



House of Commons

House of Lords

Joint Committee on Human  
Rights

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

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**Eighteenth Report of Session 2017–19**





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# **Legislative Scrutiny: Immigration and Social Security Co-ordination (EU Withdrawal) Bill**

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**Eighteenth Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons  
to be printed 20 March 2019*

*Ordered by the House of Lords  
to be printed 20 March 2019*

## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

### Current membership

#### House of Commons

[Ms Harriet Harman QC MP](#) (*Labour, Camberwell and Peckham*) (Chair)

[Fiona Bruce MP](#) (*Conservative, Congleton*)

[Ms Karen Buck MP](#) (*Labour, Westminster North*)

[Joanna Cherry QC MP](#) (*Scottish National Party, Edinburgh South West*)

[Jeremy Lefroy MP](#) (*Conservative, Stafford*)

[Scott Mann MP](#) (*Conservative, North Cornwall*)

#### House of Lords

[Baroness Hamwee](#) (*Liberal Democrat*)

[Baroness Lawrence of Clarendon](#) (*Labour*)

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[Lord Trimble](#) (*Conservative*)

[Lord Woolf](#) (*Crossbench*)

### Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

### Publication

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### Committee staff

The current staff of the Committee are Eve Samson (Commons Clerk), Simon Cran-McGreehin (Lords Clerk), Eleanor Hourigan (Counsel), Samantha Godec (Deputy Counsel), Katherine Hill (Committee Specialist), Shabana Gulma (Specialist Assistant), Miguel Boo Fraga (Senior Committee Assistant), Claire Coast-Smith (Lords Committee Assistant), and Lucy Dargahi (Media Officer).

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## Summary

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill removes all EU free movement of persons rights, without addressing the rights of those who currently benefit from EU free movement of persons rights under EU law, including social security rights. This includes the rights of those who have resided in the UK for many years or even decades, working in the UK, paying into our social security system, and even having been born in the UK and lived here their whole lives. Removing their rights without any legislative protection in place to guarantee those rights raises significant human rights concerns. Without the necessary protections and guarantees, these provisions could leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights. The Committee proposes some suggested amendments to the Bill to address these concerns in a way which fits with the way in which the Bill operates. The proposed amendments are included in Annex 1.

Although the Government has said that it is not its intention to strip EU Citizens resident in the UK of their rights, that is the effect of this Bill as it stands. It is not right to leave those individuals in a rights limbo, subject to a subsequent negotiation. Neither is it adequate simply to offer weak protections in policy statements or secondary legislation, which are changed regularly. These rights can affect so many aspects of a person's life and should be protected in primary legislation—whether by exempting those EU Citizens resident in the UK from the effects of this Bill, or by giving guarantees in the Bill that when the rights are removed by the Bill, equivalent rights will be put in place.

The Committee also raises concerns that whilst the Bill seeks to clarify the position for Irish nationals, the full range of rights available pursuant to the Common Travel Area with the Republic of Ireland is not clear or readily accessible post-Brexit. Further work needs to be done to clarify those rights and to ensure that the rights for nationals of both countries are not diminished following Brexit.

It is also worth recalling that the Committee undertook a recent inquiry into Immigration Detention and on 7 February 2019 produced the Report “Immigration Detention”.<sup>1</sup> This report makes a number of recommendations to improve immigration law and immigration detention. All of these recommendations will also apply to those people who will risk becoming immigration detainees as a result of clause 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which ends rights to free movement of persons under retained EU law.

In particular, these recommendations cover the increased need for independent decision-making; the need to simplify immigration law; the need to improve the availability of legal advice (including for those detained in prisons); the urgent need to have a time limit on immigration detention; the need for independent reviews of detention; better safeguards for foreign national offenders against lengthy immigration detention; better video links for bail hearings; better protection for adults at risk of harm in immigration detention; and improved detention conditions and treatment. The changes proposed by the Immigration and Social Security Co-ordination (EU Withdrawal) Bill will make

1 Joint Committee on Human Rights, [Sixteenth Report of Session 2017–19, Immigration detention](#), HC 1484 / HL Paper 279

it all the more pressing to address the concerns raised in our Immigration Detention Report as speedily as possible so that this wider group of people is not subject to the current failings of the UK's immigration detention system.

# 1 EU Settlement Scheme

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## The Bill's provisions on EU free movement rights and social security co-ordination

1. This is a Bill “to make provision to end rights to free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security co-ordination; and for connected purposes.”<sup>2</sup> In clause 1, it removes all EU free movement of persons rights to enter the UK and to remain in the UK. It also provides specific powers to amend social security rights of EEA nationals living in the UK (clause 5). In clauses 4 and 5 it provides extensive Statutory Instrument-making powers, including to amend primary legislation to accommodate these changes to EU free movement of persons rights and social security rights.

2. In its ECHR Memorandum, the Home Office states that “insofar as [persons currently exercising EU free movement rights] will be affected by this Bill, the Department will ensure that the Convention rights of such persons are respected.”<sup>3</sup> However, there are no legislative guarantees of this or as to the rights which they will retain in the Bill. The Bill operates at a very high level in removing rights (and providing wide Statutory Instrument -making powers in that respect). However, the Bill does not seek to address the situation of those people whose rights may be removed and therefore the Bill itself does not guarantee that such individuals will retain an adequate level of human rights protection. Whilst some of these issues may be addressed in secondary legislation, such an approach is piecemeal; it does not benefit from protections or guarantees that such rights will be retained for those with acquired rights and does not cover the full gamut of acquired rights. This includes the rights of those who could have resided in the UK for many years, working in the UK, paying into our social security system, and even having been born here and lived here their whole lives.<sup>4</sup> Removing their rights without a legislative alternative in place raises significant human rights issues which the wide Statutory Instrument -making powers in clauses 4 and 5 do little to satisfy. The Bill is, in effect, a blank cheque.

3. In clause 1, the Bill removes all EU free movement of persons rights—this includes the right to enter the UK and the right to remain in the UK for all EEA and Swiss nationals and their family members. However, it does not address the practical impact of this removal of rights for e.g. EU citizens currently living in the UK (or moving to the UK). Consequently, it does not protect the existing rights of those who currently benefit from rights of free movement of persons under EU law in the UK.

4. In paragraph 8 of the Explanatory Notes to the Bill, the Government argues that the “details of the future immigration arrangements (i.e. requirements to be met to come to the UK as a worker, student, family member etc) will be set out in the Immigration Rules,

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2 [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#), [Bill 309 (2017–)]

3 Memorandum by the Home Office, [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#), [European Convention on Human Rights](#), December 2018

4 As noted by Coram Children’s Legal Centre “there are over half a million European national children living in the UK, 38% of whom were born here”. See The Children’s Legal Centre, [Government plan for granting ‘settled status’ to EU citizens in the UK misses out vulnerable groups](#)

as they are now for non-EEA nationals.”<sup>5</sup> The Explanatory Notes further explain that those Immigration Rules have not yet been finalised. The outcome depends on future deals, as set out in the Government’s White Paper,<sup>6</sup> as read in conjunction with the EU Settlement Scheme.<sup>7</sup> Whilst the EU Settlement Scheme has, to an extent, been incorporated into an Annex of the Immigration Rules, this does not guarantee rights. The Bill itself removes rights and does not guarantee them.

5. The proposed EU settlement scheme relies on those who reside in this country applying for (and, until recently, paying for) a specific authorisation to remain living here. Given the difficulties of operating such schemes in the past, this raises concerns about how the scheme will be applied to people who may not realise that they need to acquire specific authorisation to continue living where they may have been settled for many years. The EU Settlement Scheme, as currently set out in policy and in the Annex to the Immigration Rules, relies on individuals knowing that they need to apply to the scheme—and if they do not, they risk losing their current status and associated rights. It also relies on the Home Office not making errors in processing. The EU Settlement Scheme does not adequately address the situation of those EEA Citizens resident in the UK who ought to be entitled to retain these rights, but perhaps were unaware of the need to apply to realise their rights.

6. Clause 5 provides significant powers to amend retained EU legislation in relation to social security rights. This raises ECHR issues such as the right to property under Article 1 of Protocol 1 ECHR were these powers to be used to alter the social security entitlements and rights of those who have already paid into the system and accrued rights. Again, it is not clear how any such amendments (which seem principally aimed at removing or altering rights) could secure an individual’s rights entitlements for the future. Moreover, we note concerns expressed in the European Scrutiny Committee’s Report on the process of social security coordination between the UK and the EU, which raised concerns that the Government could discriminate with respect to the type of social security entitlements that EU nationals would have compared to UK citizens.<sup>8</sup> This therefore raises real concerns that the acquired rights of these individuals may not be guaranteed.

## Human Rights Concerns and Acquired Rights

**7. The Committee is concerned that the main provisions of the Bill, unless amended, will remove all EU free movement of persons rights, without addressing the rights of those who currently benefit from rights of free movement of persons under EU law, or social security rights. This includes the rights of those who have resided in the UK for many years, working in the UK, paying into our social security system, and even having been born in the UK and lived here their whole lives. Removing their rights with no equivalent legislative protection in place raises significant human rights concerns. These provisions could leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights.**

5 [Explanatory Notes to the Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) [Bill 309 (20017–19) –EN]

6 Home Office, UK Visas and Immigration, Policy paper, [Future skills-based immigration system: executive summary](#), December 2019

7 Home Office, [Settled and pre-settled status for EU citizens and their families](#)

8 European Scrutiny Committee, [Fifty-third Report of Session 2017–19](#), HC 301-lII, see in particular paragraphs 6.18 and 6.25.

8. The Chair of the Committee therefore wrote to the Home Secretary raising these concerns on 23 January 2019 and the Home Secretary replied in a letter of 8 February 2019. These letters can be found in Annex 2. The Home Secretary noted that he shared the Committee's view that protecting the right of these EU citizens to stay and associated rights is important and is reflected in citizens' rights protections in the draft EU Withdrawal Agreement and the EU Settlement Scheme that the Government has established. He noted that "EU nationals and their family members will have until 31 December 2020 to make an application under the Scheme". He further noted that:

"In addition, we have given unilateral assurances to EU nationals and their family members resident in the UK that they can stay if the UK leaves the EU without a deal and this was set out in the policy paper 'Citizens' rights in the event of a no deal Brexit' published by the Department for Exiting the EU on 6th December 2018: <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex>".

"The consequential power in clause 4 of the Bill will enable us to make saving and transitional provisions to protect the position of those exercising free movement rights in the UK until EU Exit allowing them time to make their application."

"Although future policy for social security co-ordination is yet to be decided, the Government has been clear that EU citizens and their family members in the UK at the point of Exit will continue to have broadly the same access to benefits and services as now. The social security provisions in this Bill do not remove the rights of individuals but provide the framework to make changes to retained social security arrangements at the appropriate time, to ensure we can respond rapidly to whichever scenario we find ourselves in. Future policy changes will be set out in regulations that will be subject to the affirmative procedure, ensuring that there is adequate scrutiny and consultation on any future policy proposals."

9. Whilst we are pleased to hear these reassurances from the Home Secretary that the Government intends to use these powers in a human rights compliant manner, we are nonetheless concerned that those EU citizens currently living in the UK do not have the necessary legislative guarantees that they will continue to benefit from the rights they currently enjoy. It is only right that the legislation removing these rights more generally, should ensure that these rights are retained and guaranteed for those people who are resident in the UK and who have these acquired rights.

**10. *The Committee proposes amendments to the Bill to put protections and guarantees in the Bill itself by ensuring that those with acquired rights will be protected through the manner in which the SI-making power is used. Such an amending clause would require that any regulations made under clauses 4 and 5 should contain measures to protect the acquired rights of those who have rights within the United Kingdom deriving from EU free movement rights.***

**Box 1: Amendments to protect acquired rights of those subject to the EU Settlement Scheme****Clause 4, page 2, line 35, at the end insert:**

(1A) The Secretary of State must exercise the power to make regulations under subsection (1) where this is necessary to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1B) Where the Secretary of State exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1C) For the purposes of this section, “acquired rights” means those rights which a person was entitled to flowing from EU free movement of persons laws.

**Clause 5, page 3, line 37 at the end insert:**

(1A) Where the appropriate authority exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1B) For the purposes of this section, “acquired rights” means those rights which a person was entitled to flowing from EU free movement of persons laws.

**Explanation:**

*This Bill removes rights but does not ensure that affected individuals will retain an adequate level of human rights protection. In its ECHR Memorandum, the Home Office states that “insofar as such persons will be affected by this Bill, the Department will ensure that the Convention rights of such persons are respected.” The aim of these amendments is to put such protections and guarantees on a legislative footing in the Bill by ensuring that those with acquired rights will be protected under the Bill through the manner in which the SI-making power is used.*

**The EU Settlement Scheme**

11. We would echo concerns raised in the letter of 27 February 2019 from the Chair of the Lords EU Justice Sub-Committee relating to the EU Settlement Scheme where that Committee considered that more needed to be done relating to awareness of the EU Settlement Scheme, assistance with applications, physical proof of status and transfer from pre-settled to settled status.<sup>9</sup> We note the similarities of some of these concerns with problems that have arisen in other work that our Committee has undertaken relating to the Windrush scandal.

12. Concerns in relation to the EU Settlement Scheme have also been set out in the work of the Committee on Exiting the EU. We note in particular the concerns expressed in its 8th Report into “the Progress of the UK’s negotiations on EU Withdrawal: the rights of UK and EU Citizens.”<sup>10</sup> In that Report that Committee notes that the lack of physical proof that an individual has the entitlements under the EU Settlement Scheme could risk

<sup>9</sup> Letter from Baroness Kennedy of The Shaws, Chair, EU Justice Sub-Committee, to Rt Hon Sajid Javid MP, Home Secretary, regarding [EU Settlement Scheme](#), dated 27 February 2019

<sup>10</sup> Exiting the European Union Committee, Eighth Report of Session 2017–19, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), HC 1439. See in particular the recommendations at paras 45 to 49 of that Report.

impeding their access to their rights. We share this concern, and we would hope that the Home Office will rectify this issue, having already experienced the problems faced by the Windrush Generation who had difficulty in proving their rights and entitlements for similar reasons, as documented in our Committee's Report "Windrush Generation Detention."<sup>11</sup> We very much hope that the Home Office has learned from the errors in the handling of the Windrush cases and that this will not be repeated for EEA nationals.

13. Furthermore, the Committee on Exiting the EU has expressed concern that the population of over 3 million EU citizens in the UK will include several categories of people who could find applying for, and being awarded, Settled Status to be a challenge. Many will not know that they are required to apply or will not have the documentary proof required. The Committee on Exiting the EU has described the need for effective information provision about the Settled Status Scheme to be "of paramount importance in ensuring its success." [para 76]. This applies both to those who need to apply and those who may have reason to ask an EU citizen to demonstrate their immigration status. That Committee pointed out that:

"if even a small proportion of those eligible to apply do not do so, or are refused, there is a risk of a large number of EU citizens in the UK by July 2021 not having certainty as to their legal status. The UK Government needs to set out what it would do with thousands of EU migrants unable to demonstrate their legal status."<sup>12</sup>

This is a particular concern in relation to certain categories of vulnerable people who may have difficulties in knowing about and accessing the EU Settlement Scheme.<sup>13</sup>

**14. The Committee shares concerns expressed by other Committees that the EU Settlement Scheme as currently proposed creates problems relating to the lack of physical proof of status. We consider that more should be done to raise awareness of the EU Settlement Scheme and to assist individuals with applications. However, we do not consider that these steps alone will address the concerns around a lack of physical proof of status. *The Home Office should ensure that physical proof of status is issued to those registered under the EU Settlement Scheme.***

**15. The Committee is also concerned at the ambiguity about the situation of those who miss the deadline for applications under the EU Settlement Scheme. These could be individuals who have lived and worked in the UK their whole lives. Their rights should not depend on subsequent registration with a scheme within a specific time limit. *The Committee considers that steps should be taken either to make provision for registration outside of the EU Settlement Scheme time limit, or to ensure that the entitlement to this status is not dependant on registration, for example with the registration solely being used to assist with physical proof of status.***

**16. The Committee is particularly concerned that certain categories of vulnerable people may have difficulty in accessing the EU Settlement Scheme and therefore may**

11 Joint Committee on Human Rights, Sixth Report of Session 2017–19, [Windrush generation detention](#), HC 1034 / HL Paper 160

12 Exiting the European Union Committee, Eighth Report of Session 2017–19, [The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens](#), HC 1439, para 92

13 See, for example, The Migration Observatory, [Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?](#), April 2018

**be excluded from the rights to which they should be entitled under it. *The Committee recommends that the Government take steps to ensure that vulnerable groups are made aware of their rights and are assisted in accessing their rights under the EU Settlement Scheme.***

## 2 Common Travel Area

17. Clause 2 of the Bill provides for special treatment for Irish Citizens who, unlike other EU citizens will not require leave to enter or remain in the UK. This preferential treatment is based on nationality and is intended to reflect the special rules concerning the Common Travel Area between the UK and Ireland that existed before the UK and Ireland joined the EU. The Home Office justify this special treatment on the basis that Irish citizens are not analogous to other non-UK citizens or indeed other EEA nationals. This is due to the special geographic, cultural and historical ties between the two countries and the Common Travel Area. On this basis, the Department presumably considers that either Article 14 is not engaged as Irish Citizens are not in the same category as other EEA nationals, or that that distinction is justified.

18. The Common Travel Area is a series of mutual understandings between the UK and Ireland that accord UK and Irish nationals the right to enter and reside and to work in either country as well as a series of related rights concerning access to healthcare, social security, education and social care. The rights flowing from the Common Travel Area have, in recent decades, been overtaken by EU free movement of persons rights. However, with the removal of these protections due to Brexit, the rights flowing from the Common Travel Area will now have increased importance and there is a need to better clarify and protect these rights. This is true for British nationals living in Ireland and Irish nationals living in the UK, but also for cross-border communities. This concern has also been raised in the work of other Committees, such as the Report by the Northern Ireland Select Committee, “The Land Border between Northern Ireland and Ireland”.<sup>14</sup>

**19. We are aware that not all of the current rights flowing from the Common Travel Area mirror the EU free movement of persons rights that exist pre-Brexit. For example, the rights flowing from the Common Travel Area do not currently include the right for an individual to be accompanied by their third country national spouse or third country national dependents, which could have an impact e.g. on Irish nationals with a foreign spouse living in the UK. Therefore, whilst clause 2 of the Bill is welcome in that it seeks to ensure Common Travel Area protections for Irish nationals to enter and reside in the UK, the overall effect is that some existing EU rights are diminished, such as the rights relating to family reunification which are not protected.**

**20. The Bill does not address other EU free movement rights that currently exist relating to employment, education, health and social security. Some of these are covered in arrangements relating to the Common Travel Area, but this is not comprehensive and is patchy. We note work is underway to seek to improve the protections for British and Irish nationals flowing from the Common Travel Area, for example the agreement on social security,<sup>15</sup> and this is welcome.**

14 Northern Ireland Affairs Committee, Second Report of Session 2017–19, [The land border between Northern Ireland and Ireland](#), HC 329. See in particular the recommendation at paragraph 36 of that Report.

15 [Foreign and Commonwealth Office, International treaty, \[CS Ireland No.1/2019\] UK/Ireland: Convention on Social Security](#), February 2019

***21. We recommend that the UK Government, working with the Irish Government, seeks to further clarify the Common Travel Area arrangements with a view to keeping comparable arrangements in place for UK and Irish citizens as currently exist pre-Brexit. This should include family reunification as well as rights relating to healthcare, social security, education and workers' rights.***

## Conclusions and recommendations

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### EU Settlement Scheme

1. The Committee is concerned that the main provisions of the Bill, unless amended, will remove all EU free movement of persons rights, without addressing the rights of those who currently benefit from rights of free movement of persons under EU law, or social security rights. This includes the rights of those who have resided in the UK for many years, working in the UK, paying into our social security system, and even having been born in the UK and lived here their whole lives. Removing their rights with no equivalent legislative protection in place raises significant human rights concerns. These provisions could leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights. (Paragraph 7)
2. *The Committee proposes amendments to the Bill to put protections and guarantees in the Bill itself by ensuring that those with acquired rights will be protected through the manner in which the SI-making power is used. Such an amending clause would require that any regulations made under clauses 4 and 5 should contain measures to protect the acquired rights of those who have rights within the United Kingdom deriving from EU free movement rights.* (Paragraph 10)
3. The Committee shares concerns expressed by other Committees that the EU Settlement Scheme as currently proposed creates problems relating to the lack of physical proof of status. We consider that more should be done to raise awareness of the EU Settlement Scheme and to assist individuals with applications. However, we do not consider that these steps alone will address the concerns around a lack of physical proof of status. *The Home Office should ensure that physical proof of status is issued to those registered under the EU Settlement Scheme.* (Paragraph 14)
4. The Committee is also concerned at the ambiguity about the situation of those who miss the deadline for applications under the EU Settlement Scheme. These could be individuals who have lived and worked in the UK their whole lives. Their rights should not depend on subsequent registration with a scheme within a specific time limit. *The Committee considers that steps should be taken either to make provision for registration outside of the EU Settlement Scheme time limit, or to ensure that the entitlement to this status is not dependant on registration, for example with the registration solely being used to assist with physical proof of status. The Committee considers that steps should be taken either to make provision for registration outside of the EU Settlement Scheme time limit, or to ensure that the entitlement to this status is not dependant on registration, for example with the registration solely being used to assist with physical proof of status.* (Paragraph 15)
5. The Committee is particularly concerned that certain categories of vulnerable people may have difficulty in accessing the EU Settlement Scheme and therefore may be excluded from the rights to which they should be entitled under it. *The Committee recommends that the Government take steps to ensure that vulnerable groups are made aware of their rights and are assisted in accessing their rights under the EU Settlement Scheme.* (Paragraph 16)

## Common Travel Area

6. We are aware that not all of the current rights flowing from the Common Travel Area mirror the EU free movement of persons rights that exist pre-Brexit. For example, the rights flowing from the Common Travel Area do not currently include the right for an individual to be accompanied by their third country national spouse or third country national dependents, which could have an impact e.g. on Irish nationals with a foreign spouse living in the UK. Therefore, whilst clause 2 of the Bill is welcome in that it seeks to ensure Common Travel Area protections for Irish nationals to enter and reside in the UK, the overall effect is that some existing EU rights are diminished, such as the rights relating to family reunification which are not protected. (Paragraph 19)
7. The Bill does not address other EU free movement rights that currently exist relating to employment, education, health and social security. Some of these are covered in arrangements relating to the Common Travel Area, but this is not comprehensive and is patchy. We note work is underway to seek to improve the protections for British and Irish nationals flowing from the Common Travel Area, for example the agreement on social security, and this is welcome. (Paragraph 20)
8. *We recommend that the UK Government, working with the Irish Government, seeks to further clarify the Common Travel Area arrangements with a view to keeping comparable arrangements in place for UK and Irish citizens as currently exist pre-Brexit. This should include family reunification as well as rights relating to healthcare, social security, education and workers' rights. We recommend that the UK Government, working with the Irish Government, seeks to further clarify the Common Travel Area arrangements with a view to keeping comparable arrangements in place for UK and Irish citizens as currently exist pre-Brexit. This should include family reunification as well as rights relating to healthcare, social security, education and workers' rights.* (Paragraph 21)

## Annex 1: Proposed Amendment

**Clause 4, page 2, line 35, at the end insert:**

(1A) The Secretary of State must exercise the power to make regulations under subsection (1) where this is necessary to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1B) Where the Secretary of State exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1C) For the purposes of this section, "acquired rights" means those rights which a person was entitled to flowing from EU free movement of persons laws.

**Clause 5, page 3, line 37 at the end insert:**

(1A) Where the appropriate authority exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the acquired rights of those persons who, prior to Exit Day, benefitted, in the UK, from right of free movement of persons under EU law.

(1B) For the purposes of this section, "acquired rights" means those rights which a person was entitled to flowing from EU free movement of persons laws.

*Explanation:*

*This Bill removes rights but does not ensure that affected individuals will retain an adequate level of human rights protection. In its ECHR Memorandum, the Home Office states that "insofar as such persons will be affected by this Bill, the Department will ensure that the Convention rights of such persons are respected." The aim of these amendments is to put such protections and guarantees on a legislative footing in the Bill by ensuring that those with acquired rights will be protected under the Bill through the manner in which the SI-making power is used.*

## Annex 2: Correspondence between the Chair and the Home Secretary

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Dear Sajid,

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

I am writing in relation to the Immigration and Social Security Co-ordination (EU Withdrawal) bill recently laid before Parliament by your Department.

The main provisions of this Bill seem to remove the rights of certain individuals without ensuring that affected individuals will retain an adequate level of human rights protection in legislation. These provisions could also leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights.

In the Home Office's ECHR Memorandum, your Department states that "insofar as such persons will be affected by this Bill, the Department will ensure that the Convention rights of such persons are respected." We further note statements that the Government has made to reassure such individuals that they will retain their current rights. However, on the face of the legislation this leaves affected people in an uncertain situation.

The Committee is therefore in favour of amendments to the Bill to put such protections and guarantees on a legislative footing in the Bill by ensuring that those with accrued rights will be protected under the Bill through the manner in which the SI-making power is used. Our draft amendments are contained in the Annex below and we would be grateful if you would consider supporting their inclusion in the Bill.

I will be writing separately to colleagues on immigration matters.

Yours sincerely

Rt Hon Harriet Harman MP, Chair

23 January 2019

### **Annex**

#### **PROPOSED AMENDMENTS:**

Clause 4, page 2, line 35, at the end insert:

(1A) The Secretary of State must exercise the power to make regulations under subsection (1) where this is necessary to protect the accrued rights of those persons who, prior to 29 March 2019, benefitted, in the UK, from right of free movement of persons under EU law.

(1B) Where the Secretary of State exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the accrued rights of those persons who, prior to 29 March 2019, benefitted, in the UK, from right of free movement of persons under EU law.

Clause 5, page 3, line 37 at the end insert:

(1A) Where the appropriate authority exercises the power to make regulations under subsection (1) those regulations must contain measures, as necessary, to protect the accrued rights of those persons who, prior to 29 March 2019, benefitted, in the UK, from right of free movement of persons under EU law.

Explanation:

This Bill removes rights but does not ensure that affected individuals will retain an adequate level of human rights protection. In its ECHR Memorandum, the Home Office states that “insofar as such persons will be affected by this Bill, the Department will ensure that the Convention rights of such persons are respected.” The aim of these amendments is to put such protections and guarantees on a legislative footing in the Bill by ensuring that those with accrued rights will be protected under the Bill through the manner in which the SI-making power is used.

Dear Harriet,

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

Thank you for your letter of 23 January in which you set out the Committee’s views on the Bill, specifically in relation to retaining adequate human rights protections, and proposed amendments to protect individuals who have accrued rights. My Rt Hon. Friend, the Immigration Minister, has replied to your separate request for additional information to support the Committee’s inquiry into detention.

I am grateful to you for raising important issues during the Bill’s Second Reading debate earlier this week. I have noted the specific amendments proposed to protect individuals who are resident in the UK when free movement ends, and I share your view that protecting their right to stay and associated rights is important. This has always been the Government’s priority and we have delivered on this commitment through our negotiations with the EU to secure protections on Citizens’ Rights which are included in the draft Withdrawal Agreement, and if that is agreed by Parliament, there will be legislation to implement it into UK law.

We have also opened the EU Settlement Scheme to allow EU nationals who are already living in the UK to obtain settled status or pre-settled status in the UK. This will provide them with a clear status once free movement ends and will ensure their rights are protected in UK law.

In addition, we have given unilateral assurances to EU nationals and their family members resident in the UK that they can stay if the UK leaves the EU without a deal and this was set out in the policy paper ‘Citizens’ rights in the event of a no deal Brexit’ published by the Department for Exiting the EU on 6th December 2018: <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexite>

To deliver this we will continue to run the EU Settlement Scheme for those resident in the UK before Exit. EU nationals and their family members will have until 31 December 2020 to make an application under the Scheme.

The consequential power in clause 4 of the Bill will enable us to make saving and transitional provisions to protect the position of those exercising free movement rights in the UK until EU Exit allowing them time to make their application.

Although future policy for social security co-ordination is yet to be decided, the Government has been clear that EU citizens and their family members in the UK at the point of Exit will continue to have broadly the same access to benefits and services as now. The social security provisions in this Bill do not remove the rights of individuals but provide the framework to make changes to retained social security arrangements at the appropriate time, to ensure we can respond rapidly to whichever scenario we find ourselves in. Future policy changes will be set out in regulations that will be subject to the affirmative procedure, ensuring that there is adequate scrutiny and consultation on any future policy proposals.

I want to assure you that I have considered the Bill's compatibility with Convention Rights and I have made a statement under Section 19(1)(a) of the Human Rights Act 1998 confirming this. Any regulations made under the Bill will of course also be subject to our human rights obligations.

Yours sincerely,

Rt Hon Sajid Javid MP

8 February 2019

# Declaration of Lords' Interests<sup>1</sup>

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## Interests declared:

### Baroness Hamwee

- Liberal Democrat Lords Spokesperson (Immigration)

### Baroness Lawrence of Clarendon

- Chancellor of De Montfort University
- President of Stephen Lawrence Charitable Trust

### Baroness Nicholson of Winterbourne

- Prime Minister's Trade Envoy to Azerbaijan, Iraq, Kazakhstan and Turkmenistan

### Baroness Prosser

- No relevant interests to declare

### Lord Trimble

- No relevant interests to declare

### Lord Woolf

- Membership of Committees
- Office holder of societies and the bodies interested/involved with criminal law, penal policy and other justice issues.
- Editor of De Smith Judicial Review, various editions
- Chair of an EHRC event about the EU (Withdrawal) Bill (January 2018)
- Chief Justice of the Commercial Court of the AIFC
- Patron Woolf Institute
- Ex Chair of UCL London, London University

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<sup>1</sup> A full list of Members' interests can be found in the Register of Lords' Interests: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/registeroflords-interests/>

# Formal minutes

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**Wednesday 20 March 2019**

Members present:

Ms Harriet Harman MP, in the Chair

Ms Karen Buck MP	Baroness Hamwee
Fiona Bruce MP	Baroness Lawrence of Clarendon
Scott Mann MP	Baroness Nicholson of Winterbourne
Jeremy Lefroy MP	Lord Trimble
	Lord Woolf

Draft Report (*Legislative Scrutiny: Immigration and Social Security Co-ordination (EU Withdrawal) Bill*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 21 read and agreed to.

Summary read and agreed to.

Annexes read and agreed to.

*Resolved*, That the Report be the Eighteenth Report of the Committee.

*Ordered*, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

*Ordered*, That embargoed copies of the report be made available, in accordance with the provisions of House of Commons Standing Order no. 134.

[Adjourned till Wednesday 27 March 2019 at 3.00pm.]

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis	HC 774 HL 70
Second Report	Proposal for a Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018	HC 645 HL 86
Third Report	Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill	HC 568 HL 87
Fourth Report	Freedom of Speech in Universities	HC 589 HL 111
Fifth Report	Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018	HC 926 HL 146
Sixth Report	Windrush generation detention	HC 1034 HL 160
Seventh Report	The Right to Freedom and Safety: Reform of the Deprivation of Liberty Safeguards	HC 890 HL 161
Eighth Report	Freedom of Speech in Universities: Responses	HC 1279 HL 162
Ninth Report	Legislative Scrutiny: Counter-Terrorism and Border Security Bill	HC 1208 HL 167 (HC 1827)
Tenth Report	Enforcing Human Rights	HC 669 HL 171
Eleventh Report	Second Legislative Scrutiny Report: Counter-Terrorism and Border Security Bill	HC 1616 HL 195
Twelfth Report	Legislative Scrutiny: Mental Capacity (Amendment) Bill	HC 1662 HL 208
Thirteenth Report	Proposal for a draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2018	HC 1451 HL 209
Fourteenth Report	Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018	HC 1547 HL 227
Fifteenth Report	Proposal for a draft Human Rights Act 1998 (Remedial) Order 2019	HC 1457 HL 228
Sixteenth Report	Immigration Detention	HC 1484 HL 279
Seventeenth Report	Human Rights Protections in International Agreements	HC 1883 HL 310

First Special Report	Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee's Sixth Report of Session 2016–17	HC 686
Second Special Report	Mental Health and Deaths in Prison: Interim Report: Government Response to the Committee's Seventh Report of Session 2016–17	HC 753
Third Special Report	Legislative Scrutiny: Counter-Terrorism and Border Security Bill: Government Response to the Committee's Ninth Report of Session 2017–19	HC 1578
Fourth Special Report	Windrush generation detention: Government Response to the Committee's Sixth Report of Session 2017–19	HC 1633
Fifth Special Report	Second Legislative Scrutiny Report: Counter-Terrorism and Border Security Bill: Government Response to the Committee's Eleventh Report of Session 2017–19	HC 1827