Home Office

Baroness Williams of Trafford
Minister of State

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ALL PEERS

29 September 2020

My Lords,

Immigration and Social Security Co-ordination (EU Withdrawal) Bill: Lords Committee 14 and 16 September follow up

During the course of the Lords Committee debate on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill on 14 and 16 September, Lord Parkinson of Whitley Bay and I undertook to write in response to a number of questions raised in relation to amendments on immigration. I am replying as the lead Minister in the Home Office on these issues. Some of the questions are outside the scope of the Bill, but I have sought to answer them as fully as possible. My noble Friend, Baroness Stedman-Scott will be responding on points raised in relation to the social security co-ordination amendments.

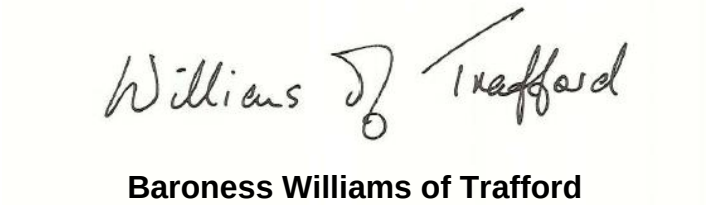
I have provided detailed responses to the questions raised in the accompanying annex to this letter.

The questions asked on 14 September were on a number of areas: amendments 43, 72 and 74 (tabled by Baroness Hamwee and Baroness Bennett of Manor Castle) on data protection; amendments 39, 40, 41, 70 and 94 (tabled by Baroness Hamwee and, Lord Ramsbotham) on detention time limits; amendments 49 and 51 (tabled by Lord Oates and Lord Rosser) on physical documents; amendments 53 and 73 (tabled by Lord Rosser and Baroness Bennett of Manor Castle) and amendments 42, 50 and 71 (tabled by Baroness Hamwee and Baroness Bennett of Manor Castle) on access to work, benefits and services; on clarification on the Grace Period Statutory Instrument; and to confirm a meeting with Baroness Jolly.

During the debate on 16 September, questions asked on a number of areas: amendment 79 (tabled by Baroness Bennett of Manor Castle) on family minimum

income threshold; amendments 63 and 67 (tabled by Lord Rosser and Baroness Lister of Burtersett) on citizenship; amendment 95 (tabled by Baroness Hamwee) on the Windrush Lessons Learned Review; and amendment 82A (tabled by Baroness Hamwee) on family life and deportation thresholds.

A copy of this letter and accompanying annex will be placed in the libraries of both Houses so it may be referred to.



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ANNEX – RESPONSES TO QUESTIONS RAISED DURING LORDS COMMITTEE DEBATES ON THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL ON 14 AND 16 SEPTEMBER 2020

Data Protection – amendments 43, 72 and 74 (tabled by Baroness Hamwee and Baroness Bennett of Manor Castle).

Immigration exemption in Data Protection Act 2018

Lord Oates asked a question regarding use of the immigration exemption in the Data Protection Act 2018. I believe the noble Lord was referring to figures published after a Freedom of Information request in December 2019 where the Government's response explained, since January 2019, there had been a total of 18,332 subject access requests processed for a response by a caseworker and in 10,823 (60%) of these cases, the Immigration Exemption was relied on. The latest internal figures show that 29,539 of 39,955 subject access requests processed from 25 May 2018 until 15 September 2020 had the Immigration Exemption applied (73.9% of the total number of subject access requests).

This demonstrates that the Exemption is being relied upon on a case by case basis and each request is dealt with on its own facts. While this is a high number, especially when expressed in terms of percentages, the Home Office does take every subject access request seriously and ensures compliance with the General Data Protection Regulation and data protection legislation. The Home Office does not and cannot control the number of subject access requests that are made. It also demonstrates that the exemption is a necessary legislative measure that enables us to protect the border and our citizens.

It may be helpful if I put the use of the exemption into the context that the Home Office handles the personal data of around 140 million persons every year. Those who make a subject access request are more likely to have data on their files which would not be disclosable – such as an entry on the Watchlist or ongoing or pending enforcement action, and it is only this information that we redact.

As I said in the House, the exemption is also only applicable so long as the risk of prejudice to the immigration system can be evidenced and cannot be applied thereafter. I would also like to reiterate that we do not withhold any data that could assist a person in pursuit of their application, and we rectify personal data as soon as we know of inaccuracies.

Home Office

Detention Time Limits – amendments 39, 40, 41, 70 and 94 (tabled by Baroness Hamwee and Lord Ramsbotham)

Lord Hylton asked me to confirm whether there is a backlog in applications for bail for immigration detainees and if so, what the Government is doing to ensure that such applications are promptly heard.

The First-tier Tribunal (Immigration and Asylum Chamber) does not have a backlog of bail applications. Rule 39(1) of the Tribunal rules requires that the Tribunal hold a hearing of the application "as soon as reasonably practicable" which is supported by the Tribunal Practice Directions which states (Para 13.1) that "… an application for bail must, if practicable, be listed for hearing within six working days of receipt by the Tribunal of the notice of application"[1].

Bail applications are routinely heard within 6 working days except:
a) where the applicant requests a date after 6 days and the judge accedes to that request, or
b) where it is not reasonably practicable to list within the period (for example, where a court or detention centre closure has prevented the hearing from taking place and it is deemed to be in the interests of justice for the hearing not to take place by remote means)

Almost all bail hearings have been dealt with by remote means during the pandemic, using either a video link or telephone meeting technology. Previously, bail hearings would have been held either by video link or with a physical hearing in court.

Baroness Barker asked me to send information on the consequences of a reduction in detention figures due to the Covid-19 pandemic.

Detention plays a key role in maintaining effective immigration controls and securing the UK's borders, supporting the removal of people who have no legal basis to remain in the UK but who refuse to leave voluntarily, and protecting the public. There is a presumption in favour of liberty for all individuals and decisions to detain are taken on a case by case basis. The *Hardial Singh* principles set out that detention will only be lawful if there is a realistic prospect of removal within a reasonable timescale. At any one time, the overwhelming majority (95%) of people liable to removal are managed in the community.

[1] https://www.judiciary.uk/wp-content/uploads/2018/12/practice-directions-iac-dated-18-dec-2018.pdf

Crucially, our detention estate has adapted to the unique circumstances of the Covid-19 pandemic to ensure that all Public Health guidelines can be followed. During this time, the health and safety of our staff, detainees and all those working in the immigration system, are more important than ever.

By definition, the current constraints on detention as a result of Covid-19 make it more challenging to achieve the Government's objectives of removing from the UK those who are in the country unlawfully and protecting the public. Our priority in current circumstances is to progress the removal of the most high-harm individuals as quickly as possible, maintaining their detention where it is necessary to secure this and lawful to do so. We also pursue action rigorously against individuals living in the community, actively monitoring and managing cases through the legal process and negotiating barriers to removal. There is no global embargo on removals as a result of Covid-19, and the Home Office will continue to progress removals on routes currently available and as further routes return.

Not all foreign national offenders released into the community comply with the restrictions on their reporting requirements, for example, reporting to a police station or immigration centre every week. It is inevitable that some foreign national offenders will abscond to evade deportation. There is a specialist team set up to trace and locate these absconders.

Baroness Lister of Burtersett, asked me to send information on how many women were being detained in immigration removal centres (IRCs) other than Yarl's Wood.

Following action taken by the Home Office throughout the current health pandemic, the number of women at present in detention and previously accommodated at Yarl's Wood is very small. Published figures show that as at 30 June 2020, there were 19 women detained under immigration powers, 9 of whom were located in Her Majesty's Prisons, 1 in Dungavel IRC and 9 in Yarl's Wood IRC. In current circumstances it is not appropriate to detain this small group in an IRC certified for around 400, so women previously held at Yarl's Wood are now housed elsewhere in the immigration removal estate, at the Colnbrook and Dungavel House IRCs, where dedicated facilities to hold women already exist.

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LGBT Training for Immigration Staff

Baroness Barker asked me to send information on training for immigration staff on the handling of LGBT issues.

The UK has a proud record of providing protection for asylum seekers fleeing persecution because of their sexual orientation or gender identity, and fully considers their needs and circumstances at all stages of the process.

Training materials dealing with claims based on sexual orientation were last fully updated in June 2017 but are constantly reviewed and amended as policy and guidance change. These materials emphasise the need to sensitively explore a claimant's sexual identity rather than sexual practices and makes clear that any form of stereotyping is inappropriate.

Each asylum case is carefully considered on its individual merits by caseworkers who receive extensive training and must follow published Home Office policy guidance. Each individual assessment is made against the background of the latest available country of origin information and any relevant caselaw. Country policy and information notes are published on the GOV.UK website and are kept under constant review and updated periodically. Decision makers also have access to the latest available country information through an information request service for specific enquiries to deal with particular issues raised in individual claims.

The Home Office has worked, and continues to work, closely with a diverse range of organisations specialising in asylum and human rights claims from those who are LGBT, not only to facilitate the regular reviews of our guidance and training products but also to further our work for lesbian, gay, bisexual, trans and intersex people within our asylum system.

EU Settlement Scheme and Physical Documents – amendments 49 and 51 (tabled by Lord Oates and Lord Rosser)

Citizenship Certificates for British citizens

Lord Kennedy of Southwark asked why we provide certificates to British citizens at citizenship ceremonies and provide a digital status to EEA citizens under the EU Settlement Scheme.

Section 6 of the British Nationality Act 1981 requires the Secretary of State to issue a certificate following a grant of citizenship. This legislation was made long before we

were able to digitise immigration status documents. The certificate is a record of an event and it is normally handed out at citizenship ceremonies to commemorate the occasion.

Section 4 of the Immigration Act 1971 requires the Secretary of State to issue a notice in writing of the grant of leave and any conditions attached to that leave. This notification is now often sent by email as a pdf letter, but it can be printed and stored with the person's personal documents.

Physical documents for non-EEA national family members

Lord Oates referred to the provision of physical documents for non-EEA national family members.

The EU Settlement Scheme (EUSS) only provides a physical document – a biometric residence card – to non-EEA national family members where (a) the family member does not already hold such a document under the EEA Regulations; and (b) the family member enrols their fingerprint biometrics as part of their EUSS application. It does so because non-EEA national family members require such a document (as well as a valid passport) to enable them to leave and re-enter the UK. They are able to prove their status in the UK using the digital checking services.

Vehicle Excise Licenses

Lord Paddick asked for figures on the evasion of vehicle excise licenses as a result of going completely digital. The 2019 published statistics on evasion of vehicle excise duty which is available on GOV.UK[2] show a decrease in the level of evasion from the peak in 2017 of 1.8% to 1.6% in 2019.

Access to Work, benefits and services - amendments 53 and 73 (tabled by Lord Rosser and Baroness Bennett of Manor Castle) and amendments 42, 50 and 71 (tabled by Baroness Hamwee and Baroness Bennett of Manor Castle)

No Recourse to Public Funds

Baroness Lister of Burtersett, asked me to confirm how many people are subject to the "no recourse to public funds" (NRPF) condition.

[2] https://www.gov.uk/government/statistics/vehicle-excise-duty-evasion-statistics-2019

There are a number of reasons why it is not practical for the Home Office to produce an estimate of the total population subject to no recourse to public funds present in the UK at any one time. The NRPF condition applies to millions of visa applications, the vast majority of whom are visitors and other temporary migrants who would have no requirement to access funds during their stay. Quarterly and annual statistics relating to those: coming to the UK, extending their stay, gaining citizenship, applying for asylum, and being detained or removed, as well as immigration for work, study and family reasons are published on GOV.UK[3]. Information captured by the Home Office does not take into account individuals who have left the country or all those in the UK without lawful status. Therefore, they cannot be used to accurately measure the resident population at any one time.

However, as part of its commitment to investigate how data held by the Department can inform public understanding of any impacts from application of the NRPF condition, the Home Office recently published data on the number of applications to have the NRPF restriction lifted by making a 'Change of Conditions' application. This publication can be found on GOV.UK[4] and in future will be published as part of the transparency data[5]. As part of the regular publication of 'Change of Conditions' data, the Home Office will review whether the data can be meaningfully broken down any further. The next update of this data is due to be published in November.

To provide clarification on a point raised by Lord Rosser, the 'Change of Conditions' process allows migrants with leave under the Family and Human Rights routes to apply to have their NRPF condition lifted by making an application if they are destitute or at risk of destitution, if the welfare of their child is at risk due to their low income, or where there are other exceptional financial circumstances. This application process allows applicants, who are successful in their applications, to have the NRPF condition lifted. This in turn allows them to apply for benefits in the UK in the same way that those who do not have an NRPF condition applied to their immigration status are able to do so. The Home Office does not provide any payment to those who apply to have their NRPF conditions lifted: the restriction preventing them from accessing benefits is simply removed.

[3] https://www.gov.uk/government/collections/migration-statistics
[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904641/No_Recourse_to_Public_Funds__NRPF__-_Applications_to_change_conditions_of_leave_Q2_2020.pdf
[5] https://www.gov.uk/government/publications/immigration-protection-data-august-2020

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Right to Rent Scheme (amendment 42 tabled by Baroness Hamwee)

Lord Paddick, asked about the Right to Rent Scheme and specifically referred to individuals visiting from the B5JSSK countries (Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States of America).

The legislative framework which governs the Right to Rent Scheme was purposely designed to minimise the frequency of checks a landlord needs to undertake.

For all tenants who have temporary leave to enter or remain the minimum re-check period is set at 12 months, or when their leave to enter or remain expires, whichever is the longer period. Thus, ensuring all tenants regardless of the leave they hold are treated equally when accessing the private rented sector.

The majority of visitors from B5JSSK countries will be coming to stay in the UK for less than three months and will be staying in holiday accommodation and will not therefore be required to undergo a right to rent check. The Visit England Overview of UK Visitor Statistics 2019 confirms that visitors from the B5JSSK countries stay for an average of 8 nights when visiting the UK[6].

A small minority who rent accommodation for between three and six months will require a right to rent check. The evidence that an individual will present to a landlord differs depending on their circumstances, this is to ensure that individuals who are here legally do not find themselves unable to access accommodation. Any visitor overstaying their leave would be liable to compliance and enforcement action. All B5JSSK nationals coming for more than six months are currently required to have a biometric residence permit (BRP) because EU law still requires the UK to issue BRPs until the end of the transition period on 31 December 2020.

The Right to Rent Scheme should not be viewed in isolation but as one of the suites of measures that deter immigration offending. A visitor who overstays would find that our measures restrict the ability of disqualified persons to establish a settled life in the UK and encourage them to either regularise their status or to leave voluntarily.

At present, visitors are not issued with a digital status when granted entry at the border, either by an officer or e-passport gate, but we will continue to monitor and review the situation and the ability to prove their right to rent for those visitors whose passports are not endorsed on arrival.

[6] https://www.visitbritain.org/inbound-tourism-trends

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Clarification on the Grace Period Statutory Instrument

A number of noble Lords asked for clarification on the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('the grace period SI'), the illustrative draft of which was shared with Parliamentarians in both Houses. The draft SI was formally laid in Parliament on 21 September. The grace period SI will set the deadline for applications to the EU Settlement Scheme (EUSS) by those EEA citizens and their family members who are resident in the UK by the end of the transition period. This deadline will be 30 June 2021, with scope to be made in the Immigration Rules for the EUSS contained in Appendix EU for an application to be made after the deadline where there are reasonable grounds why the person missed it.

Also, in line with the Citizens' Rights Agreements, the grace period SI will save the rights of those EEA citizens and their family members who are lawfully resident in the UK at the end of the transition period under the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations). It will save relevant legislation otherwise repealed by clause 1 and Schedule 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. This will mean that they can continue to live and work in the UK as now throughout the grace period and pending the resolution of their application to the EUSS, providing they apply by 30 June 2021.

EEA citizens' rights to live and work in the UK will not change during the grace period. The grace period SI saves relevant parts of the EEA Regulations in respect of entry, residence and removal. It makes the necessary modifications to ensure they accurately reflect current EU law, the fact the UK has left the EU and the terms of the withdrawal agreements. The SI does not save provisions in Part 3 of the EEA Regulations concerning documentation.

After the end of the transition period we will no longer be accepting new applications for such documentation under the EEA Regulations, as these documents confirm rights under EU law which will have ceased to be relevant in the UK. In addition, residence cards issued by an EEA state to a non-EEA citizen family member will no longer evidence a right of admission to the UK after the end of the transition period. These are often referred to as 'Article 10/20' cards. This is because the reciprocal recognition of such documents will cease at the end of the transition period. Non-EEA citizen family members will instead be able to apply free of charge for a UK-issued family permit to enter the UK. EEA citizens and their family members will need to have a valid passport or national identity card to enter the UK and may no longer seek to rely on other means to evidence their right to do so.

Peers also asked about the implications of regulation 13 of the grace period SI, which provides that where a question arises as to whether the EEA Regulations continue to apply to a person, it is for that person to show that they do. During the grace period, EEA citizens will be able to evidence their rights to work and rent property by showing their passport or identity card. If, during the grace period, EEA citizens who have not been granted settled status under the EUSS apply for benefits they may need to demonstrate they were also lawfully resident under the EEA Regulations at the end of the transition period, for example that they were employed, which they might demonstrate by providing a wage slip or a letter from the employer. This is a requirement they must meet now.

The grace period SI does not change the eligibility criteria for the EUSS. There is no change to the Government's policy that comprehensive sickness insurance (CSI) is not required to obtain status under the EUSS. The grace period SI maintains CSI as a requirement for lawful residence during the grace period as a student or self-sufficient person, under the saved EEA Regulations, as is consistent with EU law. The draft statutory instrument does not, therefore, require amendment in this respect.

Baroness Hamwee asked a question about the amendment made to the EEA Regulations in regulation 7 of the grace period SI (provisions relating to powers of refusal of admission and removal etc). The EEA Regulations as they apply at the moment refer to the UK acting within the parameters set by the "EU Treaties" when defining what the UK's standards of public policy and public security are. Clearly this is inappropriate from the end of the year when the UK ceases to be bound by the "EU Treaties". The SI replaces the reference to the "EU Treaties" with a reference to "the law". This will encompass the Withdrawal Agreement itself, as implemented by the European Union (Withdrawal Agreement) Act 2020.

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Family minimum income threshold – amendment 79 (tabled by Baroness Bennett of Manor Castle)

Baroness Bennett of Manor Castle asked if the Government has made an estimate of the number of children likely to be affected annually by the minimum income requirement once this Bill becomes an Act. This question was raised following reference to a point made by the Children's Commissioner in a report entitled "Skype Children" prepared in 2015 that 15,000 children, mainly British, have been adversely affected by the minimum income requirement. The then Government said at the time of that report, that it considered the figure to be a considerable over-estimate. Even based on the assumptions drawn from the unrepresentative sample used by the Children's Commissioner, we estimate that around 6,500 children may have been affected by the minimum income requirement over the three years from July 2012.

The Supreme Court has endorsed the approach of setting an income requirement for family migration that prevents burdens on the taxpayer and ensures migrant families can integrate into our communities. This includes setting a higher requirement where non-EEA national children are involved. The Court asked us to ensure that the best interests of any children are taken into account as a primary consideration in any decision affecting them. Relevant changes to the family Immigration Rules and guidance were implemented to give effect to the Court's findings.

Windrush Lessons Learned Review – amendment 95 (tabled by Baroness Hamwee)

Baroness Lister of Burtersett asked about the review conclusions and whether legislation governing access to work, benefits and services would be reformed.

The Government has accepted the Windrush Lessons Learned review's important findings and will be responding this month, and I committed to meet with the noble Lady if she has further questions about this.

Baroness Sherlock asked for figures on how many individuals have applied to the compensation scheme and when there would be an update on progress so far.

What happened to the Windrush generation is unspeakable, and no one with a legal right to be here should ever have been penalised. The Home Secretary has tasked officials in the Home Office to undertake a full evaluation of the policy and measures governing access to work, benefits and services ('compliant environment'), individually and cumulatively, to make sure that the crucial balance is right. They will evaluate the changes that were made to immigration and nationality laws over successive

Governments to ensure that they are fit for purpose for today's world. If those changes were not communicated effectively enough, we will act to make them so. Have no doubt that where we find problems, the Government will seek to fix them, but equally, be under no illusion that if people are here wrongly or illegally, then naturally we will act.

With regards to the compensation scheme the latest published figures as of July 2020 show there have been 1,480 claims with over £1million paid out to claimants. This data is published monthly and is accessible on GOV.UK[7].

Lord Rosser – amendment 82A (tabled by Baroness Hamwee)

Lord Rosser asked about estimates on number of exemptions against deportation given under section 117C of the 2002 Act in each of the last three years for which figures are available. This data is not published; however, I am taking this forward with my officials and assure the Lord that I will write separately.

[7] https://www.gov.uk/government/publications/windrush-compensation-scheme-data-august-2020