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Dear bianne

Thank you for tabling Amendment 11, which sought to sunset the power in clause 13 two years after the end of the Implementation Period. Your remarks during Committee stage of the EU (Withdrawal Agreement) Bill, on Tuesday 14 January, were helpful and you requested further explanation of why this power is required.

The primary reason we need to ensure the power is not sunsetted is due to our obligations under the Withdrawal Agreement, where we have committed to continue maintaining alignment with updates at EU-level to the EU Social Security Coordination Regulations ("the Regulations"). We will align with these Regulations for as long as the Withdrawal Agreement is in force. The UK and the EU have done this to ensure the operational viability of the system for citizens in scope of the Withdrawal Agreement. Crucially, these updates may require adjusting domestic legislation, which will be done under the clause 13 power. If the clause 13 power sunsets after two years, as proposed by your amendment, we will not be able quickly make the necessary tweaks to ensure our statute book operates effectively, which could disadvantage both UK nationals and EU citizens.

The majority of updates to the Regulations are technical in nature and will be automatically added to the relevant annex of the Withdrawal Agreement by the Withdrawal Agreement Joint Committee ("the Committee") after the Implementation Period ends. For more substantive changes, the Committee will consider the impact of the changes and decide on whether to maintain alignment. This category of more substantive changes includes: whether a non-exportable cash benefit becomes exportable and vice versa, or whenever a limit on the length of time for which a benefit is exportable is imposed or removed.

Future updates to the Regulations will apply directly in the UK once they have been annexed to the Withdrawal Agreement via the Committee procedure. This is achieved through clause 5 of the Bill. However, the clause 13 power will be used to make sure that our domestic legislation is compatible with the Regulations, so:

- updates can be incorporated into UK law as intended, including administrative or operational changes;

- that the interaction between the Regulations and the domestic social security system does not result in individuals losing access to entitlements; and
- Ministers can respond where these “gaps” become apparent.

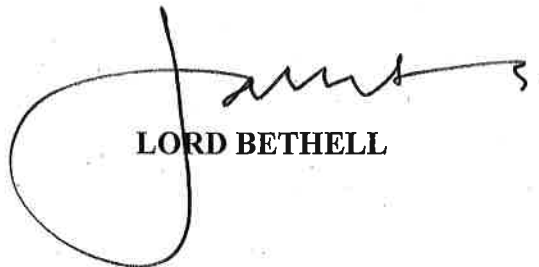
The clause 13 power will allow us to protect the social security coordination rights of those EU citizens, UK nationals and their family members who are in scope, without prejudice to any future system that would apply to those not covered by the Agreements.

Due to the complexity of the current social security coordination system, the power will give us the necessary flexibility we need to provide legal certainty to individuals subject to these rules as the Regulations evolve over time and to ensure that our domestic statute book operates alongside our international obligations under the Agreements. If the power sunsets after two years, we will not be able to undertake this important work.

I hope this letter has reassured you that the clause 13 power is appropriate and necessary to ensure that we are able to protect the rights of citizens covered by the Agreements.

I will also send a copy of this letter to those Peers who spoke to the amendment and place a copy in the House library.

Very best wishes


LORD BETHELL

Baroness Hayter of Kentish Town
House of Lords