



**Submission to the**

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

**Public Bill Committee**

**February 2019**

Amnesty International UK is a national section of a global movement of over seven million people who campaign for every person to enjoy all rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We represent more than 670,000 supporters in the United Kingdom. We are independent of any government, political ideology, economic interest or religion.

1. Amnesty International UK (“AIUK”) is grateful for the opportunity to have given oral evidence to the Public Bill Committee.<sup>1</sup> This submission follows on from that evidence session to address matters that arose in the course of the session and in the other evidence sessions the committee has held – particularly as these matters relate to the true scope of the Bill.
2. Unless otherwise stated, references in this submission to the session refer to the oral evidence session in which we participated.

### Summary

3. The scope of this Bill is not restricted to ending free movement and related EU Treaty rights (and to future social security co-ordination). The words “*and for connected purposes*” in this Bill’s long title must have significantly wider meaning given the express inclusion among the Bill’s provisions of powers to amend law, including primary legislation, affecting people whose presence in the UK has always been subject to immigration controls: people who are neither European Economic Area (EEA) or Swiss nationals nor their family members. This wider scope of the Bill is further explained by Ministerial statements and departmental papers that make clear the intention to enable by this Bill the establishment of a single immigration system – i.e. a future system that will apply to every person subject to immigration controls including but not limited to people now enjoying and exercising the rights to be ended by clause 1 and Schedule 1 of the Bill.
4. AIUK considers that it is vital – given the intention by this Bill, the powers within it and the likely absence of any similar opportunity for parliamentary scrutiny – that Parliament takes the opportunity presented by this Bill to subject the future of the UK’s immigration system to scrutiny. That should include consideration of:
  - a the principles, purposes and constraints to and within which it is to operate;
  - b complexity and volatility of the immigration system, including by the manner, degree and frequency of changes to its rules and fees;
  - c respect for family unity and for children’s rights, including in relation to refugee rights of family reunion and the rights of British and settled persons to be joined by family members in the UK;
  - d the need for effective safeguards including to ensure access to justice for individuals by provision of appeal rights and legal aid; and to secure equality, human rights, data protection and constraint on the exercise of the power to detain (including through the introduction of a statutory time limit);
  - e the means by which the immigration system makes people vulnerable to abuse and exploitation, including survivors of domestic violence at risk of being subjected to immigration powers if seeking to escape their abusers; and

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<sup>1</sup> *Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee*, 14 February 2019 (morning), Third Sitting, Col 85 *et seq*

- f barriers, including prohibitive and unjustifiable fees, to the exercise of rights to British citizenship of people born and grown up in the UK.

## Scope

5. In the very first of the oral evidence sessions, Professor Bernard Ryan aptly summarised the immigration aspect of the Bill. He did so in response to the Committee’s question about whether the Bill “adequately defines the rights that those acquiring settled status will have”? Professor Ryan replied:

*“It does not, because it does not really attempt to do that... In relation to EU rights, the Bill provides for switching off, but it does not provide anything about prior residents or people who are already exercising rights. There is nothing said about that in the Bill.”*<sup>2</sup>

6. This is a good starting point for understanding the Bill and the concerns expressed by many in relation to it. The Bill switches off EU-derived rights. Several witnesses have confirmed this as the primary effect of the Bill, specifically clause 1 and Schedule 1. The consequential effect of switching off these rights was addressed in AIUK’s response to the first question put by the Committee. In short, the effect is that a very large number of people – previously exempted from the fullness of the immigration system – will become fully subject to it. The Impact Assessment summarises this neatly:

*“The Bill makes EEA nationals and their family members subject to UK immigration controls. This means they will require permission to enter and remain in the UK under the Immigration Act 1971.”*<sup>3</sup>

7. This effect has implications not only for EEA nationals and their family members, but also for everyone else subjected to the immigration system because one critical problem with that system is its current incapacity, which can only be exacerbated by making it responsible for the position of many more people.<sup>4</sup> To this question of capacity must, in the wake of what last year was exposed by what is now known as the Windrush scandal, be added more systemic concerns regarding the fitness of this system. AIUK emphasised these matters in response to the first of the Committee’s questions. It is less than six years since then Home Secretary, the Rt Hon Theresa May, described what was then known as the UK Border Agency as beset by “conflicting cultures”; “all too often [focusing] on the crisis in hand at the expense of other important work”; as being “closed, secretive and defensive”; having “inadequate IT systems”; and “caught up in a vicious cycle of complex law and poor enforcement

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<sup>2</sup> *Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee*, 12 February 2019 (morning), First Sitting, Cols 8-9 (Q15)

<sup>3</sup> IA No: HO0299, December 2018, page 1, ‘What is the problem under consideration? Why is government intervention necessary?’: [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/2018-12-18%20Impact%20Assessment%20\(signed\)%20-%20Immigration%20Social%20Security%20Co-ordination%20Bill.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/2018-12-18%20Impact%20Assessment%20(signed)%20-%20Immigration%20Social%20Security%20Co-ordination%20Bill.pdf)

<sup>4</sup> This is a matter on which the Home Affairs Committee expressed considerable concern in its *Home Office delivery of Brexit: immigration*, Third Report of Session 2017-19, HC 421: <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/421.pdf>

*of its own policies.*”<sup>5</sup> The evidence the Committee has received is consistent with these systemic problems having worsened rather than improved. It is against this backdrop that the Bill falls to be considered.

8. Ministers have explained the Bill as providing the framework for the future immigration system. The Home Secretary put it this way at Second Reading:

*“...the Bill gives us the basis to build a legal framework for the future immigration system.”*<sup>6</sup>

9. The Explanatory Notes accompanying the Bill, in referring to the December white paper,<sup>7</sup> state that these notes provide further details on:

*“...how the Bill provides the legal framework to help deliver [the proposed single immigration system].”*<sup>8</sup>

10. The Impact Assessment states this more clearly:

*“The Bill therefore establishes the legislative framework for the future immigration system for EEA nationals, but it does not set out the detail of this system.”*<sup>9</sup>

11. However, what is there said in the Impact Assessment is not the full picture because, as the Home Secretary has emphasised, including in his Foreword to December’s white paper, the intention is to have “*a single system*”. The precise meaning or intent of that was a matter to which certain of the Committee’s questions were directed.<sup>10</sup> What is clear, however, is that Ministers’ intentions are that the future immigration system is one to which both EEA nationals and non-EEA nationals will be subject. During the session, the Committee expressly probed this matter in relation to the Bill. Firstly, when asking about the Henry VIII powers in clause 4 (also in clause 5), and in relation to these:

*“...could the Government use the powers in the Bill to amend immigration legislation affecting non-EU citizens?”*<sup>11</sup>

12. As AIUK explained in response to a follow-up to this question, the Bill makes explicit that the powers can be used to amend legislation affecting people who are neither

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<sup>5</sup> Hansard HC, 26 March 2013 : Columns 1500-1501

<sup>6</sup> Hansard HC, 28 January 2019 : Column 510

<sup>7</sup> *The UK’s future skills-based immigration system*, December 2018, Cm 9722:

<https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

<sup>8</sup> Bill 309-EN, page 3, paragraph 10: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/en/18309en.pdf>

The Memorandum from the Home Office to the Delegated Powers and Regulatory Reform Committee makes this same point at paragraph 3, as does the European Convention on Human Rights Memorandum by the Home Office at paragraph 2: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/20-12-DLM-Imm.pdf> and <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/11-01-DLM-Imm.pdf> respectively.

<sup>9</sup> IA No: HO0299, December 2018 *op cit*, page 3, paragraph 5

<sup>10</sup> The Committee asked several questions relating to whether or not there should be preferential treatment of EEA nationals in future.

<sup>11</sup> This was asked in the immediate follow-up to the Committee’s first question.

EEA nationals nor their family members. It does so at clause 4(4). Paragraph (4) to clause 4 makes express that regulations made under clause 4(1) may apply to people without EU-derived rights and who are, therefore, subject to immigration controls (the need for permission to enter and stay in the country) before those EU-derived rights are switched off.

13. Clause 4(5) confirms this goes further even than immigration law since, at least in relation to fees, that paragraph makes express that legislation passed before (or in the same session as) this Bill is enacted may also be amended by regulations under clause 4(1). The relevant legislation here is the Immigration Act 2014, which by section 68 gives powers to the Home Secretary to set fees in respect of functions and claims under not only immigration law, but also nationality law.
14. All of this has importance for a primary consideration for the Committee: What is the true scope of this Bill? What do the words “*for connected purposes*” in the Bill’s long title mean? The answer to this question must encompass the true content of the Bill; and, as the Committee, has confirmed by the evidence it has sought and received, and the questions it has asked, the true content includes the changing of law, including primary legislation, as it affects everyone who in future will be subject to the proposed single immigration system; and (having regard to clause 4(5) includes many people who are not or should not be subject to that system at least in relation to the setting and demanding of fees). The scope of this Bill, therefore, is very far from limited to the future circumstances of EEA nationals and their family members.
15. By way of illustration, we highlight the Home Office policy of using fees as a means to raise revenue to pay for the immigration system; and in doing so to set some fees at above (sometimes very far above) the administrative cost of the function or claim in question so as to subsidise the cost of other functions and claims. Thus, Minister’s decision not to charge claimants under the settled status scheme for EEA nationals and their family members has implications for the fees other people will be charged. The previous decision to charge £65 (itself significantly below the administrative cost of that scheme) also had such implications.
16. To adopt the language of the Bill in the long title and in clause 4(1), these fees are ‘connected’ – at least in the intention, policy and practice of the Home Secretary and his department. This was expressly confirmed by the noble Lady, Baroness Manzoor, when responding for the Government to questions on ‘Child Citizenship Fees’:

*“...any changes to the charging structure have financial consequences that the Home Office must consider alongside other pressures. It is important to look at where the charges impact. Where fees are set above costs, the additional income is used to help fund and maintain the function of an effective wider immigration system... If I may, I will give two examples. Fees for EEA nationals have been set below cost to reflect the agreements in place with the EU. Fees for short-term visas, our largest volume application route, reflect the importance to our economy of visitors to the UK.”<sup>12</sup>*

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<sup>12</sup> *Hansard* HL, 23 October 2018 : Cols 764-765

17. This answer was in direct response to questions about the propriety of setting fees for children to exercise their statutory rights to British citizenship at above the administrative cost to the Home Office of registering the child's citizenship. The relevant fee to the child currently is £1,012.<sup>13</sup> This fee is charged to children born and growing up in this country. It is charged to children who have statutory entitlements to British citizenship given by Parliament in the British Nationality Act 1981. The children affected are not migrants and should have nothing to do with the immigration system. The rights they are exercising are not within the gift of the Home Secretary but are rights established by Parliament in passing the 1981 Act – rights that Parliament emphasised, in passing that Act, to be the entitlement of the children in question.<sup>14</sup>
18. We must make clear that AIUK strongly supports the work done by the Project for the Registration of Children as British Citizens (PRCBC)<sup>15</sup> to draw attention to the fundamental error that the Home Office has made and continues to make in treating these children's citizenship rights as benefits which it is within the gift of the Home Secretary to bestow; and in treating these children as migrants and their claims to British citizenship as matters concerning the immigration system.<sup>16</sup>
19. However, the first relation of this to this Bill is by way of illustration of the meaning and effect of the words "*for connected purposes*" in its long title as confirmed by the provisions of clause 4.

#### **What does this Bill need that it currently lacks?**

20. In the middle of the session, the Committee expressly returned to a point we had raised in our response to the Committee's first question. This was the switching off of rights without setting out what will then be the position for the people affected. We have revisited the televised recording. The Committee's question at this point was: "*What do you think that the Bill needs that it lacks on that point?*" The question does not appear in the transcript that we have seen. Nonetheless, it is a vital question to which AIUK did not, for reasons of time, have opportunity to respond. We do so now.
21. If the Bill is to establish the legal framework for the future immigration system (or establish the basis for that framework), it needs to go very much further than merely handing power to the Home Secretary to create that future system by Henry VIII regulation-making powers in clause 4 and under the immigration rules (to which the Minister referred towards the end of the session).
22. The Bill should, therefore, truly establish a framework. The foundations, limits and safeguards in respect of what the Home Secretary will do should be included on the

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<sup>13</sup> Immigration and Nationality (Fees) Regulations 2018, SI 2018/330, Schedule 8, Table 19 (19.3.1)

<sup>14</sup> See e.g. PRCBC's 'Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees':

[https://prcbc.files.wordpress.com/2018/11/commentary\\_hansard-bna-1981\\_registration\\_aug-2018.pdf](https://prcbc.files.wordpress.com/2018/11/commentary_hansard-bna-1981_registration_aug-2018.pdf)

<sup>15</sup> More about the Project for the Registration of Children as British Citizens (PRCBC), including joint work with Amnesty International UK, is available at: <https://prcbc.org/>

<sup>16</sup> This is addressed in a joint PRCBC and Amnesty International UK briefing for a Westminster Hall debate on children's registration fees in September 2018:

[https://prcbc.files.wordpress.com/2018/11/briefing\\_westminster\\_debate\\_children-citizenship-fee.pdf](https://prcbc.files.wordpress.com/2018/11/briefing_westminster_debate_children-citizenship-fee.pdf)

face of the Bill. The foundations ought to include the primary principles and purposes to which the system will be directed. Constraints on the exercise of powers under the proposed system should be included; and the safeguards – particularly safeguards available to the people and families who may be, rightly or wrongly, subjected to the future system and the powers available to the department in operating that system – should be addressed by and in considering this Bill.

23. That all this is necessary ought to be clear following last year’s revelations concerning what has generally become known as the Windrush scandal. As AIUK said to the Committee, that scandal was not short-term; it was not something that happened over a few months or even a few years.<sup>17</sup> While witnesses in other of the Committee’s evidence sessions have rightly highlighted the significant exacerbation of injustice and harm done by the policies introduced since May 2010, particularly by the Immigration Acts 2014 and 2016, several causes and effects of this scandal are traceable back long before that time. Successive administrations and parliaments bear responsibility. Moreover, while there are certainly injustices specific to Commonwealth citizens who settled in this country prior to 1 January 1973,<sup>18</sup> and their family members who joined them prior to 1 August 1988,<sup>19</sup> it is very far from the case that only Commonwealth citizens have suffered injustice and harm done by immigration policy and the exercise of immigration powers.
24. There is a connection, therefore, between the first of the Committee’s questions and the questions put by the Minister at the end of the session – particularly where the Minister put to the Immigration Law Practitioners’ Association (ILPA) that the immigration rules “*have been the usual way to do it since 1971.*” There are two necessary responses to this:
- a Firstly, there is ILPA’s response at the session. The rules have never been the means to amend primary (or any) legislation. What the Home Secretary seeks by way of regulation-making powers in clause 4 goes very far beyond what previously has been permitted in terms of delegating parliamentary authority to make and amend the immigration laws and powers to which non-British citizens are subject.
  - b Secondly, there is the wider concern expressed in responses to the first question at the session (and to a degree in the answers to the Minister’s questions concerning simplification). Whatever the suitability of the system established by the Immigration Act 1971 when it was introduced 46 years ago, that suitability no longer applies. At a minimum, at the point of hugely expanding the number of people and claims for which that system is to be responsible, it is inadequate for the department merely to assert, without

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<sup>17</sup> Amnesty International UK made a detailed submission to the Home Office Windrush lessons learned review, including a chronology of the relevant causes and effects of injustice done to members of the Windrush generation by nationality and immigration law, policy and practice. That submission is available here: <https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

<sup>18</sup> This is the date of commencement of the Immigration Act 1971 and, of particular significance, sections 1(5), 7, 34 and Schedule 1 of and to that Act.

<sup>19</sup> This is the date of commencement of section 1 of the Immigration Act 1988, which repealed the general protection given by section 1(5) of the Immigration Act 1971 to Commonwealth citizens settled in the UK before 1 January 1973, and their family members, to come and go freely to and from the UK.

proper parliamentary scrutiny, that a system introduced nearly half a century ago remains apt. That would be so even if there had been no Windrush scandal or even if it had not been revealed last year. The position is not the same as it was in 1973. Over the intervening period, the system has become very much more complicated.<sup>20</sup> There has been a substantial accretion of power while many safeguards have been removed or dramatically cut back.<sup>21</sup> Yet there was (indeed, is) a Windrush scandal and it was exposed last year. The system is not fit for purpose now.<sup>22</sup> It is not going to get any more fit by hugely expanding its responsibilities.

25. Parliament ought, therefore, to insist on the opportunity to thoroughly review the immigration system and to address questions of principle, purpose and safeguards.
26. This should include addressing several of the matters raised in the Committee's evidence sessions with the Joint Council for the Welfare of Immigrants (JCWI)<sup>23</sup> and with Liberty and Justice.<sup>24</sup> It certainly should include addressing how the Home Office will be redirected to pursuing, as a primary purpose, the facilitating of the rights of people entitled or eligible to come and stay in the UK. As ILPA stated in answer to the Minister's questions at the close of the session, that ought to include promotion of family and family unity; and that should include in relation to visa regimes for refugees, British citizens and people settled in the UK;<sup>25</sup> and powers of deportation and removal. Children's best interests and the right to respect for private and family life are neither adequately understood nor respected by immigration policy and practice.<sup>26</sup>

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<sup>20</sup> As Amnesty International UK referred to at the session, the courts have frequently had cause to criticise the complexity of the UK's immigration system including expressing in the judgment of the Supreme Court in *R (Mirza & Ors) v Secretary of State for the Home Department* [2016] UKSC 63 (paragraph 30) that: "*It is particularly disturbing that the Secretary of State herself has been unable to maintain a consistent view of the meaning of the relevant rules and regulations.*"

<sup>21</sup> The Immigration Act 2014 (section 15), in particular, removed the right of appeal of many people subjected to immigration decisions. The Legal Aid, Sentencing and Punishment of Offenders Act 2013 (Schedule 1) generally removed legal aid for non-asylum immigration matters. While these were particularly severe and far-reaching, these were not the first reductions in both appeal rights and legal aid provision. The Immigration Acts 2014 and 2016 also curtailed certain of the appeal rights that had been retained; and section 1 of the former curtailed the right to be given notice of the timing of a person's removal thereby interfering with her, his or their capacity to secure effective legal advice and access the courts to protect against unlawful deportation or removal. As regards the latter, this too was not the first time the Home Office had curtailed the right to be notified of removal.

<sup>22</sup> Previous Home Secretaries have expressly observed upon this including the now noble lord, Lord Reid in 2006 (as reported by the BBC, see: [http://news.bbc.co.uk/1/hi/uk\\_politics/5007148.stm](http://news.bbc.co.uk/1/hi/uk_politics/5007148.stm)) and Rt Hon Theresa May in 2013 (*Hansard* HC, 26 March 2013 : Cols 1500 *et seq*).

<sup>23</sup> For example, in their evidence, JCWI raised specific concerns about 'the right to rent', access to healthcare, the complexity of the immigration rules and system, risk of exploitation and absence of appeal rights.

<sup>24</sup> For example, in their evidence, Liberty and Justice raised specific concerns about data sharing and protections, access to various public services and social opportunities, indefinite immigration detention, appeal rights, legal aid and the changeability of the immigration rules.

<sup>25</sup> Parliament should take the opportunity to require the withdrawal of the minimum income threshold in the immigration rules as this applies to partners and children joining British citizens and people settled in the UK; and extension of the immigration rules to protect refugee family reunion, including for children recognised as refugees and granted asylum in the UK.

<sup>26</sup> The Home Office is frequently found wanting in its understanding and application of its duty to safeguard and promote the welfare of children and give a primary consideration to their best interests; and respect for private and family life has been improperly diminished including by the Immigration Act 2014 (section 19).

27. Safeguards need to include proper constraints on the department's powers. A time limit on the exercise of the power to detain is but one of the vital safeguards the Committee ought to address.<sup>27</sup> Sweeping exemptions from race and other equalities exemptions,<sup>28</sup> and from data protections,<sup>29</sup> ought to be removed or restricted to any properly specified and justified purpose. Individual safeguards need to be restored. Appeal rights are of especial importance, but the Committee should not shy away from addressing the implications of what has been done to the provision of legal aid and the devastating impact upon people's capacity to protect themselves against excessive or unlawful immigration decisions and exercise of powers. The Committee should concern itself with the volatility of the immigration system and its insensitivity to the lives of people and families in making and changing the rules and requirements to which they are expected to comply.<sup>30</sup>
28. The Committee should also address the continued injustice whereby children born and grown up in the UK are prevented by Home Office practice and policy, including by fees, from establishing and exercising their rights to British citizenship – that is to be exempt as any other British citizen from the immigration system. As AIUK emphasised in response to the first of the Committee's questions, that too has specific relevance to the children of EEA nationals in the UK – many of whom are growing up having been born British citizens (but as yet not recognised as such) or with rights to British citizenship, which they are at risk of being unable to assert because the Home Office is yet to give any express attention to (still less address) the many barriers in the way of children establishing and exercising their citizenship rights such as the £1,012 fee for registration of the child's citizenship.
29. In view of the true scope of this Bill and the powers it seeks to provide the Home Secretary, all of these aforementioned matters should properly be within the scope of the parliamentary scrutiny given this Bill. AIUK would very pleased to assist the Committee further in relation to any of these matters.

### **Refugee family reunion**

30. AIUK is a member of the Families Together coalition, a group of organisations that support the expansion of the UK's refugee family reunion rules. We would urge the Committee to use the opportunity of the Bill to address restrictive refugee family reunion rules. Under current refugee family reunion rules, adult refugees can sponsor their spouse and any children under 18 to come join them in the UK. The rules do not allow child refugees to sponsor any family members to join them in the UK (such as their parents and siblings). Families Together is calling for MPs to support an amendment that would expand the UK's refugee family reunion rules, allowing adult refugees to sponsor their adult children and siblings that are under the age of 25; and

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<sup>27</sup> Amnesty International UK included this recommendation in its December 2017 report, *A matter of routine: the use of immigration detention in the UK*: <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

<sup>28</sup> Equality Act 2010, Part 4 of Schedule 3

<sup>29</sup> Data Protection Act 2018, paragraph 4 of Schedule 2

<sup>30</sup> Amnesty International UK raised this in response to the Minister's final question at the session. The matter of immigration fees (distinct to that concerning children's citizenship registration fees) is also relevant to this as the fees are frequently raised with dramatic impact on people's and families' continued capacity to meet requirements and pay fees required for their continued lawful stay in the UK.

their parents. The amendment would also allow child refugees to sponsor their parents and siblings aged up to 25. We include the Families Together written evidence as an annex.