshold on our constituents, we say to many of them—half the population, in fact—"You do not earn enough money to live in your home country with your family if you were to marry somebody from outside the EU," and in future it will be anybody outside the common travel area. We are saying to them: "You have to choose between your country and your family." That is absolutely barbaric. The impact of the rules will grow every year if we pass this Bill as it is, because the rules that apply to those in relationships with non-EEA nationals will for the first time extend to those in relationships with EEA nationals.

I want to start with a neat summary of the issue in a statement made by Bishop William Nolan and Bishop Paul McAleenan, the lead bishops for migrants and refugees from the Catholic Bishops' Conferences of Scotland and of England and Wales respectively:

"The minimum income threshold for family visas unjustly separates tens of thousands of couples, parents and children. Without reforms, the end of free movement will result in even more families being kept apart by this policy. Some key workers who have played a vital role during the Covid-19 pandemic are among those who cannot be reunited with their families because they do not meet the minimum income threshold. This separation not only has serious implications on family life, but also has a direct impact on the development and wellbeing of children who are isolated from their parents in another country."

That is the issue in a nutshell. There are other egregious features of the rules that I will come to in a minute.

The Children's Commissioner for England prepared a report called "Family Friendly? The impact on children of the Family Migration Rules", which is a review of the financial thresholds that the amendment and the new clause focus on. It was published in 2015 and it concluded:

"the financial requirements introduced in 2012 have been responsible for the separation of thousands of British children from a parent."

Such requirements

"cannot be met by almost half of adult British citizens, including many in full-time work, particularly the young, the retired, women, ethnic minorities and those living outside London and the South East."

What we usually get back by way of defence from the Government is, "We asked the Migration Advisory Committee and it came up with the threshold of £18,600." It is true that that committee was tasked with a bit of work, but it was not asked to come up with a general view of how the family migration rules should be formulated. It was asked to come up with a figure at which it could be said that people could support a family without becoming a burden on the state; that is how it was put. That is a perverse way to pose the question, given that when people come here on family visas, they are not allowed to become a so-called burden on the state because they are prohibited from accessing public funds.

As the MAC made clear, in doing its work, it was not in any way making recommendations that gave consideration to what is required of the UK under its international and domestic human rights obligations to respect private family life or consider the best interests of children.

3 pm

In that 2015 report, the Children's Commissioner concluded that the impact on families had been devastating. The report also emphasised several detrimental effects on children's health, welfare and development as a result of forced separation from a parent and, in the case of some British children, exile from their home country, and on the health and welfare of partners and their families. None of that featured in the Migration Advisory Committee's work.

Every day, there are examples of this issue in the news. I do not doubt that every single MP present has had constituents come to them with such issues. I was reading today about an NHS worker who is involved in combating covid. She does not earn enough through that job to meet the income requirements, so she has had to take a second job.

The first time I was approached by a constituent with these issues, it was somebody who had served in the British Army; afterwards, while abroad, they had met somebody, who came here and worked under a different type of visa, so they had shown that they could work and contribute. When it came to making an application for them to be united as a family in this country, however, the £18,700 threshold was missed by a few hundred pounds. The Home Office refused to take into account the possibility that the partner would earn money here—she would have, as she had in the past—so that family is split asunder.

My solution in the amendments is essentially to go back to the old regime. There are other things that we could consider doing as well, even if the Government do not want to go back to that regime. There are things that could be looked at, such as setting the threshold at the minimum wage, which would at least give some hope to several thousand families.

The other thing that makes absolutely no sense about the rules is that they do not look at any other possible sources of income. In particular, as in the example just given, why do they not take any account, except in exceptional cases, of the potential earnings of the partner who is going to join family members in the United Kingdom? It makes no sense at all, nor does the exclusion of offered support from family members and so on. I ask the Minister to look at that again. There was supposed to have been a review of that—I cannot remember at what stage, but sometime after 2012—which has not happened. They are not the Minister's rules; they come from a previous regime. We do not need to accept the status quo just for the sake of it.

The new clause raises particular issues about the coronavirus pandemic. Obviously, all sorts of folk out there have been working really hard to make sure that they get to that £18,700 threshold, so that they can apply for somebody to come and join them, or so that the family can stay in this country. As a result of the pandemic, some will have lost their jobs, and some will have been put on the welcome furlough scheme but will have lost 20% of their income. They will have been just a few months short of being able to join their family up, but now have the horrible prospect of it all going totally wrong and having to live apart again.

As I understand it, guidance momentarily appeared on the Home Office website yesterday or the day before, which was welcomed for the time it was up. It seemed to provide some sort of assurance that families would not be penalised if they fell short only because of covid consequences. It suddenly disappeared again, however, so people are a wee bit upset, perplexed and confused. It would be hugely welcome if the Minister could at least say that the impact of the covid crisis on income will not mean that even more families than necessary are split apart.

As I say, I am no fan of the UK's immigration rules, as hon. Members will have gathered, but the measures I am talking about are up there among the most incomprehensible and unjustifiable. I appreciate that Government MPs will not suddenly vote against the Government today, but they should go away and think about this . Let us see whether we can come up with solutions, so that so many families are not split apart by horrible, draconian rules.

Holly Lynch: We are enormously sympathetic to all the points that the Scottish National party spokesperson has just made on amendment 1, but I want to focus my comments on new clause 34, which we support. It would ensure that EEA and Swiss spouses of UK nationals were not ineligible for visas because of job cuts and furloughs resulting from the coronavirus. For many families, the coronavirus crisis has already led to loss of livelihood and prolonged separation. Now, families of British citizens with EU spouses fear that they will be permanently separated if their partner cannot secure a visa because their job security has been affected by coronavirus and they no longer meet the income threshold to settle in the UK.

We feel strongly that we should at this time give families as much security as possible. In the crisis, unemployment has crept up significantly, and there are limited work prospects. A recent publication for the Institute for Public Policy Research, using data from the labour force survey, found that migrants to the UK are far more likely to be working in industries affected by the crisis, including accommodation and food services. Migrants are also more likely to be self-employed and in temporary work, which puts them at particular risk of losing income, or having diminished income, as a result of the crisis.

[Holly Lynch]

We can foresee a ruthlessly competitive job market in the aftermath of the crisis. The new clause seeks only an appropriate grace period for the duration of the crisis on the minimum income requirement, for those who were working hard to ensure that they met it. It seems entirely appropriate to use the expiration of the Coronavirus Act 2020, as set out in the new clause, to set that.

A constituent of mine who worked at McDonald's needed to meet the threshold so that his wife could stay in the country, and will fall short, having been furloughed. Another woman who contacted me has a one-year-old and is pregnant with her second child. Having been furloughed, she has had to get a second job to top up her income, to meet the minimum income requirement for her partner to join her. A raft of visa issues have been exacerbated by coronavirus, and I do not think that I am being unreasonable in saying that the Government have not been particularly swift in offering clear, effective advice about the status of citizens throughout lockdown. That is causing huge additional and unnecessary anxiety for affected families at what is already a worrying time.

We have heard that there has been ambiguity about information on the Government website this week. The Home Office issued information for those on furlough, announcing on 9 June that if someone had earned enough to meet the minimum income requirement in the six months before March 2020 but their salary had dropped on being furloughed, they could still apply as if they were earning 100% of their income. That is welcome, but are the Government minded to extend consideration to those who lost their jobs entirely, and to grant them a grace period of some kind?

I should be grateful if the Minister responded to those points and considered the new clause as a way not to pile further worry and uncertainty on to families who are looking to reunite.

Kevin Foster: I appreciate the intention behind amendment 1, which is to create a means whereby, in future, EEA citizens would be able to join a spouse, partner or parent in the UK who was either a British citizen or settled here, without being subject to the current and established financial requirements for family migration. I also appreciate the intention behind new clause 34, which is to extend the concessions that the Government have already put in place for people subject to the minimum income requirement who are affected by covid-19 and the measures necessary to tackle it.

So that those subject to the requirement will not be unduly affected by circumstances beyond their control, a temporary loss of income during the pandemic will be disregarded. I hope that members of the Committee will appreciate that it would be difficult, and probably not appropriate, for me to go through an exhaustive list of circumstances that we might consider. However, new guidance is certainly online; I have just checked. I have summarised some of the details at least in one answer to a parliamentary question this week. It is my clear understanding that if someone is furloughed and, under their contract of employment, their potential earnings at 100% would be over £18,600—there are a couple of caveats to that, but we will stick with £18,600 for now—but the 20% furlough effect takes them below that figure, that drop in income will be disregarded. It is their substantive income that we will take into account, if they are still in their job and able to return to it when furlough comes to an end. For convenience, I will write to the Committee setting out the guidance we have given so that Members have it to hand, given the concern and interest that has been shown.

Let me be clear from the outset that the effect of amendment 1 and new clause 34 would be to create a separate and preferential family migration system for EEA and Swiss nationals and their families when compared with the situation of British or settled people's family members who are non-EEA citizens. That is the intention of the amendments. That would lead to a perception that non-EEA family members were being discriminated against for no reason other than their nationality and would likely be regarded as unlawful for that reason, given that we have now left the European Union and the basis for having a two-tier immigration system has fundamentally been removed. I accept that Members would argue that they would like to change the rules overall, not just for EEA citizens, but the focus of the Bill is EEA citizens; it is not a general migration Bill.

Holly Lynch: Does the Minister not accept, however, that the difference for British citizens in EU countries is that when they took decisions to form relationships and families elsewhere in Europe, they did not envisage that the rules would change and that free movement rights would be taken away from them? The immigration rules have changed for them in a way that they have not for other British citizens in other countries around the world.

Kevin Foster: When anyone takes the decision to go and live abroad, there is no guarantee that migration rules will not change while they are living abroad; rules have changed over the years for British citizens living outside the EEA. However, we have put in place a longer transitional period, which I think will be to 2022—it will be nearly six years after the referendum by the time that is implemented—for those who have moved abroad on freedom of movement. Even then, they will still have the ability to move back under the family migration rules, the same as UK citizens living anywhere else.

It is also worth noting that someone who might apply for a spousal visa could also apply under tier 2. To touch on the point about potential earnings in this country, someone who qualified for a skilled work visa would be able to apply through that route if they were not able to apply through the spousal visa route. They would not, for example, be barred from settling with a UK citizen here because they were on a tier 2 visa rather than a spousal visa. Actually, under some of the provisions, particularly if they were a healthcare worker, they would potentially be quicker to settlement overall if they took that opportunity. I know that is a point that has been raised about those who might have an earning potential.

Let me go into some of the details of why we do not think amendment 1 is the right approach. The amendment seeks to replace the minimum income requirement for British citizens and settled persons to sponsor EEA family members with a test that has three separate components: being able to maintain and accommodate the family without recourse to public funds; taking account of the prospective earnings of the EEA nationals seeking entry; and taking into account any third-party support available. Let me address those in turn.

The first component—the simple ability to maintain and accommodate without recourse to public funds—would take us back to the policy that was in place before the minimum income requirement was introduced in 2012. It was partly because the test for whether a family could maintain and accommodate themselves without recourse to public funds was difficult to apply consistently that the minimum income requirement was introduced. The minimum income requirement provides certainty to all by ensuring that family migrants are supported at a reasonable and consistent level that is easy to understand. As Opposition Members have alluded to, the minimum income requirement has been based on in-depth analysis and advice from the independent Migration Advisory Committee.

I turn to some of the points about differentials across the United Kingdom. The Migration Advisory Committee found no clear case for differentiation in the level of the minimum income requirement between the UK's countries or regions. A single national threshold provides clarity and simplicity. Data also show that the gross median earnings in 2018 exceeded the minimum income requirement in every country and region of the United Kingdom.

3.15 pm

It is therefore true that the minimum income requirement is set at a suitable and consistent level, and promotes financial independence, thereby avoiding burdens on the taxpayer and ensuring that families can participate sufficiently in everyday life to facilitate integration into British society. The second and third component introduced by the amendment, to take into account the prospective earnings of incoming EEA-national family members and any third-party support available, are already present in the consideration of the minimum income requirement.

Where there are exceptional circumstances, other sources of income, including the prospective earnings of the partner and genuine, credible offers of third-party support, can already be taken into account. That happens as part of the necessary consideration of whether refusal of the application breaches a person's right to respect for family life under article 8 of the European convention on human rights. That consideration takes place in all cases, although, as I have pointed out, there will be those who may well be able to qualify via the new tier-2 global skilled worker route, if looking to settle in the United Kingdom. British citizens and settled persons who want to be joined by family members who are EEA citizens will benefit from those considerations without the need for the amendment.

The immigration rules on family migration, which amendment 1 would effectively undermine, are designed to prevent burdens on the taxpayer, promote integration and tackle immigration rules abuse, thereby ensuring that family migration to the UK is on a properly sustainable basis that is fair to migrants and to the wider community. The amendment would mean that the rules were explicitly discriminatory, when in fact they are not, and cannot be so. The rules are helping to ensure public confidence in the immigration system. The amendment, well intended as it is, has the potential to reverse that.

In the same way, the introduction of a dual family migration system, as required by amendment 1, would not be seen in a uniformly positive way by British citizens and persons settled here. It would lead to an undesirable two-tier system of family migration, in which a group of family members who were EU nationals were given preferential treatment over non-EU family members many years after we had left the European Union.

The rights and status of EEA and Swiss citizens living in the UK will remain the same until 30 June 2021. EEA and Swiss nationals in the UK before the transition period ends, and their existing family members who wish to remain in the UK beyond that date, should apply under the EU settlement scheme, with the provision that we have already mentioned several times about late applications. If their application is successful, they will be granted either settled or pre-settled status under the scheme, and be able to continue living and working in the UK after 30 June 2021. Such an application is, of course, free of charge and will allow EEA and Swiss nationals and their family members to remain in the UK after free movement has ended.

I can be clear that the concessions that we have put in place to ensure that families are not unduly affected by a temporary loss of income due to covid-19, when it comes to meeting the minimum income requirement, already extend to EEA and Swiss nationals and their family members, and will continue to apply if necessary in the future. New clause 34, which would apply only to EEA or Swiss nationals, is therefore both unnecessary and, by treating certain groups of migrants more favourably than others without any particular justification for doing so, potentially discriminatory. The concessions that we have made apply to all, regardless of where their passport is from. For those reasons, I request that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East consider withdrawing amendment 1 and new clause 34.

Stuart C. McDonald: I am very grateful to the Minister for his response. I will not press either amendment 1 or new clause 34 to a vote, but for slightly different reasons. On new clause 34, I am grateful for the assurances with regard to the impact of the coronavirus shutdown on incomes, and I look forward to the Minister's letter, which I will obviously look at closely, and the scheme that is being put in place. We will no doubt return to that issue in the weeks and months ahead.

I will not press amendment 1 to a vote because I may wish to revisit it on Report. I do not think that people fully grasp the impact that this issue is having on families out there. The tier-2 alternative is not realistic for lots of families. My recollection of the test of maintaining and accommodating one's family without recourse to public funds was that it worked perfectly well but, as I said in my original submissions, there are other ways in which we could do it: we could have a lower threshold, such as the minimum wage or the living wage. We could do things differently and still provide certainty.

On the subject of certainty, it is no reassurance to someone if their only certainty is that they cannot live in this country with their loved ones. The Minister said that the threshold had been set at a suitable level, but it excludes almost half of the country from being able to be joined by their husband, wife or partner from overseas—in Northern Ireland, I think, it even excludes more than half, because of the different wage levels.

The so-called "exceptional circumstances" route just does not work; that was the bare minimum that the Home Office had to put in place because of a Supreme Court challenge about how awful these rules were. In

[Stuart C. McDonald]

terms of public confidence, I think that the more members of the public find out about these rules, the more they will be horrified at how the UK Government treat UK citizens.

These are miserable rules. I hope people will go away and think again, even if they do not want to go back wholesale to the position as it was before 2012. We cannot let this continue—more than that, we cannot let it escalate. Tens of thousands of families are already impacted, and in the next decade there will be tens of thousands more. They will all come to our surgeries. The Government have been warned. But I will keep that point for Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 14, in clause 4, page 3, line 28, at end insert—

"(11) Regulations made under subsection (1) must make provision enabling UK citizens falling within the personal scope of the Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement to return to the UK accompanied by, or to be joined in the UK by, close family members with whom they lived while residing in the EEA or Switzerland.

(12) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members which could not have been imposed under EU law relating to free movement, as at the date of this Act coming into force.

(13) References in subsection (11) to the Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement have the same meaning as in the European Union (Withdrawal Agreement) Act 2020."

This amendment would mean UK citizens who had been living in the EEA or Switzerland but wish to return to the UK, could continue to be accompanied or joined in the UK by close family members who would otherwise lose their rights (under the Surinder Singh route) because of this Act.

I am being kept busy this afternoon. I am pleased to move amendment 14. Once again, it is all about family. We are talking about what became known as the Surinder Singh route, because of a judgment of the European Court of Justice. I talked in my previous contribution about the unfairness of separation that immigration rules can cause; in the case of the Surinder Singh families, that is coupled with a real sense of unfairness and the loss of a legitimate expectation.

We are talking about UK citizens who have gone to live somewhere in the EEA at a time when the rules were quite clear that the UK was part of the European Union, so there would never be any conceivable difficulty about being able to return to this country with family that they may have settled down with in another EU country.

To my mind, we should say that they had a legitimate expectation when they left that they would be able to return to this country at the appropriate moment with their EU family members. The problem now arises that if they return after the transition period that the Government have put in place—it is better than nothing; that is absolutely true—they will face the £18,600 threshold, which I previously alluded to.

There are folk over there with huge dilemmas to address. The briefing we have had from British in Europe sets out a very typical example. Sarah is a 48-year-old British national living in Germany with her 52-year-old German husband and children. She is the only child of an elderly mother in the UK. Career and schooling reasons mean that she cannot realistically return to the UK by March 2022. What happens if Sarah's mother becomes so frail or ill that she needs the care of her daughter in five years' time? Sarah will have a huge decision to make: either to uproot her family at a hugely disruptive and inconvenient time, to come back to look after her mother, or to leave her family behind and come back to look after her mother. Alternatively, she will just have to hope that her mother is able to cope.

Sarah was not negligent in going abroad without taking this future prospect into account when she made the decision to travel and live in Germany, because it just did not arise. We were part of the EU and free movement was always going to be there.

I am grateful for and welcome the fact that the Government have reviewed the immediate cut-off, but 2022 does not give enough time. Why do we not have an open-ended cut-off for the people from this country who have made their lives in other parts of the European Union or the EEA, and let them return here under the regime that was in place when they left? That is the purpose of amendment 14, and I hope it will have a sympathetic hearing.

Holly Lynch: Once again, we are very sympathetic to the amendment. As we have already heard, it is not dissimilar to amendment 1, and it would offer reassurance to the 1.2 million British nationals who live in EU countries. Failure to implement measures such as those proposed in the amendment would show the Government's indifference to British citizens who decided to make their homes and lives in Europe and, as in the example we have just heard, could force people to choose between loved ones there and loved ones here.

The example provided by British in Europe paints a picture of something that is affecting thousands of people and has the potential to affect thousands more in future, as family members age and their circumstances change. The amendment characterises the significance of forming laws and policies; what is discussed and decided on in this building has far-reaching implications and consequences affecting vast swathes of people in their day-to-day lives.

Until March 2022, any citizen going to live in an EU 27 country did so with the security of knowing that if they were to form a relationship and/or have a family, they would have the right to return to the UK with their partner and family, with no or very few conditions attached. That was the point I made to the Minister in challenging and seeking further clarification on some of his points about differences being potentially discriminatory against returning UK citizens and spouses from other parts of the world, not just EEA countries.

As I am sure we can all appreciate, families and relationships can be complex. The provisions afforded to British citizens through freedom of movement would allow any citizen to return to the UK with their partner and family if a situation arose where they needed to do so, potentially at quite short notice. If the UK citizen returned to be either employed or self-employed, there would be no conditions on their return; if they returned to be a student or to be non-economically active, they

would have to have sufficient resources not to become a burden on the social assistance system of the UK, and have comprehensive health insurance.

In comparison, under the proposed new immigration rules, spouses and partners who wish to enter the UK with their British partner will have to meet the minimum income requirement of £18,600, and the figure is increased if the family have children. That is a wholly restrictive requirement that will severely deter families from returning and coming to the UK. In some cases, it may stop British citizens returning to the UK altogether.

As highlighted in evidence by Jeremy Morgan, the right of citizens to return with their families to their country of origin was deemed outside the scope of the UK-EU withdrawal negotiations, resulting in a serious inequality between UK citizens in the EU and EU citizens in the UK. Bizarrely, the UK Government are discriminating against their own citizens in this instance, since nationals continue to enjoy their right to return to their countries of origin with their non-EU family members.

Furthermore, EU citizens resident in the UK and covered by the withdrawal agreement also have an unconditional lifelong right to bring in family members, including non-EU members, to the UK, provided that the relationship existed before the end of the transition period. The amendment tabled would address that discrepancy.

The coronavirus pandemic has only heightened the need for the Government to carry out their basic duty to support UK citizens living abroad. What if the pandemic had occurred after 29 March 2022? As countries began lockdown, British citizens in Europe would have been faced with the unenviable choice of remaining or hastily returning to the UK. The minimum income requirement would have meant that many British citizens and their families would have been simply unable to return, despite both global and personal crises.

Kevin Foster: I again thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and his colleagues for tabling amendment 14 and allowing us to have this discussion. As the hon. Gentleman has said, the amendment would require the Government to include in regulations, made in consequence of this Bill ending EU free movement law, lifetime rights for UK nationals to bring their close family members to the UK on EU free movement terms, where the UK national was resident in the EEA or Switzerland in accordance with EU law by the end of the transition period at the end of this year. Those family members would thereby continue indefinitely to bypass the immigration rules that otherwise apply to family members of UK nationals.

I will set out the Government's policy for this cohort of family members before I explain our reasons for rejecting the amendment. In certain circumstances, family members of UK nationals who have resided together in the EEA or Switzerland are able to come to the UK under EU free movement law. That applies where a UK national has exercised free movement rights in the host state—as a worker or self-employed person, for example—for more than three months. That is sometimes referred to as the "Surinder Singh route", after the relevant judgment of the Court of Justice of the European Union.

Surinder Singh family members are not protected by the withdrawal agreement, as was said. None the less, as a matter of domestic policy, the Government decided that UK nationals resident in the European Economic Area or Switzerland under EU free movement law until the end of the transition period, which is the end of this year, will have until 29 March 2022 to bring their existing close family members—a spouse, civil partner, durable partner, child or dependent partner—to the UK on EU law terms. The family relationship must have existed before the UK left the EU on 31 January 2020 unless the child was born or adopted after that date, and it must continue to exist when the family member seeks to come to the UK, for obvious reasons.

3.30 pm

Other family members such as a spouse, where the relationship was formed after the UK left the EU, or other dependent relatives, have until the end of the transition period on 31 December to return to the UK with a qualifying UK national on EU free movement terms. If such family members return to the UK with a qualifying UK national by the relevant date, they will be entitled to apply for status to remain here under the EU settlement scheme. If they wish to come to the UK but do not return to the UK with a qualifying UK national by the relevant date, they will need to meet the requirements of the family immigration rules applicable at the time.

The Government believe this fair and balanced policy is appropriate. It was developed after listening to the concerns of UK nationals living in the EEA or Switzerland, many of whom decided to relocate there before the outcome of the EU referendum in June 2016 on the understanding that they would be able to return to the UK with their family members on EU law terms. On 4 April 2019, the policy was announced that gave UK nationals almost three years to decide whether they wished to return to the UK by 29 March 2022 with their existing close family members and, if so, to make plans to do so. The immigration rules for the EU settlement scheme were changed accordingly. There are still 21 months remaining until the cut-off date.

I turn to the effect of amendment 14, and why the Government do not agree with it. It seeks to provide UK nationals lawfully resident in the EEA or Switzerland by 31 December 2020 with preferential family reunion rights on an indefinite basis. Under the withdrawal agreement, EEA and Swiss citizens have lifetime rights to be joined here by existing family members as long as they are resident in the UK by the end of the transition period. By contrast, the amendment does not specify a date by which a UK national must return to the UK, meaning they could return at any point in the future and continue to benefit from EU family reunion rules—which, I suspect, is the amendment's intention. In addition, it does not require the family relationship to exist by the date on which the UK left the EU or even the end of the transition period. Therefore, a 25-year-old UK national could relocate to the EEA or Switzerland tomorrow, get married in 10 years' time, retire to the UK in 2060 and bring their spouse with them on EU free movement terms. Such preferential treatment is unfair and could not be justified so long after Britain has left the European Union.

The family reunion rights of UK nationals returning to the UK from the EEA or Switzerland after the transition period are not covered by the withdrawal agreement. Their rights should—after a reasonable period for planning accordingly, which our policy provides—be aligned with those of other UK nationals who have always resided in the UK or who seek to bring family members to the UK after a period of residence in a non-EEA country. To do otherwise would be manifestly unfair to all other UK nationals wishing to live in the UK with family members from other countries and would undermine public confidence in our migration system and the objective of the family migration rules to ensure that settlement is not at the taxpayers' expense within the United Kingdom.

I hope I have set out why the Government believe that to be the appropriate balance to strike in moving towards a position where we create a single global migration system while allowing a period of transition for affected UK nationals. With that, I hope that the hon. Gentleman will withdraw his amendment, which the Government are not willing to accept.

Stuart C. McDonald: I am grateful to the Minister for his response. I will have to go and look at the drafting of my amendment. While it may not be technically correct, I absolutely stand by the principle of what it is trying to achieve.

The Minister and the Department have listened to UK nationals living in Europe and the EEA, which is why they put in place the transition period and the cut-off point of March 2022. However, I listen to those very same people, who say to me that that will leave an awful lot of them with a huge dilemma. I just do not understand why the UK Government insist that it has to happen like that. There is no need for a balance to be struck or for any cut-off point.

This is not, as the Minister expressed, a question of people bypassing domestic immigration rules. The aim of the amendment is to help people who moved abroad and formed family relationships in good faith at a time when there was no prospect of their right to return to this country with a family being impeded; they could have done so at that time, on the basis of free movement rules. With your leave, Mr Stringer, I will withdraw the amendment. In the meantime, I will go away and work on it, but I stand by the principle and intention behind it.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 16, in clause 4, page 3, line 28, at end insert—

"(11) Subject to subsection (13), regulations made under subsection (1) must make provision for ensuring that all qualifying persons have within the United Kingdom the rights set out in Title II of Part 2 of the Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement and implementing the following provisions—

(a) Article 18(4) of the Withdrawal Agreement (Issuance of residence documents);

(b) Article 17(4) of the EEA EFTA separation agreement (Issuance of residence documents); and

(c) Article 16(4) of the Swiss citizens' rights agreement (Issuance of residence documents).

(12) In this section, "qualifying persons" means—

(a) those persons falling within the scope of the agreements referred to; and

(b) those eligible under the residence scheme immigration rules, as defined by section 17(1) of the European Union (Withdrawal Agreement) Act 2020.

(13) Notwithstanding subsection (11), regulations must confer a right of permanent, rather than temporary, residence on all qualifying persons residing in the UK prior to 5 March 2020.".

This amendment would mean that EEA and Swiss citizens residing in the UK would automatically have rights under Article 18(4) of the Withdrawal Agreement (and equivalent provisions in the EEA EFTA and Swiss citizens rights agreements) rather than having to apply for them, and ensure that for the overwhelming majority, that status is permanent.

I feel a little like somebody who has been banging his head against a brick wall, and I am sure other hon. Members feel the same. This is a return to the debate about whether the European Union settlement scheme should be a constitutive or a declaratory scheme. That sounds quite technical, but it is not really. The Government say, "We'll give you a right to remain, and you can retain your rights, if you apply." That will inevitably mean a—hopefully small—percentage missing out and losing their rights in this country. Scottish National party Members say we should put it into the Bill that EU and EEA nationals automatically have these rights. Doing so would fulfil a promise made by the Prime Minister, the Home Secretary and, indeed, the Chancellor of the Duchy of Lancaster during the referendum campaign, when they said quite expressly that everybody would retain their right to be in this country, and that there would be no need for any application at all.

Before we go too far into the debate, I want to say that Ministers quite often stand up and tell us about the success, and fairly so, of the settlement scheme so far. Opposition MPs obviously asked questions, such as about why it was not working on the Apple iPhone or whatever else, how the numbers were progressing or why so many people were given pre-settled status. However, I am happy to say, as I have many times before, that it has exceeded my expectations. The Home Office has reached more EU and EEA nationals than I anticipated. It does not have a wonderful record with IT over the last 10, 15 or 20 years, but on this occasion it has done a decent job.

However, the fact remains that—with the best will in the world, even if the Home Office gets to 95% of its target crowd—that still leaves hundreds of thousands of people who will fail to apply in time. I have asked repeatedly what estimate the Home Office has made of how close to 100% it will get, and what the implications of that are, in terms of dealing with the 100,000 folk who will overnight be without rights this time next year. We really need to get to the nub of this.

Other amendments offer alternatives, exploring different cut-off points and different solutions as to how to treat applicants who come to the Home Office after the cut-off date, but we still insist that the much simpler solution would be to say, in this or another Bill, that if someone meets the criteria, they retain their rights, even if they do not apply.

The Home Office seems to suggest that folk will not apply. In fact, during an evidence session on Tuesday, the Minister asked a question on how looked-after children would prove that they had rights. It is simple: they would apply to the EU settlement scheme. We are

not saying, "Just ditch all the work that has gone on for the past 18 months to two years." We are saying, "Keep that work, but make it so that it is not the digital whatever you get that gives you the rights, but that the rights come from the legislation, and you get that document"—if we have our way—"or a digital code to prove your rights."

Probably the best way to explain this would be with reference to British citizenship, which is the most obvious example I can call to mind of another declaratory system. No one in this room gets their rights as a British citizen from their passport or from any other document; we have our rights to British citizenship declared in law, in the British Nationality Act 1981. It does not cause us difficulties if for the first few years of our lives we do not have proof of that; indeed, if we do not go abroad on holiday, we can actually go through until we are perhaps 14, 15 or even 18 years old without having to access that proof. That is not a problem.

That works perfectly well for British citizenship—it becomes convenient for lots of people, at a certain time, to get a passport or wherever else to prove that they can exercise their rights—and it would be exactly the same with the EU settlement scheme. All these people will want to work or to access social security or housing, if they are subject to the right-to-rent scheme, so they will still have every incentive to apply to the EU settlement scheme. The amendment would just mean that if, for whatever reason, they did not apply, their rights were protected.

Douglas Ross (Moray) (Con): Would the hon. Gentleman consider whether perhaps one reason some people, particularly in Scotland, would not apply for the scheme is because, despite his having praised it today and said it has exceeded his expectations, SNP politicians in Scotland have encouraged people not to apply? I raised this issue when he and I were members of the Home Affairs Committee. The messaging that comes out should be far clearer. Does he accept that, whether or not he agrees with the scheme, the advice not to apply that some SNP politicians are giving is unhelpful?

Stuart C. McDonald: I have had that intervention before, and I think I answered it. There is one individual who would be expected to apply to the scheme but at some point in the past—I am not sure what his current position is—he said that as a point of principle he does not want to apply. I have said previously that I do not agree with him, but the hon. Gentleman cannot possibly accuse the Scottish Government or the SNP of not being clear about the messaging—they have invested considerable sums of their own money in outreach and in attempting to get as many folk as possible to sign up to the scheme. For that reason, I do not accept the premise. I disagree with that one colleague, but I absolutely reject the premise that we have been anything other than clear in encouraging people to sign up.

The reasons folk will not sign up are not related to the position of an individual politician. Folk will not sign up because they are vulnerable, as we have spoken about—care leavers; children; elderly people who perhaps were settled and had permanent residence under the old EU scheme; and people who quite simply just do not understand that they have to do it.

There are really complicated questions involved. For example, lots of folk will think, "Well, I was born in the United Kingdom, so I am British," but in actual fact whether or not they are British depends on a million different things. It depends on the marital status of their parents, depending on when they were born. It depends on their date of birth. It might even depend on when a particular country joined the EU, as that can have an impact on the conferring of nationality. There are millions of different issues.

It is beyond doubt that on 1 July next year we are going to wake up in a United Kingdom that has 100,000 people who do not have the right to be in this country. We have to be constructive and come up with a solution, but we do not yet have enough from the Government on what they want to do. We get told, "We'll be reasonable," but that really does not cut. We need to do better than that, which is why we have tabled other amendments to push the Government to be much more explicit about how they are going to treat folk who apply after the deadline, for whatever reason.

The simple point, which is consistent with all the work that has gone before and does not undermine it in any way, is to turn around now and say, "Right, we are doing well, but we are just going to say that everybody has these rights. Continue to apply so that you can go about living your lives without being refused renting or a job or whatever else, but you have these rights." It is a simple matter and would avoid a tremendous headache that would make Windrush look almost insignificant. That was cataclysmic; this situation risks being considerably worse.

3.45 pm

Holly Lynch: Yet again, I rise to echo a great deal of what has already been said by the SNP spokesperson. The Opposition have spoken consistently in favour of a declaratory approach, and the Home Affairs Committee has also tabled an amendment outlining its preference for that approach, so, while we have sought to deal with the scheme in front of us by way of our amendments and new clauses, should he push amendment 16 to a vote, he would certainly have our support.

In our 2019 manifesto, we committed ourselves to ending the uncertainty created by the EU settlement scheme by granting EU nationals the automatic right to continue living and working in the UK. This new declaratory system would allow EU nationals the chance to register for proof of status if they wished, but they would no longer have to apply to continue living and working in this country. This would help to secure reciprocal treatment for UK citizens living in the EU, prevent a repeat of the shameful Windrush scandal and avoid unnecessarily criminalising hundreds of thousands of EU nationals.

Kevin Foster: This has been a useful debate. As has been pointed out, amendment 16 would require the Government to establish a declaratory system for those eligible for residence rights under the withdrawal agreement or the immigration rules for the EU settlement scheme. That was touched on by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, who speaks for the SNP. It is a familiar argument we have been having over the last couple of years, and I suspect we will continue having it over the next year or two.

[Kevin Foster]

As the hon. Member alluded, EEA and Swiss citizens resident in the UK by the end of transition period and their family members can secure their rights here through the EU settlement scheme and through applications that are free of charge to make. So far, more than 3.5 million applications have been received and more than 3.2 million concluded, despite the efforts of one or two people to encourage people not to take part, as my hon. Friend the Member for Moray highlighted. This is with still more than a year to go before the deadline for applications on 30 June 2021 for those resident here by the end of the transition period on 31 December.

It is worth pointing out that the UK's immigration system has long been predicated on individuals applying to the Home Office to be granted leave to enter or remain, under what we call a constitutive system. The Government have repeatedly made it clear that the constitutive system, introduced through the EU settlement scheme, is the best approach to implementing the citizens' rights elements of the withdrawal agreements. It provides EEA citizens and their family members with clarity about what they need to apply for and by when, and with the secure evidence of their status that they need.

A requirement to apply for individual status by a deadline provides a clear incentive for EEA citizens living here to secure their status in UK law and obtain evidence of this, whereas a declaratory system, under which individuals acquire an immigration status under an Act of Parliament, would significantly reduce the incentive to obtain and record evidence of status. Indeed, the amendment does not include any requirement to do that, so in decades to come it could result in some of the issues we saw in the Windrush scandal: people with a status that has been granted, but for which there is no clear or recorded evidence.

Stuart C. McDonald: I am happy to take on board what the Minister says and redraft the amendment to include, for example, a £50 fine if somebody does not have a document proving their settled status. That would be much less serious than leaving them without any right to be in this country at all. Would he consider a declaratory system on that basis?

Kevin Foster: Well, I do not think I would. Like I said, we would be reasonable in accepting late applications—for example, if somebody did not have EU settled status because they were a child in care or mentally incapable at the time when they should have applied. I suspect that when we publish the guidance those two situations will be among the list of reasonable reasons for late applications. It would be rather odd, however, to then issue them with a £50 fine. We think it right that at some point a line be drawn, although we would be reasonable in respect of the circumstances of a late application. Certainly, in the early stages after the deadline, it is likely that the bar to cross will be fairly low, in terms of what is a reasonable reason for not having made the deadline.

As was touched on, we are up to more than 3.5 million applications already. It has been a very successful scheme. It is slightly ironic that the organisation representing EU citizens in the UK calls itself the3million, because the Home Office has already found 3.5 million and there is still a good stream of applications coming in every day, as there has been throughout the recent period. The Government are confident that we have already found many more than 3 million, and all of them are our friends and neighbours. We want them to stay, and we welcome the fact that they have taken the opportunity to apply to the European settlement scheme to guarantee their rights.

The Government are adamant that we must avoid a situation where, years down the line, EEA citizens who have built their lives here find themselves struggling to prove their rights and entitlements in the UK. That is why we have set up this system. I fundamentally believe that changing a system that is working well would have the opposite effect to that which the amendment is intended to achieve. It would reduce the certainty of a grant of status under the EU settlement scheme, which has already been given to more than 3 million EEA citizens and their family members.

The amendment provides that a right of permanent residence would be automatically acquired by EEA citizens resident here before 5 March 2020—when the Bill was introduced—regardless of how long they had been continuously resident in the UK. I do not wish to speculate about why the amendment is designed to exclude people who arrived on 6 March, or about why the Bill being introduced is a more significant moment than the end of the transition period or the day that Britain left the European Union. The general requirement under the EU settlement scheme to have been continuously resident here for five years before becoming eligible for a right of permanent residence—settled status—reflects the rights under the free movement directive, which are protected by the withdrawal agreement. To reassure hon. Members that we are talking to people who work with the EUSS, there will be efforts put in place, using the contact details provided to the EUSS, to prompt people should they be approaching the five-year period.

It is right that someone should demonstrate sufficiently long residence in the UK, in line with our current EU law rights, before being eligible for all the benefits and entitlements that settled status brings, including access to those provided by public funds. The amendment would mean that any length of residence in the UK prior to 5 March 2020, however short, would be sufficient. I do not believe that is the right approach. It is a rather strange date to choose, even though it is the introduction. Why would that be logical? It is worth explaining why someone was not covered on 6 March but was covered on 5 March. I therefore suggest to the Committee that we should not accept the amendment; we should stick with a system that is working and doing a great a job at getting those who are our friends and neighbours the status they need for the long term and the surety that brings. I therefore suggest that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East withdraw his amendment.

Stuart C. McDonald: Again, I am grateful to the Minister for his reply. The amendment would not negate the good work that has happened in managing to process applications from EU nationals and provide them with digital proof of their status; it would build on it.

The Minister always insists that such a system would give people less of an incentive to apply, but that is just not the case. We would not say to anyone who was a

victim of the Windrush fiasco that they did not have an incentive to apply for documentary proof. In fact, all the Windrush citizens had the right to be in this county, but that was not enough. They had to get documents, and the result of not being able to access documents was that they went through absolute hell. That is a lesson that we must learn. If we make the system declaratory, people will still apply because they need digital proof of their status to access work, social security, education and whatever else.

I do not accept the Minister's explanation of why we retain the constitutive system. If he wants to talk about incentives, there is a big problem for anyone who misses the deadline of 30 June 2021. When they find out that they have missed it, they suddenly think, "I thought I was British, but I am not. I thought I had rights here because I had status under the old EU system, but it turns out I don't." Those hundreds of thousands of people will be absolutely petrified of applying to the Home Office because they have no assurance that they will be granted status here. There are vague words about being reasonable, but that did not really cut it for the Windrush generation, and this is a much bigger problem. I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 7]

AYES

Elmore, Chris	Lynch, Holly
Green, Kate	
Johnson, Dame Diana	McDonald, Stuart C.

NOES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Holden, Mr Richard	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

Question accordingly negatived.

Question put, That clause 4 stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 8]

AYES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Holden, Mr Richard	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

NOES

Elmore, Chris	Lynch, Holly
Green, Kate	McDonald, Stuart C.
Johnson, Dame Diana	Owatemi, Taiwo

Question accordingly agreed to.

Clause 4 ordered to stand part of the Bill.

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

3.59 pm

Adjourned till Tuesday 16 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

IB08 Amnesty International UK
IB09 Law Society of England and Wales
IB10 UNISON
IB11 JUSTICE
IB12 London First
IB13 The Royal Society
IB14 Independent Age