



**ALL PEERS**

30<sup>th</sup> September 2020

**IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL –  
UPDATE AHEAD OF REPORT STAGE**

My Lords,

As the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (the Bill) approaches Lords Report stage, I wanted to set out the Government's response on a number of amendments which remain of concern to your Lordships and emphasise the timings for progressing the Bill through its remaining stages.

The amendments which I am writing on concern those relating to the immigration delegated power (amendments 4, 5 and 9); the EU settlement scheme (amendments 10, 13, 14 and 18); enforcement approach under the new immigration system (amendment 1); detention time limits (amendments 20-23 and 31); independent review on the impacts of ending free movement on the health and social care sector (amendments 3 and 30); unaccompanied asylum-seeking children and family reunion policies (amendment 15); raising awareness of entitlement to citizenship (amendment 16); the policy for family members of UK citizens (amendment 11) and protections for victims of modern slavery (amendment 27). The accompanying annex sets out the Government's position in relation to these amendments.

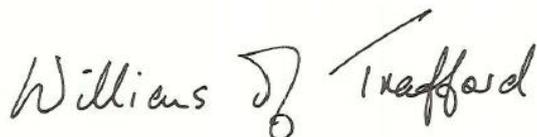
I am grateful to your Lordships for the passion in which many of you have spoken on a number of important immigration issues during debates on the Bill so far. I am sure we will continue these discussions with good spirit when Report stage starts on 30 September.

The Government made a pledge to the British people at the General Election in December that it would end free movement by the end of the transition period and introduce a new Points-Based Immigration System from 1 January 2021. This Bill is key to enabling the Government to deliver on these priorities. As we set out in our July publication of further details on the Points-Based Immigration System, individuals seeking to work, study and live in the UK from 1 January, and who are not EEA citizens eligible for the EU Settlement Scheme (EUSS), must apply for visas under the new system. It is therefore vital the Bill is passed by the end of October so applicants can apply for their visas in plenty of time

before the 1 January deadline. I would therefore like your support in ensuring we do not unnecessarily delay the Bill's progress.

We have spent considerable time debating amendments during the Bill's Committee stage and I wanted to provide further reasons as to why the Government believes these amendments are unnecessary. I have focused on amendments which I believe Peers remain most concerned about, however, I would be happy to discuss any other amendments during the course of the debates if that would be helpful. A copy of this letter will be placed in the libraries of both Houses.

I look forward to debating these and other issues during the Bill's Report stage.

A handwritten signature in black ink that reads "Williams of Trafford". The signature is written in a cursive style with a large 'W' and a distinct 'of'.

**BARONESS WILLIAMS OF TRAFFORD**

## **ANNEX – GOVERNMENT’S POSITION ON SPECIFIC AMENDMENTS TABLED**

### **Immigration delegated power – clause 4 (amendments 4, 5 and 9)**

I shared an illustrative draft of the consequential amendment Statutory Instrument (SI) with your Lordships on 4 September ahead of Lords Committee stage. This was intended to demonstrate the necessity of having the power in clause 4 as drafted and how it will be used in conjunction with the powers in the EU (Withdrawal Agreement) Act 2020. The Government is committed to ending free movement in a way that is coherent and fully meets the requirements of the withdrawal agreements. As your Lordships are aware, the power will be used to make changes once free movement ends so we can align the immigration treatment between EEA citizens and non-EEA citizens as part of the future Points-Based Immigration System. There are concerns around the provision to make changes “in connection with the ending of free movement”. As the draft SI demonstrates, this drafting is needed to enable the Government to make provision for people who are not exercising free movement rights at the end of the transition period, but who are seeking to apply to the EUSS. I hope your Lordships have found the illustrative draft SI useful in demonstrating the changes we are seeking to make under the clause 4 regulations and that it alleviates your concerns. The SI includes a number of technical changes across immigration, nationality, housing and benefits legislation. We do not expect to make further changes beyond these, however it is important that, should the Government identify a need to make further changes, it has the power to do so.

### **EU Settlement Scheme (EUSS) (amendments 10, 13, 14 and 18)**

#### ***Declaratory scheme for children in care and care leavers (amendment 14)***

A number of your Lordships have raised ongoing concerns relating to securing immigration status for EEA children in care homes or care leavers; how late applications will be treated under the scheme; and providing a physical document to EEA citizens who request one in addition to the digital status they are given under the scheme.

Protecting the rights of EEA citizens who are resident in the UK has been the priority since the outcome of the EU referendum.

The EUSS is a success, with more than 3.9 million applications received and more than 3.7 million concluded by the end of August. This demonstrates the scheme is working. We have been working with local authorities and other partners to ensure children and other vulnerable groups obtain immigration status under the scheme and will continue our efforts in this regard. The Home Office made available £9 million of grant funding in 2019-20 to 57 voluntary organisations across the UK to support vulnerable citizens in applying to the EUSS. This included several organisations specialising in support for vulnerable children and young people. Earlier this year, the Government announced a further £8 million for this work in 2020-21.

The call for children in care and care leavers to be granted indefinite leave to remain (settled status) is well intentioned as we all want to ensure children get the status they need. However, it will risk putting children in a more vulnerable position without a clear status – Windrush showed us that a declaratory system – under which immigration status is conferred on people automatically, without providing them with secure evidence of this – does not work. The creation of such a status would also require those with it to, effectively, declare there were once a child in care every time throughout their adult life they were required to prove their status, such as when applying for a new job. We cannot agree to put our most vulnerable children in this precarious position and the Government is adamant it will not do so.

### ***Late applications under the EUSS (amendments 10 and 13)***

A number of Peers raised questions about how the Government will treat late applications made under the EUSS. This is an important issue as it relates to ensuring those who are eligible obtain status under the scheme.

The Government has made clear its commitment to accept late applications where there are reasonable grounds for missing the deadline. This is in line with the withdrawal agreements, which now have direct effect in UK law via the European Union (Withdrawal Agreement) Act 2020, so I would like to reiterate this commitment is already effectively enshrined in primary legislation agreed by Parliament. The Government has provided examples of where reasonable grounds will be accepted, which includes where a local authority makes a late application on behalf of an EEA child or where the child concerned applies having become an adult and discovered the local authority concerned had failed in its duty to do so and has been clear that it will publish guidance in early 2021. Further examples will include children whose parent or guardian failed to apply on their behalf, people in abusive or controlling relationships who were prevented from applying, and those who lack the physical or mental capacity to apply. The list of examples will not be exhaustive and allow decision makers to allow a late application where there are in the circumstances presented good grounds for it being presented late.

Our priority now must be to encourage those eligible to make their application before the deadline. This will ensure they can continue to live their lives here, as they do now, with the certainty that status granted under the scheme will provide them. We do not want to undermine those efforts and risk inadvertently causing people to delay making their application. I believe your Lordships will agree this is the right and logical approach.

### ***Physical documents under the EUSS (amendment 18)***

As many of you will be aware, the EUSS protects the residence rights of EEA citizens living in the UK by the end of the transition period, and their family members. Those resident here by 31 December 2020 have until 30 June 2021 to apply. The status granted to EEA citizens under the scheme guarantees they can carry on with their lives here as now. They will be doing so under UK law, not EU law.

In practice, EEA citizens' new UK immigration status under the EUSS will guarantee they continue to have the right to work, study, rent property and access benefits and public services as they do now.

The Government has started rolling out its system of providing online access to immigration status information with EEA citizens but we are building a border and immigration system which will be 'digital by default' for all migrants. In time, we will completely stop issuing physical immigration documents to all people coming to and staying in the UK.

Digital and online services are the way forward for immigration products, as part of the shift to online in the UK and across the world. All migrants will though continue to receive written notification of their immigration status; this provides the reassurance about their status.

Our digital services are designed to be highly resilient, with rigorous testing to build assurance, and deployed across multiple data centres which ensures customer data is backed up across those data centres meaning that if one fails another will take over, maintaining continuity of service.

Providing immigration status information online has enabled us to simplify and standardise the system of checks for employers, by providing information about an individual's status in a format that is easy to understand and accessible to all users. We have removed the need for employers and others to authenticate the myriad of physical documents and interpret complex legal terminology or confusing abbreviations.

Although the vast majority of adults aged 16-74 years in the UK in 2018 were recent internet users, we are committed to delivering a service that reflects the diverse needs of all users:

- we have designed our digital services and products to be easy to use along with support for those who need help.
- individuals will be able to access help on how to use their digital status and how to share it with prospective employers and landlords through a contact centre.
- we provide a telephone helpline for landlords and employers to provide guidance on conducting right to work and right to rent checks.
- the Home Office has provided a free Assisted Digital service where applicants to the EUSS, or other people making online applications in the UK, are able to get support to apply.
- the Assisted Digital service is tailored based on an individual's circumstances, and dependent on the level of support needed can be received over the phone, or in person through a network of over 250 centres across the UK or through visiting tutors in a person's home if they are unable to travel to a centre.

### **Enforcement policies (amendment 1)**

The Government is moving towards having a level playing field for EEA and non-EEA citizens, where they will be treated equally and will be covered by the same published guidance regarding the application of sanctions and enforcement measures if they are relevant. Enforcing the UK's immigration laws is critical to a functioning immigration system and effectively implementing the Government's policies. I can assure noble Lords that the Home Office will be updating its published enforcement policy with particular regard to EEA citizens and their family members who, having arrived here after the end of the transition period, from January 2021, must have leave to enter or remain.

### **Detention time limits (amendments 20-23 and 31)**

It remains the Government's view that a formal time limit on immigration detention is unnecessary and not in the public interest. The *Hardial Singh* principles laid out in common law dictate that detention is only lawful if there is a realistic prospect of removal within a reasonable timescale. Detention is used sparingly and for the shortest period necessary. 95% of those liable to removal are managed in the community while their cases are being progressed, and in the year ending December 2019, 39 per cent of those leaving detention were detained for seven days or less, and 74 per cent for less than 29 days (up from 69 per cent in 2018). These figures all represent the situation before COVID-19.

It is only in the most complex cases, and almost always where serious and/or persistent criminality is involved, that detention exceeds these timescales. In the year ending December 2019, only four per cent of individuals were detained for more than four months, and only two per cent for more than six months. At the start of May 2020, there were 313 people detained in the detention estate – 97% of whom were foreign national offenders. This compares to 1,278 at the end of December 2019 and 555 at the end of March 2020.

Those in detention can apply to the courts for immigration bail at any time, and decisions to detain, and to maintain detention, are also subject to significant internal safeguards. The Home Office is also considering alternatives to detention, such as satellite tracking devices to provide more effective electronic monitoring of foreign national offenders on immigration bail, and piloting community-based approaches to case resolution. But a rigid time limit would not be appropriate, given the variety of circumstances of those for whom detention is necessary to their removal from the UK, and would incentivise many to seek to run down the clock through late and unfounded claims and other forms of disruption.

### **Social care impacts (amendments 3 and 30)**

The Government recognises the importance of supporting the health and social care sector, which has done so much to look after some of the most vulnerable citizens in the UK – a fact highlighted by the efforts of those working in this sector during the Coronavirus pandemic. There are a range of immigration routes, which provide a general right to work, such as dependants or those on family routes or youth mobility, which will allow the sector to fill vacancies. These routes will continue to operate under the UK's new Points-Based Immigration System.

We will also continue to commission and fund a range of training opportunities and programmes to help recruit people into the sector and develop leadership within social care. These include the Think Ahead programme which has taken on over 400 applicants since it was launched in 2015, training graduates to become mental health social workers. There is also the Workforce Development Fund which helped nearly 2,800 establishments support nearly 14,500 learners in 2018/19. This fund will continue to focus on key priorities going forward. It is of course sensible policies are kept under review – something the Government stands by with the current system and will ensure continues under new arrangements.

The Department of Health and Social Care (DHSC) ran a National Recruitment Campaign, the latest phase of which ran from April to July this year and highlighted the vital role social care workforce has played during the pandemic, along with the longer-term opportunity of working in care. DHSC is also working with the Department of Work and Pensions to provide resources to work coaches to help them promote adult social care careers to jobseekers, including those who may have lost their jobs during the COVID-19 pandemic, and have launched a new online platform, Join Social Care, to fast-track recruitment during the Covid-19 response. The online platform allows candidates to access the free training via Skills for Care and the opportunity to be considered for multiple job opportunities.

A number of Peers have called for an independent review of impacts on ending free movement on the health and social care sector. The Migration Advisory Committee (MAC) is a world class independent body, with new autonomy to review any part of our immigration system if it sees a case for doing so, and has the means to ensure the views of interested stakeholders and users of the system are listened to and considered. The MAC will also produce an Annual Report which will allow them to comment on emerging trends in the labour market and migration patterns relating to it which will also provide the type of regular analysis I believe Peers are looking for on these areas.

### **Unaccompanied asylum-seeking children and family reunion policies (amendment 15)**

The Government remains supportive of the wellbeing of vulnerable children and is committed to supporting them. Concerns have been raised in the Bill debates on whether we are doing enough. Your Lordships, we have said you cannot measure our support by a pure number, but it is right that people understand the UK's strong record in this area by referring to statistics. The Government granted protection and other leave to over 5,800 children seeking protection in the year ending June 2020 and more than 44,000 since 2010. In 2019 the UK received 3,775 asylum claims from unaccompanied children. This was more than any country in the EU and accounted for approximately 20% of all such claims made in the UK and EU Member States. Since 2015, we have resettled more than 25,000 refugees, around half of which have been children.

The Government is deeply saddened by the tragic fire in the Moria camp on Lesbos. The UK is responding to requests by the Greek Government to provide specific humanitarian goods and is urgently making plans for the delivery of these goods.

Throughout the pandemic the UK has continued to receive those accepted for transfer under the Dublin III Regulation, including unaccompanied children. We are in regular contact with sending Member States, including Greece, who are responsible for arranging transfers.

We have also committed to continue to process transfer requests under the Dublin family reunion provisions from Greece and other Member States which were received before the end of the transition period.

UK has made a credible and serious offer to the EU to agree new, post-transition arrangements for the family reunion of unaccompanied asylum-seeking children, and it remains our goal to negotiate such an arrangement.

### **Citizenship awareness (amendment 16)**

We had a good debate during the Bill's Committee stage on entitlements to British citizenship. As I mentioned in Committee, during the statement on the Windrush Lessons Learned Review on 21 July, the Home Secretary announced she would evaluate changes to immigration and nationality laws to ensure they are fit for purpose for today's world and would also act to make sure the changes were now communicated effectively where they previously hadn't been so. I hope your Lordships will see this Bill which ends free movement is not the right place to be debating citizenship policies. We need to allow time for the evaluation referred to by the Home Secretary to take place.

### **Family members of UK citizens (amendment 11)**

There have been concerns raised regarding the Government's policy for family members of UK nationals living overseas who wish to return to the UK, particularly those families who were residing in an EEA country at the end of the transition period.

The Government recognises that UK nationals moved to the EU expecting free movement rights to continue. That is why we have provided transitional arrangements. However we have to be fair to other UK nationals, whether they are living overseas beyond the EU or in the UK. The UK family Immigration Rules reflect the public interest in preventing burdens on the taxpayer and promoting integration.

UK nationals protected by the withdrawal agreements because they had been living in the EEA before the end of the transition period do of course have lifetime rights to be joined in their host state by existing close family members.

Some questions have been raised on why UK nationals only have until 29 March 2022 to bring their existing close family members with them from the EEA. 29 March 2022 represents three years after the date the UK was originally to leave the EU. This cut-off date was announced on 4 April 2019, giving UK nationals and their family members almost three years in which to decide whether, and when, to return to the UK.

UK nationals will still be able to bring their family members to the UK after 29 March 2022, but the UK's family Immigration Rules will apply, as they will to the family members of other UK nationals.

### **Victims of modern slavery (amendment 27)**

The Government is committed to tackling the heinous crime of modern slavery, ensuring that victims are provided with the support they need to begin rebuilding their lives and that those responsible are prosecuted. At the end of the transition period in December 2020, the UK will no longer be bound by EU law. However the Modern Slavery Act 2015 and the Council of Europe Convention against Trafficking in Human Beings, which sets out our international obligations to victims, will be unaffected. As we said in Committee stage, the scourge of modern slavery reaches far beyond immigration issues; the highest represented nationality of individuals referred to the National Referral Mechanism in 2019 was British.

In October 2019, the Prime Minister reiterated his commitment to continue with the world leading work of the previous Prime Minister in tackling modern slavery. The Government is currently undertaking a programme to transform how we identify and support victims of modern slavery, emphasising our continued commitment to a world-leading system having left the European Union. As part of this, we are looking carefully at the legal framework in this area.