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Public Bill Committee

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

Third Sitting

Thursday 11 June 2020

(Morning)

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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

(Morning)

[Sir Edward Leigh *in the Chair*]

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

11.30 am

The Chair: Before we begin, I have a few preliminary points. Please switch your electronic devices to silent. Tea and coffee are not allowed during sittings, although I might turn a Nelsonian blind eye if I see any. I remind Members about the importance of social distancing—as if you did not know already. The main body of the Committee Room has capacity for a maximum of 11 Members. If more than 11 Members are present, the remainder will have to sit in the Public Gallery, which I am pleased to see some Members are doing already. I will suspend the sitting if I think anyone is in breach of social distancing guidelines. The *Hansard* reporters would be most grateful if Members emailed copies of their notes to hansardnotes@parliament.uk.

Today, we will begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. Decisions on amendments take place not in the order they are debated, but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause that the amendment affects.

I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules, following the debates on the relevant amendments. Obviously, if we spend a long time on the amendments, we cover all the ground and so it may not be necessary to have a stand part debate, but I will take advice from the Opposition on that. I am anxious to be helpful to them and to the Government. I hope this explanation is helpful.

I have talked to Graham Stringer, my fellow Chair, about one further point. The Bill is very important but quite narrowly focused. Therefore, I do not really want to have long speeches about how terrible it is to leave the European Union or how wonderful is that we are leaving the European Union. We will just leave that on one side. We are going to focus on the amendments that we have in front of us. Generally, if you focus on the amendments, and if speeches are not discursive, the Committee can hold the Government to account in a better way. I hope you do not mind me saying that, but I had a word with Graham Stringer and we agreed that we should make that clear.

Clause 1

Repeal of the main retained EU law relating to free movement etc.

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): It is a pleasure to serve under your chairmanship, Sir Edward, and I will take on board the comments you have just made. If you will permit me, I would like to make a few introductory remarks—at the start of Committee proceedings and before we begin to debate the detail—on the purpose of the clauses.

The Bill delivers the ending of free movement of people and lays the foundations for introducing a fairer, firmer skills-led immigration system. The coronavirus pandemic is the biggest crisis we have faced in our lifetime. We need people, regardless of nationality, to continue coming together, using their skills and expertise to support the United Kingdom's recovery.

As you will know, Sir Edward, legislating is not an academic exercise; there must be a point to it. The point is that we will introduce a new system by ending preferential treatment for EEA citizens. That will mean a system that prioritises the skills people have to offer and how they will contribute to the United Kingdom, not where their passport comes from.

The Government recognise the tremendous contribution people are making to keep vital services running during this incredibly difficult time and the dedication shown by millions demonstrates to employers the skills and work ethic we have here. Colleagues may well recall that this Bill was introduced in the previous Parliament. There have been no substantial changes to the content since it was previously considered. The only changes made are minor drafting clarifications in places and updates to the list of retained EU law to be repealed.

We remain committed to delivering a points-based immigration system that benefits the whole UK from January 2021. We will open key routes from autumn 2020, so people can start to apply ahead of the system taking effect on 1 January 2021. I want to clarify that the details of the future system will be set out in the immigration rules and not in the Bill, as is the case now for the non-EEA immigration system and has always been the case under previous Governments. The rules will be laid before Parliament later this year.

Turning specifically to clause 1, this introduces the first schedule to the Bill, which contains a list of measures to be repealed in relation to the end of free movement and related issues. The clause fulfils a purely mechanistic function to introduce the schedule.

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward, as we start line-by-line scrutiny of this particularly important legislation in these highly unusual times.

I thank the Minister for his opening speech on clause 1 and schedule 1. Early in proceedings, I want to put on the record my thanks to the Clerk of the Bill Committee. He has been absolutely invaluable to all Committee members with assistance on the amendments and new clauses before us.

I also want to put on the record—I am sure that the Minister will join me, in the spirit of some early unity, as might you, Sir Edward—an expression of our disappointment about the audio arrangements for Tuesday's evidence session. The poor sound quality was problematic not only on the day, as on occasion exchanges between Members and witnesses were seriously restricted, but for *Hansard* during the afternoon sitting. Colleagues

worked incredibly hard to make that *Hansard* report available, but, unfortunately, it was not published until after 11 o'clock last night. That made preparations for today's line-by-line scrutiny based on that evidence incredibly difficult.

That said, I turn to clause 1 and schedule 1. As the Minister is aware, we voted against the Bill on Second Reading, and the clause is the Bill in a nutshell. We will go on to discuss in great detail the various clauses and to outline our reservations at the different stages, but, ultimately, we fear that the Bill—right now, and in this form—holds none of the answers to the problems facing the country and actually stands to exacerbate them.

It is not difficult to see how implementation of the Bill could have severe consequences for the health and social care sector, a point made by several of the witnesses on Tuesday. The sector will require special consideration. The policy statement published in February on what comes after clause 1 specifically comes into effect simply saying to those earning less than £25,600:

"We will…end free movement and not implement a route for lower-skilled workers."

Many of the people on the frontline fighting the coronavirus earn less than that. We need them now, and we need them to recover. The policy paper and the Minister state that they are looking to the domestic workforce to plug those gaps, but on Tuesday we heard from the Migration Advisory Committee—we can all see and feel this—that systemic failures underpin the problems in social care, and those will not be resolved by January. If we put a hard stop on free movement without having resolved some of those issues, there will be consequences when the country can least afford that.

Concerns about the clause fall into two distinct groups: ensuring that we have done the right thing by the some 3.5 million EU citizens who are already here under free movement rules when those come to an end, and certain groups in particular, and looking ahead to the future impact of restricted migration flows. Since the Bill's predecessor was presented to the House in the 2017 to 2019 Parliament, the EU settlement scheme has come into effect to give European citizens who reside in the UK a pre-settled and a settled status.

The numbers coming through the scheme are positive, but there are concerns about certain groups, some with specific vulnerabilities. Eligible children in care, for example, are one cohort that we will return to under the new clauses. The impact of coronavirus on Home Office capabilities alone, in addition to its impact on applicants, inevitably has heightened our concerns that some groups will need more support than ever to access the scheme.

Turning to the impact that ending free movement will have on migration flows in key sectors, the Bill provides more questions than answers. It is incredibly narrow in scope, as we have discussed, which is extraordinary given that it will create the biggest change to our immigration system in decades. Instead of putting forward a new immigration system, which Parliament could discuss, debate, amend and improve, the Bill grants powers to Ministers to introduce whatever system they like with extensive Henry VIII powers.

The Government's February 2020 policy statement indicated what such a system might be like. Properly debating most of that new system will be deemed out of scope for this Bill and this Committee, but we will do what we can within scope to set out principles and solutions for when clause 1 comes into effect.

A number of the witnesses on Tuesday were critical of the Government's planned £25,600 threshold—not just on health and social care—and transitioning on to a visa system and sponsorship routes will cause headaches and shortages for a range of businesses, exacerbating economic uncertainty. For example, the Bill fails to address the UK's need for migrant workers to allow the agriculture sector simply to function, which is another issue that we will explore when we debate the new clauses.

To be clear, Labour has no problem with an immigration system that treats all migrants the same, no matter where they come from, but that is not the system the Government propose. A points-based immigration system could be effective. However, it would be predicated on receptive analysis of occupation shortages, parallel education and skills strategies that seek to fill long-term job gaps with domestic talent, and a pragmatic yet empathetic Border Force. The Bill fails to do any of that, and we will seek to remedy this, within the bounds of its scope, through our amendments and new clauses.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Sir Edward, albeit at a longer distance than we are accustomed to. I thank the Clerks for dealing with what were probably some horrendously drafted amendments by the bucketful during the last couple of weeks.

I am pleased to have the opportunity to take part in our detailed line-by-line scrutiny of the Bill. It will be with a sense of déjà vu that I am sure the hon. Member for Stretford and Urmston also feels, having sat in the same Public Bill Committee this time last year. The real shame is that, this time last year, nobody listened to a thing that we said, and this Bill is in the same form as it was back then. Looking around the room, however, I see a much more discerning Committee this year, so I am filled with optimism that we may indeed be able to deliver some change.

We have serious concerns; we do not just make things up. As Opposition MPs, we have lots of concerns that stakeholders have raised with us. My preliminary point is that the two previous Immigration Acts that passed all the way through Parliament, in 2014 and 2016, contributed in a very serious and significant way to the Windrush scandal. In her review of what happened, Wendy Williams highlighted all the warnings that came from the same stakeholders about the problems that those Bills would cause. Indeed, she quoted from some of the contributions made by Opposition Members during the passage of the Bills. Hon. Members might not agree with everything we say, but sometimes we are worth listening to, even if we do not manage to achieve change in this Committee. I plead with the Home Office and members of the Committee to engage seriously with the concerns that we are flagging up.

At the weekend, the former Home Secretary, the right hon. Member for Bromsgrove (Sajid Javid), wrote that

"the Home Office has yet to implement the process of root and branch cultural change necessary in the aftermath of Windrush."

I hope that, during the passage of the Bill, we receive some signals that the cultural approach of the Home Office, and its attitude to listening, is changing.

[Stuart C. McDonald]

Clause 1 is the Bill in microcosm. I will not repeat my entire stage 2 speech, which I am sure hon. Members followed very closely indeed, but I take your advice on scope, Sir Edward. I am sad to say again that the SNP totally opposes clause 1, because it brings to an end what we regard as a valuable, simple and well-functioning immigration system of free movement. As a result, it extends what is a complex, expensive and unjust domestic system to EEA nationals. That is bad for the individuals caught up in it, who will face prohibitive fees, complicated procedures, broken families and diminished rights, but it is also bad for the economy. I do not think that any hon. Member present who paid attention to the evidence that we heard on Tuesday can remain 100% enthusiastic about the Government's proposals for the immigration system come January. It will be an abject nightmare for many industries that have already been totally decimated by the coronavirus shutdown. We did not even hear from the tourism and hospitality industries, which are at the forefront of facing the challenges.

Clause 1 is also bad for Scotland—for our population growth, demographics, economy and tax base. If the task had been to design an immigration system for Scotland alone, nobody in their right mind would have come up with this one. The same is true—probably even truer—of Northern Ireland, with its land border with a country where free movement will continue. We will explore all these issues as we go through the Bill in more detail and discuss the amendments and new clauses that have been tabled. From my point of view, there is nothing much to celebrate and lots to regret about clause 1, and indeed schedule 1, and we oppose them both.

11.45 am

Kevin Foster: I will reply briefly. I recognise the position of the Scottish National party on the Bill and on these particular proposals. There is a fundamental difference, but I assure the hon. Gentleman that he is always worth listening to, even when we disagree. He laments the absence of the tourism and hospitality industries on Tuesday. Regardless of our views on the Bill, we all look forward to an era when those industries will be able to think about recruiting again, rather than being in the position that we expect them to be in of significant job losses, including in my constituency, over the coming weeks and months, given the impact of recent weeks.

To turn to the comments of the hon. Member for Halifax, I was listening on Tuesday to the evidence from Professor Brian Bell, interim chair of the MAC, particularly on social care, and I cannot remember him saying that a general route for employers in the social care sector to recruit abroad at or near the minimum wage would be good news for the social care sector. In fact, I think he said precisely the opposite. To be clear, the general salary threshold is being reduced to £25,600, but where an occupation is deemed to be in shortage, it will be subject to a lower salary level of £20,480 a year.

It is also worth pointing out that for more than 20 categories of healthcare professional and allied healthcare professional, their eligibility will be based on the national salary scales paid in the NHS, rather than the general salary scales set out in the wider immigration rules. That is linked to the creation of what we are looking at as a healthcare visa to give fast-track access and reduced fees to people under that scheme. It is important that we keep placing those facts on the record so that people are aware of them, given some of the not very well informed commentary we have seen in the media, such as the claim that nurses will not be eligible, when in fact they will be fast-tracked and prioritised under our system.

Holly Lynch: I am concerned that the Minister has put words in my mouth in relation to what the MAC said about social care. What we did hear loud and clear from a number of witnesses, however, was that there is no plan to address workforce issues in social care when free movement ends. Is he minded to have specific remedies for social care in his future plans, before we end free movement?

Kevin Foster: Again, if people think, from what we have seen in the last few weeks, that the remedy for social care is to recruit more people at or near to the minimum wage from abroad, that is an odd conclusion to draw.

Holly Lynch: Domestically.

Kevin Foster: We will certainly talk to the Employment Minister. Again, I am conscious of the scope of the Bill and not going off more widely into our labour market strategies.

One conversation I recently had with the Employment Minister was about how, sadly, a lot of people in my constituency, and I am sure in the hon. Lady's constituency as well, need to find new employment opportunities. Social care, and the healthcare sector more widely, will be part of providing some of those opportunities, not just through entry level jobs, but by ensuring that education, colleges and others are training people towards skilled jobs and providing real career progression.

For me, that is the solution for social care, rather than looking to the migration system as the overall labour market solution. I am sure we all share the sentiment, whatever any of us thinks of ending free movement, that the sector needs to be more invested in and more valued, and that there need to be clearer paths of career progression that people can see when they are deciding what they want to do for a job and a career.

I am conscious, Sir Edward, of what you said about the scope of the Bill. We could have an interesting discussion about the overall labour market strategy, but for now, this is a focused debate about why clause 1 is important and delivers the core of what the Bill is about.

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

The Committee divided: Ayes 8, Noes 5.

Division No. 1]

AYES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Lewer, Andrew	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

NOES

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

Question accordingly agreed to.

Clause 1 ordered to stand part of the Bill.

Schedule 1

REPEAL OF THE MAIN RETAINED EU LAW RELATING TO FREE MOVEMENT ETC.

Stuart C. McDonald: I beg to move amendment 18, in schedule 1, page 7, line 26, leave out paragraph 4(2).

I am moving this amendment because, as we heard on Tuesday from Adrian Berry, the drafting of paragraph 4(2) —there are similar paragraphs in schedule 1—is far from satisfactory.

In tabling this amendment, we are asking the Minister, how is it that this paragraph is supposed to work? Why must we leave it to ordinary citizens to work out whether they still have certain rights by checking back whether these provisions are inconsistent with or could impact on the interpretation of decades of immigration laws, both Immigration Acts and legislation made under them? Why has the Bill not done that job for them? As Mr Berry said, the Home Office must know how these rights interplay with earlier provisions of immigration legislation. Why is that not set out in the Bill?

As we just heard, schedule 1 does the heavy lifting of repealing large parts of retained law in relation to free movement of people. Over three parts, schedule 1 lists, in considerable detail, the various bits of primary and secondary legislation of retained EU law that are to be omitted and revoked.

For large parts, the schedule is pretty clear. For example, it says:

"Article 1 of the Workers Regulation is omitted."

I do not like that, but I cannot complain that it is lacking in clarity. As Adrian Berry pointed out, however, elsewhere the drafting lets people down. Even with the help of immigration lawyers like Mr Berry, it will be incredibly difficult for people to know whether other rights that they have under the workers regulation are still effectively in force.

Other articles in the workers regulation are important. These are not trivial matters. They include, for example, the right to equal treatment in various spheres, such as education, employment rights and family rights. It will be important for folk to know, in a straightforward manner, whether they still enjoy these rights, but schedule 1 totally fudges this question.

The offending paragraph states that these provisions

"cease to apply so far as—

(a) they are inconsistent with any provision made by or under the Immigration Acts (including, and as amended by, this Act), or

(b) they are otherwise capable of affecting the interpretation, application or operation of any such provision."

I find that very difficult to understand, as a parliamentarian and somebody who many years ago was an immigration lawyer.

For example, is a protection offered against discrimination on vocational grounds in paragraph 6, contrary to the Immigration Acts or any provision made under them? The Immigration Acts are a specific list of provisions. Again, as Mr Berry pointed out, it would not be unreasonable to think that the Home Office knew exactly which workers regulation articles were not impacted at all and which were, and to what extent.

That should be in the Bill, so that folk know where they stand. It is as simple as that. Otherwise, the consequence would be endless confusion and litigation. The query and question for the Minister is, why is the Bill still drafted in this way?

The Chair: Before I call the Minister, does anybody else wish to speak? In that case, over to you, Minister.

Kevin Foster: Thank you, Sir Edward. I just thought I would be courteous, in case there was another hon. Member who wished to speak.

Amendment 18, which stands in the name of the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, and his colleagues, would remove paragraph 4(2) from schedule 1 to the Bill, which disapplies provisions of the workers regulation, which conflict with domestic immigration law. This would mean that the UK remained bound by EU law in relation to the rights of EEA citizens to access the UK's job market, which might in part be the hon. Gentleman's intention, given his well-known view on that subject.

The Government, therefore, cannot support this amendment, because it would effectively result in free movement rights for workers and their families continuing after the end of the transition period. The Government are committed to ending the free movement of people now that we have left the EU, so therefore this proposal is incompatible with that. The Government are committed to ending the free movement of people now that we have left the EU, so therefore this would be incompatible with that.

We have made it clear that we will bring free movement to an end on 1 January, and introduce an effective and fairer points-based immigration system that takes into account the needs of the whole of our United Kingdom and works for the whole of our United Kingdom. It will be a system that reflects the skills and contributions that someone has to offer, not where the person comes from.

Stuart C. McDonald: The Minister is right that I would love to see all these rights retained, but that is not the motivation behind this amendment. I accept that the Government want to go about repealing some rights, but the Bill does not really do that. It says, in a peculiar way, that the rights are "sort of repealed" and one has to check back through immigration legislation for decades to work out to what extent. Why has it been done in this way rather than setting out specifically which rights are retained and which are not?

Kevin Foster: The answer is partly that it is not possible to draw up an exhaustive list of directly affected law in terms of the EU because court judgments will affect that. One reason for the wording is to make it clear that it relates to the Immigration Act 1971 and does not create a wider enabling power around the workers regulation. I am also clear that those who are subject to the withdrawal agreement are covered by those provisions.

During the passage of the European Union (Withdrawal Agreement) Act 2020 we discussed in great detail the provisions for protecting the rights of EEA citizens resident in the UK by the end of the transition period, which is 31 December this year. The EU settlement scheme, which was fully opened on 13 March 2019, was specifically introduced for this purpose. One of the rights protected by the status granted under the scheme is equality of access to employment, benefits and services, in the manner outlined by the workers regulation.

Retaining sub-paragraph (4)(2) of schedule 1 will in no way compromise our commitments to upholding the rights of resident EEA citizens already working in the

[Kevin Foster]

United Kingdom. It will simply ensure other provisions of the workers regulation, which are not specific to immigration, do not have ongoing effects on UK immigration law, but continue to have their effects for other purposes, hence the wording of the sub-section. Otherwise the UK would be required, for example, to provide all EEA citizens with an offer of employment as though they were British citizens, meaning they could not be subjected to any restrictions on access in the UK labour market, directly undermining the new points-based immigration system, which will not provide preferential treatment for EEA citizens.

The changes made by sub-paragraph (4)(2) only relate to immigration aspects of the workers regulation and will not affect any other rights provided by that regulation. For example, the right to equal treatment in respect of positions of employment and work, and the right to join a trade union are unaffected by the provision, because this Bill is not the appropriate vehicle in which to consider them or to look for a power to alter or amend them.

It is less than six months since the British people voted to take back control of our borders and introduce a new points-based system to control immigration, which will deliver for the UK for years to come. This provision, ending the immigration rights provided by the workers regulation, is one the steps needed to pave the way for the new system. For those reasons, the Government cannot support this amendment and I ask the hon. Gentleman to withdraw it.

Stuart C. McDonald: I thank the Minister for his explanation. I absolutely understand what the Government are trying to achieve and that some of the rights in the workers directive have been put in legislation, including in the European Union (Withdrawal Agreement) Act 2020. However, that is not the point that this amendment is trying to make. The point is about how the Bill is—or is not—going about repealing the workers directive.

It is essentially a point about the rule of law. When I intervened, the Minister said that it would not be possible to draw up an exhaustive list of exactly how these rights were affected by Immigration Acts and other provisions. If the Government cannot do that, how on earth is the ordinary citizen supposed to be able to tell what their rights are? I think we should take this paragraph out of the schedule and, if the Government are unhappy with the implications that has in leaving things on the statute book, they should come back on another occasion with a clear list and fix it that way. I would like to push the amendment to a division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 2]

AYES

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

NOES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Lewer, Andrew	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

Question accordingly negatived.

Question proposed, That the schedule be the First schedule to the Bill.

12 noon

Kate Green (Stretford and Urmston) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I would like to ask the Minister some questions about paragraph 6 of schedule 1, which potentially disapplies any retained EU law relating to the immigration context. It is a similar set of questions to those we were discussing a moment ago in relation to amendment 18, but with a different focus. It arises from evidence that was given to us on Tuesday afternoon by Adrian Berry on behalf of the Immigration Law Practitioners' Association, which I thank for its help in preparing for this Committee.

I apologise that it was not possible to get an amendment tabled on this paragraph. As my hon. Friend the Member for Halifax pointed out, we have been doing a number of things in relation to this Bill at a rush, and we did not have the transcript of Tuesday afternoon's sitting until last night. I am very grateful to the *Hansard* writers for the work they have been doing—I know they have a lot of Bills on—but that has caused part of our problem.

My concern is that the breadth of the wording in paragraph 6 could lead to the repeal of legal protections that go far beyond the realm of free movement, which is the purpose of this Bill. I hope the Minister may be able to put some assurances on the record in relation to my concerns about the Government's future intentions. As we heard a few moments ago, certain provisions of EU law, as retained EU law, have been brought within UK law by a number of different instruments—some EU law has been brought into domestic law through statutory instruments and so forth. They are saved by section 2 of the European Union (Withdrawal) Act 2018. Direct EU legislation is saved as retained EU law by section 3 of the 2018 Act. It is explicitly defined and does not include treaties or directives; it is things such as EU regulations with direct applicability.

Any other powers, liabilities, obligations, restrictions, remedies and procedures that could be enforced in the UK because of EU law are carried over by section 4 of the 2018 Act. That includes things like treaties and directives that are directly effective. It is, however, important to note that section 4(2)(b) limits the enforceability of directives to the extent that retained EU law is only the rights, powers, liabilities, obligations, restrictions, remedies or procedures arising under an EU directive that are of a kind that have been recognised by the European Court or any court or tribunal in the United Kingdom in a case decided before the end of the transition period.

Paragraph 6 of schedule 1 disapplies those provisions of EU law to the extent that they are either inconsistent with or otherwise incapable of affecting the interpretation, application or operation of any provision made by or under the Immigration Acts, or otherwise capable of affecting the exercise of functions in connection with immigration. The problem is that the carve-out basically all EU immigration law retained by virtue of paragraph 4, because

"capable of affecting the exercise of functions in connection with immigration"

could basically mean just about anything. The question I am asking the Minister is what EU law that paragraph applies to. What exactly are the Government trying to target?

We get some help from paragraphs 68 and 69 of the explanatory notes to the Bill, which suggest the Government may be trying to affect what we have come to call derived rights cases, in the free movement context. For example, cases of so-called Zambrano carers. These are situations where the European Court has recognised that, because of rights within the European treaties available to European nationals, certain rights must be given to those nationals and their family members or carers in order to ensure that the European national can actually enjoy their EU rights. I accept that, if one is trying to get rid of free movement, as the Bill is, these categories would need to be removed from UK law. That is exactly what ending free movement means, but if that is the scope of the Government's intentions, it should be much clearer in the Bill.

Unfortunately, paragraph 6 goes much wider than that, addressing not only provisions made under the Immigration Acts, as the Minister suggested a few moments ago, but any matter capable of being seen as in connection with immigration. That could include, for example, the anti-trafficking directive, which prohibits removal of a victim of trafficking if they never received sufficient support and assistance under article 11 of the directive. Other directives that could be caught under involving the exercise of functions in connection with immigration include the reception conditions directive, which supports asylum seekers, the EU victims' rights directive, and potentially others.

One way of protecting all these directives would be simply to say that paragraph 6 of schedule 1 does not affect directives that form part of retained EU law. After all, the Government's own explanatory notes do not identify any directives that they wish to disapply in the immigration context, even though I accept that the list in paragraph 69 is described as non-exhaustive. Alternatively, the Government could list the directives specifically to be protected, as set out in the explanatory notes, directly within schedule 1 of the Bill.

I have to say that if the Government do not follow either of those paths, vital protections for vulnerable people could be at risk of becoming collateral damage in the ending of free movement. I am absolutely not suggesting that the Government intend to remove those protections, but if they do not intend that, I hope the Minister can give us clear assurances to that effect today and explain why they appear to fall within the scope of the Bill as drafted.

As things stand, the breadth of the language in paragraphs 6 and a lack of sufficient objective parameters to ascertain its intended targets make it impossible to accurately predict which areas of retained EU law could be affected by the Bill. That is exactly the problem we were discussing a moment ago in relation to paragraph 4. It raises fundamental legal concerns. Migrants and their representatives, Home Office caseworkers and judges must be able to ascertain with a reasonable degree of certainty what the law is. Indeed, that is one of the core lessons learned from the Windrush review carried out by Wendy Williams. I do not believe that this provision meets that standard.

Kevin Foster: I thank the hon. Lady for her speech and her interest in this section of the Bill. To be clear, paragraph 6 disapplies the directly effective rights deriving from the EU law that will form part of retained EU law at the end of the transition period if they are inconsistent with immigration legislation or affect immigration practices. They are being repealed so that people cannot in the future attempt to rely on such directly effective rights to bypass the system to enter and reside in the UK, other than under the points-based system. We have been clear that provision will be made in the EU settlement scheme for those currently exercising their EU derivative right of residence in the UK, and that has now been provided, as I touched on.

Some people have asked for examples of rights that paragraph 6 would disapply. They include the rights of Turkish nationals to preferential immigration treatment under the European Economic Community-Turkey association agreement. They also include, as the hon. Member for Stretford and Urmston said, derivative rights of residents under EU law such as Zambrano carers, and the Chen, Ibrahim and Teixeira cases, which will cease from the day that paragraph 6 comes into force. Those rights stem directly from the treaty on the functioning of the EU and need to be disapplied because otherwise people could continue to cite and rely on them to bypass the future immigration system.

The Government do not intend to use the provisions to avoid our responsibilities under international law. We are very clear that our system of protection routes will continue to operate separately from the system of migration rules, as they always have. Family migration will not form part of the points-based system; it will be based on the family migration rules. The wording has to be the way it is so that the paragraph is not too wide in scope. This is about citing it in relation to immigration—trying to cite an EU right to work in the UK rather than applying the provision in a situation where we would, for example, be breaching our international obligations. As I said during the evidence session on Tuesday, under statutory instruments and regulations, Ministers cannot act against international law. We could have a long constitutional debate about whether Parliament can still pass primary legislation in relation to international law, but that is probably not relevant to this particular schedule.

In essence, the schedule is about being clear that it will not be possible to use a range of rights to undermine the points-based immigration system that we are putting in place. We want to make it clear that EEA and non-EEA citizens should look to migrate under the points-based system.

Question put, That the schedule be the First schedule to the Bill.

The Committee divided: Ayes 8, Noes 5.

Division No. 3]

AYES

Davison, Dehenna	Richardson, Angela
Foster, Kevin	Roberts, Rob
Lewer, Andrew	Ross, Douglas
Pursglove, Tom	Sambrook, Gary

NOES

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

Question accordingly agreed to.

Schedule 1 agreed to.

Clause 2

IRISH CITIZENS: ENTITLEMENT TO ENTER OR REMAIN WITHOUT LEAVE

Question proposed, That the clause stand part of the Bill.

Kevin Foster: I do not expect this clause to be controversial, but given some of the evidence that we heard, it may be useful to set out one or two responses, especially the Government's long-standing policy on deportation of Irish nationals. As Committee members will know, clause 2 protects the status of Irish citizens in the UK when free movement ends. British and Irish citizens have enjoyed a unique status and specific rights in each others' countries since the 1920s as part of the common travel area arrangements.

Under clause 2, when free movement ends, Irish citizens will continue to be able to come to the UK without permission or restrictions on how long they can stay. British citizens, as you are probably aware, Sir Edward, enjoy reciprocal rights in Ireland, again reflecting the unique historical position of the Republic of Ireland and the UK.

The clause provides legal certainty and clarity for Irish citizens by inserting a new section 3ZA into the Immigration Act 1971. New section 3ZA will ensure that Irish citizens can enter and remain in the UK without requiring permission, regardless of where they have travelled from. This is already the position for those entering the UK from within the common travel area, but Irish citizens travelling to the UK from outside the common travel area currently enter under EEA regulations. This clause will remove that distinction by giving Irish citizens a clear status once free movement ends. While that may not have been impactive, it is there in a technical, legal sense, which is why this clause is necessary.

12.15 pm

I welcome the written evidence on this issue that has been provided by Unison and the Immigration Law Practitioners' Association. The focus of the evidence is on the common travel area associated rights of British and Irish citizens, the equal treatment of citizenship as it relates to access to public services, and the possible deportation of Irish citizens. The Government are very clear that Irish citizens should not require leave unless they are subject to a deportation order, an exclusion decision or an international travel ban. Those exceptions are set out in this clause and reflect current and long-standing practice, which I understand was set out in a written ministerial statement in 2007 and remains the Government's position.

I confirm that our approach is to deport Irish citizens only where there are exceptional circumstances or where a court has specifically recommended deportation, which is incredibly rare. Committee members will be aware that we made provision to ensure that, from 1 January 2021, Irish citizens would be exempt from the automatic deportation provisions in the UK Borders Act 2007. That exemption is contained in the Immigration, Nationality and Asylum (EU Exit) Regulations 2019, laid before the House in February last year. This clause also amends section 9 of the Immigration Act 1971 to confirm that restrictions placed on those who enter the UK from the common travel area by order under that section do not apply to Irish citizens.

Furthermore, the clause amends schedule 4 to the Immigration Act 1971, which deals with the integration of UK law and the immigration law of the islands: Jersey, Guernsey and the Isle of Man. That schedule provides, broadly, that leave granted or refused in the islands has the same effect as leave granted or refused in the United Kingdom. The amendments in clause 2 disapply those provisions in relation to Irish citizens, as they do not require leave under this clause. They also make it lawful for an Irish citizen—unless, of course, that citizen is subject to the restrictions referred to earlier—to enter the UK from the islands, regardless of their immigration status in the islands.

Clause 2 aims to support the wider reciprocal rights enjoyed by British and Irish citizens in the other state. As confirmed in the memorandum of understanding between the UK and Ireland, signed in May 2019, citizens will continue to be able to work, study, access healthcare and social security benefits, and vote in certain elections when in the other state. Following the evidence sessions on Tuesday, I make clear that once free movement rights end, and to the extent those rights are not protected by the withdrawal agreement, an Irish citizen in the UK will be able to bring family members to the UK on the same basis as a British citizen. Crucially, this is because Irish citizens are considered settled from the day they arrive in the United Kingdom. Taken with these wider rights, the clause supports the citizenship provisions in the Belfast agreement that enable the people of Northern Ireland to identify as British, Irish or both as they may so choose, and to hold both British and Irish citizenship.

Finally, I confirm that the Bill makes no changes to the common travel area or to how people enter the UK from within it. Section 1(3) of the Immigration Act 1971 ensures that there are no routine immigration controls on these routes, and this will continue, including on the Irish land border. Given the unique and historic nature of our relationship with Ireland and our long-standing common travel area arrangements, I hope Members will agree about the importance of this clause as we bring free movement to an end.

Holly Lynch: I am grateful to the Minister for a lot of the clarification in his opening remarks. We welcome clause 2, and its content is indeed necessary. We will, however, be asking for some further assurances through new clause 27, largely to reaffirm what the Minister has just said. That new clause asks the Secretary of State to

"publish a report detailing the associated rights of the Common Travel Area".

We heard from both Alison Harvey and Professor Ryan that although clause 2 is welcome and offers a degree of clarity as free movement rights are stripped away from both Irish and British citizens, as well as those in Northern Ireland who identify as both, there are some outstanding areas that require further clarification, including the scope of reciprocal rights under the common travel agreement. Clause 2 shows that many of the rights granted to Irish citizens through the common travel area are facilitated through freedom of movement. If not in the present Bill, do the Government plan to legislate to enshrine the provisions of the common travel area as reciprocal rights, rather than purely as changeable administrative arrangements, and, if so, when?

As Professor Ryan highlighted on Tuesday, more must be done to clarify the status of acquisition of British nationality, for British-born children, children born to Irish parents and Irish citizens wanting to naturalise. At the moment it is incredibly hard to ascertain the exact immigration status of those individuals and to know, for example, whether they have time limits on their visas or have ever breached immigration laws. If the Government truly want to redefine the British immigration system, they must answer those questions to clear up the ambiguity surrounding British citizenship law.

I am sure that the Minister will understand some of the nervousness about deportations. He referred to it in his opening remarks on the clause. To give the Committee some context to work with, I asked Professor Ryan at column 35 in the evidence sitting on 9 June whether he was aware of examples in recent history when an Irish citizen had been deported, either because a court had recommended deportation on sentencing, or because a Secretary of State had concluded, owing to the exceptional circumstances of the case, that the public interest required deportation. If I am not mistaken, the Scottish National party spokesperson also put a similar question to Alison Harvey. No specific examples could be provided. If the Minister is aware of any, I should welcome it if he would share them with the Committee to support the discussion.

We still do not know the Government's proposed threshold for deportation of Irish citizens. It would be helpful if that could be clarified. Ideally, the Government would enshrine that in legislation or at least make a commitment during the passage of the Bill to state explicitly how deportation and exclusion will be used for Irish citizens in future. Professor Ryan has said that owing to the arrangements in the common travel area the threshold for deportation and exclusion of Irish citizens is notionally higher than that of other nations. Seemingly, it is more rarely, if ever, exercised.

As I have mentioned, the Good Friday agreement allows people born in Northern Ireland the right to identify exclusively as Irish or British, or as both. Irish citizens are referred to in the Bill, so can we assume that that reference includes Northern Ireland-born citizens who do not identify as British? If so, will the Minister make it clear in the Bill that people in Northern Ireland who identify exclusively as Irish, per the Good Friday agreement, are exempt from deportation and exclusion?

Without such a commitment, there is inevitably some anxiety. Alison Harvey made a case for mitigating the risk through the right to abode. If that were implemented, it would guarantee a raft of citizenship rights, so I welcome feedback from the Minister on that approach. As well as clarifying the status of Northern Irish citizens who identify solely as Irish, the right to abode would also alleviate the loophole through which someone with an Irish passport is not granted protections on arriving in the UK, because they have travelled from a country outside the common travel area.

We are supportive of the clause and will not oppose it, but will return to some of its content in debate on new clause 27.

Stuart C. McDonald: Given what the Minister and shadow Minister have said, I can, I hope, be helpfully brief. I am grateful to the Minister for clarifying the position on deportation, but the shadow Minister raises a reasonable point. The Minister has clarified the policy—but why not put it on the face of the Bill? I very much welcome the Minister's confirmation of how Irish nationals will be able to come from outside the CTA with family members. It is a welcome clarification.

I want briefly to refer to the broader issue of common travel area rights. We are often told about the historic common travel area, and the fact that the rights go back many decades. That is true, but in recent years most of those rights have become embedded in and entangled with free movement rights. In the Bill, we are repealing those rights but not replacing them with common travel area rights. The Government keep talking about reciprocal rights, but we need them to be set down in statute.

So far, as the Minister said, there seems to be a non-binding memorandum of understanding with the Government of Ireland, and a Government position paper, setting out the fact that there will be rights to work, study, social security and healthcare access, and vote. For the Irish Human Rights and Equality Commission, essentially those CTA rights are "written in sand" and for the Committee on the Administration of Justice the CTA can be characterised by loose administrative arrangements of provisions that can be altered at any time. So we need to return to this issue of when we will actually see a detailed scheme of rights for the common travel area.

There is some urgency about this matter, because at the moment, for example, there are people in Northern Ireland who choose to be Irish citizens and who have the option of applying under the EU settled status scheme, but they will have to make that decision without really knowing how the benefits of the EU settled status scheme compare with the benefits of the common travel area scheme, because that has not been spelled out in great detail yet. There are practical issues that have been flagged up by the organisations I have mentioned about cross-border rights to access healthcare and education, and so on. All these questions need to be answered, and fairly urgently.

Finally, I will echo what the shadow Minister said about Alison Harvey's evidence on the right of abode, and I would be interested to know whether the Government are considering achieving some sort of resolution of these issues by using the right of abode. However, we will return to these issues when we debate the new clause that the shadow Minister has tabled.

I welcome clause 2, but we still have a considerable way to go in making sure that the common travel area persists and works properly, and that folk know where they stand.

Kevin Foster: I thank the SNP and Labour spokespersons for their overall support of the clause. I think I have been clear that there is a very strong commitment to the common travel area. Elements of its operation are inevitably required due to the provisions of the Belfast agreement, which is actually international law; it is a treaty between the United Kingdom and the Republic of Ireland, so it is not something that can just be amended on a whim. Far from it—it is underpinned by the strong consent of both communities, north and south, as expressed in referendums at the time it went through.

The commitment of both Governments to the common travel area has persisted for decades and will continue to do so. Irish citizens can apply to the European

[Kevin Foster]

settlement scheme. I do not see any detriment that would come to them from doing so, but neither is there a requirement for them to do so, given the clarity that the clause brings to their rights within the United Kingdom. To be absolutely clear, the clause looks to remove that difference in the technical definition between an Irish citizen who has arrived in the United Kingdom on, for the sake of argument, the Eurostar from France, as opposed to arriving in the United Kingdom on a plane from Dublin.

It is probably worth saying that it would be interesting to work out how that definition could have actually affected someone's life, apart from some of their more theoretical rights. However, I will be clear on that front that the Bill removes that difference. For an Irish citizen within the United Kingdom, it applies regardless of which country they travel from—whether they have travelled to the United Kingdom from within the common travel area or, for example, from the United States of America—*[Interruption.]* I am glad that the hon. Member for Halifax was reassured by that.

Effectively, Irish citizens become identified —I accept that this is perhaps a slightly controversial thing to say in the context of people's identity—as British in our system of migration. Effectively, their Irish passport becomes equivalent to a UK national's passport.

As for the provisions around deportation, I was asked whether there was a particular example. My officials in the Home Office have spent some time over the last week or two trying to find an example under current legislation —not under legislation, perhaps, from previous eras—of someone being deported from the United Kingdom to the Republic. We struggled; so far, I cannot find a specific example. I do not see any Member of the Committee who is about to jump up and give me an example, in order to contradict me on that point.

In particular, we are not aware of there ever having been, even at the heights of the troubles, a particular stream of deportation from Northern Ireland into the Republic. Partly, that is because we would all have to question the practical effect of deporting someone from County Londonderry to County Donegal; how on earth would anyone effectively enforce that in any way? Also, however, the spirit between the two Governments has been very much that we respect the rights of those who are there and, to be clear, that is set out in a 2007 written ministerial statement. That was not done under a Government formed by my party. The written ministerial statement has been there for 13 years. I wrote to the Irish Government about the fact that the provisions were in the Bill, and we have not received negative representations. The minimum threshold would have to be an offence that carried a 10-year prison sentence, so we are talking about very serious criminal offending, or the court would have to recommend it.

12.30 pm

It is not right to specify such things in a Bill. There might be a circumstance around national security, but it would have to be exceptional, given the very good relationship we enjoy with the Republic of Ireland. I understand it does not have provision in its law for the deportation of UK citizens, although I am not an authority on the law of the Republic of Ireland. If, for example, the four neo-Nazis who were convicted this week decided to head to Dublin, and the Irish Government decided that that was not conducive to public order in Ireland, I do not think we would object if they decided they did not wish to have those people in the Irish Republic. The clause brings clarity and ends the technical legal distinction. It sets out clearly in primary legislation the position of Irish citizens in the United Kingdom.

The scope of the Bill is narrow. It is not intended to set out nationality provisions. We had a long debate about that. The Government are not looking to introduce right of abode for people of Northern Ireland, but we will remain steadfast in our commitment under international law to the Belfast agreement and what it symbolises in the peace process in Northern Ireland.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3

MEANING OF THE "IMMIGRATION ACTS" ETC

Question proposed: That the clause stand part of the Bill.

Kevin Foster: The clause is minor and technical in its nature, but it is important for the implementation of the Bill and for a fully functioning statute book. Effectively, it states that the Bill will be one of the Immigration Acts. I commend the clause to the Committee.

Holly Lynch: There is so little in clause 3 that we will not make a contribution to it.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

CONSEQUENTIAL ETC. PROVISION

Stuart C. McDonald: I beg to move amendment 2, in clause 4, page 2, line 34, leave out "appropriate" and insert "necessary"

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

The Chair: With this it will be convenient to discuss 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."

Stuart C. McDonald: I am pleased to speak in support of the amendments. At this stage I expect to get the Government Members excited because I am urging them to take back control, by which I mean take back control of immigration policy from the Home Office and keep MPs in a job. Like most hon. Members I have become familiar with the broad powers of delegated legislation and sweeping Henry VIII powers in recent years through both immigration legislation and more recently through Brexit. The Government are taking increasingly more and more powers to rewrite not only subordinate legislation but primary Acts of Parliament with very little constraint. I do not think that anyone here would dispute that in certain circumstances such powers can be sensible and useful, but they should be exceptional and limited. Instead, the practice has become so routine that if it goes on we might as well shut down Parliament or end its role as a legislator.

I am grateful to the witnesses who spoke on Tuesday and to the organisations that provided briefings, including the Law Society of Scotland, Amnesty International, the Immigration Law Practitioners' Association, Justice, Liberty, the Equality and Human Rights Commission and others. There are big concerns about this clause.

In tabling the amendments I have also relied on the report of the House of Lords Delegated Powers and Regulatory Reform Committee and its 46th report in the last Session, which was an analysis of the predecessor Bill. It is fair to say that their lordships were not impressed with clause 4. It is noticeable that they went out of their way to prepare the report in advance of Committee stage so that we could benefit from their advice. I regret that the Home Office is still not listening to that sage advice at all.

The sweeping power is set out first in clause 4(1), where the Home Secretary can make any provision that she thinks "appropriate" in relation to the whole of part 1 —in other words, related to free movement. Clause 4(2) makes it clear that this can include amending any Act of Parliament as well as retained EU legislation. There are various subsections about the procedures that would be required to be used when exercising those powers, which is something that I suspect we will return to later.

The word that appears several times in the House of Lords report is "significant". Their lordships had significant concerns about significant delegation of powers from Parliament to the Executive on such a significant issue that concerns a significant number of people. Amendments 2, 3, 20, 21 and 4 are designed to cut those powers done to size and to keep MPs in a job. It is quite informative to look at the explanatory memorandum to the same Bill from this time last year. The memorandum explains, for example, how the powers would be used to set up appeal rights for EEA nationals. All those things have already been taken care of in the year that has passed, yet nothing has changed in the formulation of clause 4. The Government still say they need such powers, even though they have done everything that they envisaged using those powers for in the explanatory memorandum from this time last year.

The European Union (Withdrawal Agreement) Act 2020 was passed at the start of the year, and it contains a whole part on citizens' rights of residence, frontier workers, deportation appeals, non-discrimination and so on. It includes extensive powers of delegated legislation as well, but at least they are constrained by the requirement that they should be exercised in order to implement the provisions of the withdrawal agreement that relate to citizens' rights. As I say, a lot of what the Government originally envisaged they would use these powers for has already been accomplished.

[Stuart C. McDonald]

Amendment 2 refers to an argument that we have had many times before. It is about requiring use of the powers to be "necessary" rather than merely considered appropriate by the Minister. Again, there is no genuine objection to being able to make rules if we suddenly have to make changes for a deal or a no-deal situation in the future relationship, but that should not just be at the whim of Ministers deciding what is appropriate and what is not. Their lordships and various stakeholders have recommended a test of necessity, and that is what is in amendment 2.

Amendment 3 is probably the most critical amendment and takes out the words "in connection with". I refer again to the House of Lords Committee report, which said:

> "We are frankly disturbed that the Government should consider it appropriate to include the words 'in connection with'. This would confer permanent powers on Ministers to make whatever legislation they considered appropriate, provided there was at least some connection with Part 1, however tenuous; and to do so by negative procedure regulations".

So their lordships are not very happy at all with what the Government propose.

Amendments 20 and 21 come from the House of Lords Committee report, but there have been perfectly sensible suggestions from Amnesty International, with similar ideas from other stakeholders. Amendment 20 would limit the scope of powers so that regulations cannot be made in relation to any old provision in part 1; they must relate specifically to schedule 1. Again, I emphasise that it can be acceptable to have limited powers in order to tidy up the statute book and the detailed list of provisions in the schedule. As matters stand, however, clause 2 means that we could have sweeping changes made to the rights of Irish citizens on the whim of the Secretary of State. Indeed, on the face of it, delegated powers could be used to alter clause 4 in order to increase the Executive's powers yet further. That cannot be acceptable.

Amendment 21 would put a simple sunset clause of one year on the use of these powers. Should the Government have not tidied up the statute book by this time next year, something seriously wrong will have happened. Alternatively, something seriously positive will have happened and we will have extended the transition period by a couple of years. In either case, there will be plenty of time to legislate afresh. Everyone gets the argument that sweeping powers should not be left on the statute book forever; hence the sunset clause.

Amendment 22 puts a sunset clause on changes made by subordinate legislation. If the Minister really thinks there is such a rush that he cannot proceed by primary legislation, he should make the regulations. He should then come back to the House of Commons with a proper Bill, so that we can do our job as legislators and decide whether to keep those provisions in force or let them lapse.

In some ways, I am just sticking up for MPs. I want us to be able to continue to be the primary legislators in the field of immigration law and that we should start taking back some control from the Home Office.

Holly Lynch: I rise to speak to amendment 12, as well as demonstrate support for amendments 2 to 4, which also have our full support. With your permission, Sir Edward, I will focus my comments on the amendments relating to the transfer of powers in clause 4, and my hon. Friend the Member for Stretford and Urmston will speak specifically to amendment 15, which is part of this group but is on a slightly different issue and relates to the impact that this legislation will have on children.

It is a pleasure to follow the SNP spokesperson, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, who made an articulate speech on the concerns about the Henry VIII powers. The reason we are all here physically today and not fulfilling our duties from home is this Government's commitment to parliamentary scrutiny. Unfortunately, this transfer of powers seems to be inconsistent with that approach.

The arguments were incredibly well rehearsed on Second Reading during the previous Parliament, in Committee and in the House of Lords Delegated Powers and Regulatory Reform Committee, as we have already heard. That is why it is so disappointing that the Government have not reflected on that feedback and adapted their approach.

Clause 4 as it stands confers an extremely wide power on the Home Secretary to make whatever legal amendments they consider appropriate in consequence of, or in connection with, any provision of the immigration part of the Bill. That includes the ability to amend primary legislation. I am sympathetic to the Government's stated intention behind the clause—namely, that it will ensure coherence across the statute book following the substantial changes brought about by the ending of free movement, and deliver the required tweaks to legislation. However, clause 4 is drafted so widely that it could relate to almost any aspect of immigration law, and given that there is no time restriction on the clause or the powers within it, the concern is that there is potential for those powers to be used far beyond the aims of this Bill.

Adrian Berry of the Immigration Law Practitioners' Association, whom we heard from earlier this week, commented on the powers referenced in the Bill, including in clause 4(5). During that evidence session, he said:

> "How is the ordinary person, never mind the legislator, to know whether the law is good or not…if you draft like that? You need to make better laws. Make it certain, and put on the face of the Bill those things that you think are going to be disapplied because they are inconsistent with immigration provisions. There must be a…list in the Home Office of these provisions and it would be better if they are expressed in the schedule to the Bill."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 9 June 2020; c. 52, Q106.]

He went on to confirm that any responsible Opposition would have to table the amendments in this group in the absence of that list.

As we have heard, amendment 2 would replace the word "appropriate" with "necessary" in clause 4, line 34 on page 2 of the Bill, and amendment 3 would leave out ", or in connection with," on the same line. With amendment 4, we seek to leave out subsection (5) altogether. We are also supportive of amendment 20.

On the specific proposed changes, as has already been said, the Lords Delegated Powers and Regulatory Reform Committee considered the almost identical version of the Bill in the 2017-19 Parliament. It said:

> "We are frankly disturbed that the Government should consider it appropriate to include the words 'in connection with'. This would confer permanent powers on Ministers to make whatever

legislation they considered appropriate, provided there was at least some connection with Part 1, however tenuous; and to do so by negative procedure regulations".

The Committee expressed significant concerns about subsection (5), recommending that it be removed altogether, which is exactly what we are seeking to do,

"unless the Government can provide a proper and explicit justification for its inclusion and explain how they intend to use the power."

The reason is that

"it confers broad discretion on Ministers to levy fees or charges on any person seeking leave to enter or remain in the UK who, pre-exit, would have had free movement rights under EU law."

I argued on Second Reading that this approach is bad not just for parliamentary democracy, but for our public services and for the economy—a sentiment shared by the London Chamber of Commerce and Industry in an evidence session this week. Parliamentary scrutiny is the most effective way for stakeholders to work with MPs to shape legislation to respond to the needs of the country, and they are being denied that opportunity with the transfer of powers in this clause. The Immigration Law Practitioners' Association, the British Medical Association, London First, Universities UK, the National Union of Students, trade unions and the Children's Society are just a sample of the cross-section of organisations that have all expressed concerns that this transfer of powers to the Executive is not the way to develop quality and robust legislation.

During the attempted passage of the Bill in the last Parliament, the then Minister, the right hon. Member for Romsey and Southampton North (Caroline Nokes), set out a number of reasons why the powers in clause 4 were necessary. As the SNP spokesperson has already said, a number of those reasons have since been addressed, yet the powers remain.

Since then, almost all those powers have been rendered irrelevant by the passage of other pieces of primary and secondary legislation. I will rebut just a couple of arguments. The then Minister said:

"In the unlikely event that we leave the EU without a deal, the power will enable us to make provision for EEA nationals who arrive after exit day but before the future border and immigration system is rolled out".

There is now a deal on citizens' rights in place, so they will not be affected by negotiations on the future relationship.

The then Minister also said that the clause would allow the Government to

"align the positions of EU nationals and non-EU nationals in relation to the deportation regime".—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 26 February 2019; c. 183-84.]

However, regulation 17 of the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 makes amendments to deportation thresholds, so it is unclear why any further transfer of power is necessary in the Bill.

12.45 pm

Amendment 12 is our attempt to make the powers time-limited, by tying them to the end date of the EU settlement scheme. Those powers are contained in section 7 of the European Union (Withdrawal Agreement) Act 2020. As yet, no regulations have been made under those powers. The amendment would ensure that the powers would not extend indefinitely and that they could be used only up until the date when matters under the EU settlement scheme had been resolved and the scheme was therefore closed.

Clause 5 presents similar issues, which we will get to, and a second grouping of amendments is largely consequential on the amendments under discussion, as they all seek to restrict the powers transferred to the Executive under clause 4. We on the Labour Benches felt that, at Tuesday's evidence session, the remarks of Richard Burge, of the London Chamber of Commerce, summed it up. When he spoke about the powers in the Bill, he said:

"It is up to you in this House to decide how you use legislation to maintain scrutiny of Government. We would ask that, whatever means are chosen—through primary legislation or regulation—it is done in a transparent way and involves us. Instead of us in business being told what is happening, we should be involved in those discussions and make them as transparent as possible. As far as I can see, employment and immigration are not a national security issue; it could be discussed much more openly and transparently. We can resolve differences through public dialogue rather than through private discussion."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 9 June 2020; c. 13, Q20.]

I very much hope that the Minister has reflected on that request.

Kate Green: Amendment 15, tabled in my name and those of my hon. Friends, aims to place the welfare of children at the heart of the way in which Ministers exercise their powers under clause 4. Children's wellbeing is of central importance, both in UK law and to comply with our international obligations. We are a signatory to the UN convention on the rights of the child and to the global compact on migration, which contains 38 paragraphs on the welfare and treatment of children.

Domestically, the Children Act 1989 sets out the principle of the paramountcy of the welfare of children in matters relating to their care. Section 55 of the Borders, Citizenship and Immigration Act 2009 provides that immigration functions must be discharged with regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. With all that in place, the Committee may feel that we already have a framework that adequately protects children's interests in immigration matters. However, the powers conferred on Ministers by clause 4 are very broad, and the way in which they are exercised could have a significant impact on children, whose best interests could be overlooked.

My amendment would embed protection against that happening as freedom of movement is ended. It would ensure that policies and rules introduced under the provisions of clause 4 can have no detrimental effect on the children of EEA and Swiss nationals who are resident in the United Kingdom, and would require the Secretary of State to publish and lay before Parliament a statement to explain why he or she is satisfied that that is the case.

The loss of free movement rights in the Bill means that some EEA national children will inevitably fall within the ambit of immigration legislation in the future. Some will be new arrivals to the UK, and others will have been here already but failed to secure the status to which they are entitled, becoming undocumented and subject to the compliant environment as a consequence.

Let me say a word briefly about the children who are at risk of being detrimentally affected, starting with those already in the UK who may none the less have

[Kate Green]

failed to secure status. The number of such children could be substantial. The Refugee and Migrant Children's Consortium estimates that there were as many as 751,000 non-Irish EEA and Swiss national children in the UK in 2019, but only 415,140 grants of status were made to children under the EU settlement scheme as at the end of March this year. Some of those children will be very vulnerable. My hon. Friends and I tabled new clause 58, which would secure status for looked-after children and young people leaving care, and I hope the Committee will have the opportunity to debate it in the days to come.

The impact of the Bill's provision on those eligible for status who fail to apply is not limited to looked-after children alone. For example, parents may not understand whether their UK-born children are automatically British, whether they need to apply to register as British, or whether they should apply to the EU settlement scheme. The complexity of the system and the lack of access to advice means that some children may miss out on getting status or fail to obtain the highest status to which they are entitled. Some may be granted only pre-settled status and will need to be reminded to apply for settled status after five years or risk losing their right to remain in the UK.

Another group of children about whom I am concerned is those who have been in custody. Like adults, children applying to the EU settlement scheme are affected by time spent in custody. As well as not counting towards the five-year qualification period for settled status, periods in custody also reset the clock. Any child who spends time in custody will have to recommence their journey to qualify for settled or pre-settled status upon their release. That represents a troubling anomaly in the treatment of children who offend. Our criminal justice system generally takes the view that juvenile criminal behaviour should be treated differently from adult criminal behaviour, but that is not the case in relation to the EU settlement scheme. Is the Minister able to say how many children have been or may be unable to secure settled status as a result of that provision?

The examples I have cited are just that: examples. Any EEA and Swiss national children who do not secure status—those who were born here and those arriving in the future—could be affected by rules that may be introduced under the powers in clause 4. Hon. Members have already identified a number of potential harmful effects on EEA nationals, including children, as a result of the abolition of free movement and the imposition of new or more stringent rules. Some are reflected in the amendments and new clauses we have tabled and include the impact of fees and charges on citizenship applications; data-sharing policies; the application of income thresholds for the admission of family measures, including parents and children; no recourse to public funds conditions, which can affect children; the position of unaccompanied asylum-seeking children; and provisions relating to detention, deportation and removal. As we discussed earlier, schedule 1 may disapply certain provisions of EU law or EU-derived rights, and that, too, could affect children in some cases, such as those who are victims of crime or trafficking.

In all those circumstances, my amendment would provide assurance that the impact of any rules made using the powers in clause 4 would be subject to the requirement that they have no detrimental effect on the children of EEA and Swiss nationals resident in the UK, whatever led them to be here and whatever their status while here.

The second limb of my amendment refers to the requirement to produce a report to Parliament, which would impel the Home Office to develop processes to undertake a systematic assessment of the impact on children of any planned new immigration rules, which does not appear to happen routinely at the moment. Such an approach would also underpin a best interests approach to the application of immigration rules in individual decisions, buttressing the provisions of section 55 of the Borders, Citizenship and Immigration Act. Again, there is little sign that a systematic approach to children's best interests is embedded in Home Office decision making, and the requirement for immigration rules to protect children's rights and interests must be supported in the design of decision-making processes and appropriate staff training. I hope the Minister will accept my amendment.

Stuart C. McDonald: I apologise, Sir Edward, but in my excitement over the Henry VIII clause and various other delegated powers, I forgot to speak to amendment 22, so I will speak to it briefly. It is slightly different from the amendments I spoke to earlier, which sought to rein in the powers the Home Office is trying to give itself in clause 4. Amendment 22 is more about setting out some guidance as to how those powers should be used, and to set out some principles. I, and I dare say any MP, could come up with 10 or 20 principles by which we would like the Home Office to abide. I have discussed these proposals with Amnesty International and they are good examples of the sort of framework we should provide at the Home Office, rather than giving it a blank cheque to introduce whatever system it sees fit.

The first of the amendment's five principles is that these rules should be exercised to promote family life. Why have we allowed the Government to deliver tens of thousands of what England's Children's Commissioner called "Skype families", separated by some of the most draconian anti-family migration rules in the world? Why did we watch as the Home Office simply withdrew the concession that generally allowed families with children who had been here seven years to settle permanently? The amendment would lay down a principle that would guide the Home Office to exercise its delegated functions in a way that promotes family life rather than undermining it.

The second principle relates to appeal rights. Everyone in this room believes in the rule of law, a facet of which is that a person should have a ready and accessible means of challenging their removal from the country in which they have made their home. To disagree with that simple proposition would be to ignore some of the key lessons from Windrush.

Thirdly, we need to stop putting so many people through a tortuous process before they have security of residence in this country. If people have been here for years on end, especially during childhood, why are we charging them many thousands of pounds over a 10-year period, with application after application after application? It is a disaster for the families affected and a total waste of Home Office time and resource. Let people move on.

Fourthly, if people are here for family reasons and fall on hard times, do we really want to say that they will just have to suffer and that the safety net we provide for

others in a similar situation should not be available to them? If people are here to accompany family, why are we saying to them that they have to put their lives on hold and that they cannot seek work? These features of our immigration system are regressive, counter-productive and, frankly, prehistoric.

Finally the fifth principle is about treating people fairly and not pulling the rug from under their feet once they are here. Of course, rules and policies will change from time to time, but it is highly regrettable that we allow people to come to the UK on a particular visa route and then change the rules so that they apply not just to new people coming in but to those who are already here, making it difficult, if not impossible, for them to remain. A perfect example was the change to the financial threshold for tier 2 visa holders seeking settlement. Imagine if someone has been here for three or four years and met all the salary requirements, only for the Home Office to then say, with a year to go, "This was the salary threshold you had before, but actually we have upped it by £5,000 or £6,000 or £7,000." That is a retrospective rule change, and it is totally unfair to operate it in that way.

I could have added many more principles to those I would like to see guiding the Home Office. These principles say that if we are going to give the Home Office these powers, we want them to be exercised in the interests of family, the rule of law and stability, protecting against retrospective rule changes and providing financial security. For too long, the Home Office has disregarded those principles. It is time that we as MPs say that it should stop doing that.

1 pm

The Chair adjourned the Committee without the Question being put (Standing Order No. 88).

Adjourned till this day at Two o'clock.