

Home Affairs Committee

Oral evidence: [Work of the Minister for Future Borders and Immigration](#), HC 919

Wednesday 4 November 2020

Ordered by the House of Commons to be published on 4 November 2020.

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Members present: Yvette Cooper (Chair); Andrew Gwynne; Adam Holloway; Dame Diana Johnson; Tim Loughton; Stuart C McDonald.

Questions 1 - 126

Witnesses

I: Kevin Foster MP, Minister for Future Borders and Immigration, Home Office; Marc Owen OBE, Director of National and International Operations, Home Office; and Philippa Rouse, Director, Future Border & Immigration System Directorate, Home Office.



Examination of witnesses

Kevin Foster MP, Minister for Future Borders and Immigration, Home Office; Marc Owen OBE, Director of National and International Operations, Home Office; and Philippa Rouse, Director, Future Border & Immigration System Directorate, Home Office.

Q1 Chair: Welcome to this evidence session for the Home Affairs Select Committee. We welcome the Immigration Minister, Kevin Foster, to give evidence to us this morning on the future of the immigration system. We also welcome Marc Owen, Director of Visas and Citizenship, and Philippa Rouse, Director of Future Border and Immigration System in the Home Office. Welcome to you both. Thank you for joining us this morning.

We had an evidence session and discussion yesterday to mark Parliament Week with the organisation We Belong, which is for young people who have had experience of the immigration system. They were impressive and spoke to us about some of the challenges they had faced and also some of the reforms they wanted to see. We want to start with a couple of points from them.

Given the commitment that you and the Home Secretary have made as part of your response to the Windrush inquiry and the Windrush report to engage more fully with those who are affected by the immigration system, would you agree to meet with We Belong to discuss and listen to their concerns?

Kevin Foster: Yes, I am more than happy to.

Chair: Thank you.

Q2 Tim Loughton: Welcome, Minister. I reiterate the comments about We Belong yesterday. They are articulate advocates for people, most of whom—in the case of that charity—have come from Commonwealth countries and have been in this country for a long time.

The problem is that they estimate there are something like 300,000 young people in a similar position, many of whom may not be quite as articulate and as high profile as that charity. We are talking about a large group of young people. Their slogan is “British in all but paperwork”.

We spoke yesterday to young people in their 20s who have been in this country since the ages of 3 to 7. They typically will not qualify for their full permanent status until they are 30. Some of them will have been in the country for 23 years, far longer than they were in the country where they happen to have been born. Why is it taking such a long time to assimilate those high-performing young people we saw into British society where they can be fully appreciated and fully contribute?

Kevin Foster: Thank you for the question. It was interesting to hear some of the comments that came out yesterday. I looked at the summary



HOUSE OF COMMONS

on the Twitter feed. Even though I was conscious that it was not a public session, it was useful to have some of those comments.

In response, first, it would be interesting to look at some of the examples in there. We are planning to look at a process of simplification and change of some of the family rules coming into next year. Generally, we would be keen to engage with We Belong about that. Some of it will depend on people's exact status and whether they have been here as dependent children. There is a range of reasons why people may be going through a process to regularise.

It struck me that this is an area where we could do some work. Following on from the Law Commission's report on simplification earlier this year, we have applied some of that into the student route and then we will look at how we can take that into some of our family rules. I know that some of the issues on customer service and other areas are things that are not necessarily principles of the law but how we move to improve our customer service.

Q3 Tim Loughton: These people are typically on a 10-year journey to settlement and that may be many years after they came into the country because it has taken many years to process their claims to get to that stage. They came here with their families in most cases legally and are quite legitimately here. Do you think that that 10-year period could be reduced? They are asking why it could not be no more than five years, to put them in the same league as people who come here and settle.

In that 10-year period, they are having to pay recurrent fees. They have to reapply for their status three or four times within that 10 years. Typically, it will cost them something like £14,000. On top of that, they have to pay the health surcharge, which is going up again. In many cases, they are working in high-level jobs and paying tax. Is it fair that somebody who has been in the country for 20 years, is paying full tax, has been educated in this country and has paid for the privilege of that should have to pay a surcharge to access the National Health Service?

Kevin Foster: To be clear, your immigration status determines whether you pay the surcharge rather than the particular length of time or whether you are paying tax in the UK. But there are some routes for settlement that do cover children who are in the country. I am only too happy to meet with We Belong to discuss the exact examples quoted of people being here for more than 20 years. That is quite a lengthy period of time given that people can normally apply for settlement after 10 years of lawful residence. Regularisation after 20 years is a different concept within our system.

Q4 Tim Loughton: As an opinion, the health surcharge is there primarily to avoid health tourism and people who are here on a temporary basis coming in to take advantage of our National Health Service. These people intend to and have every likelihood of staying in the UK for the rest of their lives, yet they are having to pay that surcharge. That cannot be



HOUSE OF COMMONS

right in principle. Think of all the different statuses. I gather that in response to at least one member's query for somebody who was struggling to pay that health surcharge, you suggested that they could apply for a fee waiver. In fact, at least 75% of fee waiver applications are rejected anyway so that is not a likely route.

Kevin Foster: Fee waiver is there for those who would be destitute or would struggle to afford to pay. I would not say that the fact that one in four is proved shows that the system does not work. It shows that people do get fee waivers. Of course, we judge whether it is a fee waiver for the immigration fee and then, if those fees are waived, we inherently waive the IHS as well.

The purpose of the IHS is not necessarily to stop health tourism because you pay it if you are here for longer than six months and treatments can be extremely expensive. There are other rules in place around that type of behaviour.

From the day you arrive in this country, one of the great advantages of our NHS is that it provides services free at point of need. We do not have the type of system that we might see in Ireland, for example, where people are charged for medical treatment. Even settled residents and citizens are charged for treatment. We do not have that concept in this country. The IHS is about making a contribution in respect of the fact that most British citizens or those who have permanently settled here with ILR will have made long-term contributions in other forms. That is why it is the immigration status that determines it rather than, for example, whether you need the NHS or not and whether you have come here as a tourist to use health services that you may be charged for.

Q5 **Tim Loughton:** The point we are all concerned about is that a group of people are contributing to the UK and regard themselves as British with a lot of justification. Yet, potentially, some of them will face deportation if they cannot find the fees for their applications ongoing and for their health surcharges.

We heard one case of a chap who is at university on course for a first-class degree and is trying to hold down a job at 40 hours a week just to scrape together the money for him and family members to pay their ongoing charges for being here as part of this process.

Have any special arrangements been made to help them, not least because it is difficult to have part-time jobs during the pandemic and during lockdown? Typically, they may be in the hospitality industry. Losing that wage or even being furloughed and losing part of it could have a significant impact on them. Are you aware if any work has been done on how many deportations there have been in the last few years of people in exactly this position who have been here for many years, either part of the family or the whole family? If not, can we have those figures?

Kevin Foster: I certainly would be happy to supply figures. I would just give a slight difference. "Deportation" is the term we use for those who



HOUSE OF COMMONS

are foreign national offenders as opposed to “removal” for immigration purposes. I presume that is what you are referring to. We may deport someone who has been here for a while related to a criminal offence or a period of criminal offending. We will stick to “removal”. That is the fairer way of making sure it is those who would be for immigration matters. I am certainly happy to get figures to you.

We have brought in a range of concessions around some of our rules. In terms of fee waivers, we would look at the fact that someone had lost their income due to Covid-19, for the sake of argument, that they were self-employed here and could not afford the fee and would, therefore, face an outcome that could put them into destitution. Those are grounds that we would take into account when looking at a fee waiver. I would certainly expect UKVI, when considering fee waivers, at the moment to be conscious that the potential for seeking other employment is going to be far more limited than it might normally be.

Q6 Tim Loughton: Do you know the figures? How many have been given special dispensation as a result of the pandemic?

Kevin Foster: That changes every day. We will get a figure in writing to you.

Q7 Chair: Do either of the officials in the evidence session know the number of people who might have been removed as a result?

Philippa Rouse: No, Chair. I am afraid we do not have that.

Q8 Tim Loughton: How many have qualified for special financial help to keep them here during the pandemic as a result of the pandemic?

Kevin Foster: There is quite a number of figures about people who have been given extensions, concessions and other things. We will get the figure in writing. That is probably better.

Q9 Chair: Can you confirm whether somebody who applies for the fee waiver and is turned down then has to find the entire sum within 15 days?

Kevin Foster: I can confirm in writing. That is probably best.

Q10 Chair: That is what we were told yesterday by the members of We Belong. They said that, in practice, people will not apply for the fee waiver because there is a failure rate of between 75% and 95%. Those people do not get granted a fee waiver. If they apply and do not get granted it, they then have 15 days to come up with the entire sum of money. If they fail to do that, at best, they will be put back to the beginning of their 10-year application process to get settlement or, at worst, they will be on a track to removal. That is the description we were given by them yesterday. Would you accept that there is a disincentive for anybody to apply for the fee waiver scheme even if they might be desperate and struggling to pay the money?



HOUSE OF COMMONS

Kevin Foster: In the circumstances they outline, I can understand why people might be concerned about that. I am more than happy to pick it up in a meeting with them. We are looking at a range of issues in our current system because we are conscious that, with the impact of Covid-19, many people who would have been able to pay fees quite reasonably until March or April of this year would now struggle. We need to bear that in mind when people make applications for these waivers, and also the potential ability to borrow or for employers to stand them the money as well. That is more limited than it might have been in the past.

Q11 **Chair:** Can I ask you to look particularly at the circumstances for people who have come here as children? If they are applying for a 10-year route once they reach adulthood, it clearly puts them in a different situation and a much more difficult situation.

Secondly, look at the plight of people who may be studying for university degrees. We would want to encourage that as a good thing that helps them increase their contribution to their own country that they have grown up in, but it makes it more difficult for them to then raise the money to pay the repeat fees. Also, look at the issue of the fee waiver.

If you were able, after you have met with We Belong, to write to us on each of those things, it would be welcome.

Kevin Foster: I am happy to, Chair. As we look to take forward the reform of our family rules, it would be useful to have a session before the Committee. That is for the Committee to decide, not for me, but in the early new year it would be useful to get into some of those issues in more depth and to take the Committee's views as well.

Q12 **Tim Loughton:** That would be helpful. Caroline Nokes did meet them some time ago and was making progress. She was moved and they have not had any communication since. It would be helpful for you and officials to meet them and hear their testimonies and concerns.

Kevin Foster: I am happy to get a meeting in the diary. We are engaging more widely with some of our stakeholder groups to look at some of the simplification processes we can do for the family rules.

Q13 **Tim Loughton:** I will come briefly to another subject, which we are going to have on the Floor of the House later today, the Immigration and Social Security Co-ordination Bill and the last remaining amendment back from the Lords now to do with the family reunion scheme. Many of us on all sides are concerned about the effective vanishing of the family reunion scheme under Dublin post 31 December, which is why some of us have been urging you to put an amendment on the face of the Bill.

Do you acknowledge that if nothing is agreed with the EU by 31 December, and we are told that the EU has no negotiating mandate from its individual members to agree anything anyway, as of 1 January there will be no safe and legal route for family reunion applications from within the EU so that route will be cut off?



HOUSE OF COMMONS

Kevin Foster: No. The provisions of part 8 and part 11 of the Immigration Rules will then apply. They apply on a global basis.

Q14 **Tim Loughton:** And that is a much more restricted range of family reunion candidates they can apply to join.

Kevin Foster: The first part of it is around pre-flight partners and children. It is free of charge for them to apply. The second part covers a wider range of relatives and there is a £388 fee. However, the tests on that one are that it is in the best interests of the child to be in the UK, that there are compelling and compassionate reasons and that the person concerned is able to care for and accommodate the person being relocated to the UK. That brings a strong advantage that permission granted to them allows travel directly from the region. It does not involve having to get yourself first into the EEA, which is made up of safe and democratic countries, generally.

Q15 **Tim Loughton:** How many children have come under that scheme this year?

Kevin Foster: We can get the figure for you.

Q16 **Tim Loughton:** Roughly?

Kevin Foster: The figure varies. This year would be an odd year to use, given the disruptions to international travel with Covid. It will probably be a lower figure than normal. However, we are in the top five for resettlement generally among countries around the world.

Tim Loughton: That is not a figure.

Kevin Foster: No, but we can certainly get the figure for you, Mr Loughton.

Q17 **Chair:** Is it normally over 500 children and adults a year coming through the family reunion route over the last couple of years?

Kevin Foster: It would be lower, partly because some of those who had come under Dublin would then qualify under those rules but came under Dublin instead.

Q18 **Tim Loughton:** This is for the non-Dublin, non-EU family reunions?

Kevin Foster: That is right.

Q19 **Tim Loughton:** What are the normal figures?

Kevin Foster: The premise of your question was if the Dublin routes are not there from the European Union, is there nothing? No, because the Immigration Rules would then apply within the European Union as well. It would not be these for non-EEA states and nothing for EEA states.

Q20 **Tim Loughton:** My point is, as you know, that before Dublin III Regulations coming in, the numbers were in the teens. The numbers subsequently have been in excess of 500 a year and that has worked



rather well. That way overshadows children coming in under a similar scheme from outside the EU. Simply saying that we have the non-EU scheme there does not cut the mustard because we know the figure will be substantially lower than 500 from 1 January unless there is an equivalent or an informal rollover of the Dublin scheme.

Kevin Foster: Chair, we have discussed this on the Floor of the House on a number of occasions and the House has come to its opinion about some of the amendments tabled.

In terms of where the Government are, you will have seen we have put an amendment in lieu down for this afternoon, which will go slightly further. The amendment to be in scope of the Bill talks about reviewing those in EU member states. We will take that slightly further and review how it will operate.

Q21 **Tim Loughton:** It does not propose a scheme. It proposes a review. How does that take it further on 1 January?

Kevin Foster: First, in terms of looking at where the balance in our Immigration Rules should be and as part of the wider work we are doing on our fairly broken asylum system. Few would say that it is currently at the place we would like it to be.

Q22 **Tim Loughton:** We all agree with that, Minister, and that is part of the purpose of this report. That is for the longer term. Our immediate concern is that as of 1 January, with or without the amendment the Government are now seeking to add to the Bill, there will be a substantially lower number of unaccompanied, vulnerable children, including those 1,600 currently running around camps in Lesbos at the moment, who are exceedingly vulnerable. Very few of them will now be able to come to the UK as of 1 January.

Will the Government, at least until they have sorted out their longer-term intentions on getting a better immigration scheme or have at last been able to negotiate an arrangement with the EU, at least undertake to roll over the current conditions of the Dublin scheme on a temporary, informal basis—something you do not require legislation to do—as a measure of goodwill and to make sure those children are not disadvantaged in the way that they will be, which could result in more of them ending up fatally making that crossing across the Channel? That could be a sensible route ahead.

Kevin Foster: We have set out what our position is. Requests made for Dublin transfer before 31 December, even if they have not been resolved before that date, will continue to be considered afterwards under the basis of the Dublin Regulation. We are clear that we are not going to consider—

Q23 **Tim Loughton:** That will not exist. We are not part of the Dublin Regulation after 31 December.



HOUSE OF COMMONS

Kevin Foster: That is for applications made after 1 January, Mr Loughton. Applications made in the transition period under Dublin for reunification would be finalised afterwards. We are not going to unilaterally roll over reciprocal arrangements. We will seek bilateral deals where possible.

Q24 **Chair:** Suppose there is a 14-year-old in Greece, maybe in the Moria camp, facing a difficult situation alone. He has no family with him in Greece and has come from maybe Syria or another country that he cannot return to. He has an aunt and uncle in the UK who could look after him. Under the current Dublin arrangements, he would be able to apply through legal routes to be reunited with that aunt and uncle, to be back in a safe home rather than sleeping rough in Greece, and to go back into school. Why should he not be able to be reunited with his aunt and uncle from 1 January?

Kevin Foster: Let us look at our immigration rules. Let us assume for the sake of argument that there is no family known to be in another safe country and your example of a 14-year-old is in Greece and presumably the aunt and uncle are his closest relatives. That would probably hit the test of the child's best interests. Compelling and compassionate, yes. You give the example that they can accommodate and care for him, so there are no potential safeguarding concerns. To me, that would sit within the second part of the Immigration Rules under part 11.

Q25 **Chair:** Do you believe that your existing provisions will allow for children in those circumstances to join grandparents, aunts, uncles and siblings in exactly the same way they can under the Dublin arrangements if they have no other family in the EU?

Kevin Foster: Chair, you gave me an example, which I have just dealt with. In the Dublin Regulation, there is the test of a child's best interests. For example, if we identify closer family in another safe country that may not be in the EEA, it may be more in the child's best interests to be located with them rather than come to the United Kingdom. You gave a specific example. I have reeled off an example of how you could apply the test under our Immigration Rules. You have given the example of Greece. The child could be in Turkey rather than Greece. This is a message we really want to get out. There is no advantage in that circumstance to getting yourself trafficked or making the dangerous crossing yourself from Turkey to the island of Lesbos. You can make exactly the same application from Ankara instead. That is a message that we keep on needing to get out there. We want to get the message out about safe and legal routes.

Q26 **Chair:** Would a child in France be able to join an older brother or sister in the UK, again assuming they do not have other relatives in France?

Kevin Foster: I would not want to get into absolutely every list of relatives we could possibly argue for but—

Q27 **Chair:** But this is important because you are talking about an existing



HOUSE OF COMMONS

system that people understand with clear legal provisions that is going to end on 31 December. Safe Passage has done a lot of work with those vulnerable young people, partly to prevent them trying to make dangerous journeys and getting caught up in the arms of trafficking or smuggler gangs and to make sure they can be safe.

Kevin Foster: That is why we have dealt with them in Europe.

Q28 **Chair:** Safe Passage estimates that of the young people they work with, over 90% would not be covered by the broader immigration system that will apply after 31 December. Are they wrong?

Kevin Foster: Those are not figures I necessarily recognise.

Q29 **Chair:** What is your figure, then? I assume you have a figure and you have done an assessment, given the impact on vulnerable people. You are making changes to the law. I assume you have done an assessment.

Kevin Foster: There will be a full assessment as we bring through the next stage of the Operation Sovereign Borders work. Chair, you gave me an example earlier, presumably expecting the answer to be no, and I gave you the answer yes. We accept that our Immigration Rules are not to the fore. You say that people do not understand the Dublin rules. That could be applied to the fact of not seeing how there are read-overs into our Immigration Rules. People seem to think that reunification of pre-flight partners and children to a refugee would not be able to happen from 1 January when that is a clear part of our Immigration Rules.

Yes, it is based around refugee status, but we have put in an amendment in lieu. The House has passed its own judgment on a number of occasions on this subject about whether we should unilaterally continue these rules in the absence of reciprocal arrangements. As a Government, we take a view that it makes far more sense to look towards having a single system of reunification rather than having a different set of rules for a collection of safe and democratic countries that we are no longer a member of.

Q30 **Chair:** I am still trying to clarify the facts about what system you think applies on 1 January. You recoiled when I asked about someone in France who might have an older sibling in the UK who could look after them. If you were able to answer that question about the child in Greece joining the aunt and uncle, why are you not able to answer the question about a child in France joining an older brother or sister?

Kevin Foster: I said that you gave me one example and we had another one then thrown in. We are happy to confirm the full length of the Immigration Rules where they are. We are happy to have a full review of them. Again, there is a slightly different position in wider groups.

Q31 **Chair:** In advance of the review, what is the situation for 1 January for these young people?

Kevin Foster: We hope we can get an agreement with the EU but, if not, our Immigration Rules are there in default.



HOUSE OF COMMONS

Q32 **Chair:** Okay. I still do not understand the provision for a 14-year-old in France who has an older brother or sister working in the UK legally. What is the provision for them to be able to join that family member?

Kevin Foster: There are a couple of provisions. First, if they do not qualify under the reunification rules, they could potentially look to our family migration rules. That is another catch-all under there, although I accept that for adults that is a slightly different provision.

Q33 **Chair:** That is there, but they will not qualify under the existing family reunion rules if they are a younger sibling.

Kevin Foster: We are happy to do a review, but the House has made its judgment on a number of occasions and has supported the Government's view.

Q34 **Chair:** Regardless of the judgment of the House, I am trying to get to the bottom of the facts. Can you confirm that this child would be unable to join an older brother or sister?

Kevin Foster: It depends on the circumstances and the exact provisions of the route they apply under.

Q35 **Chair:** Which rules would apply and which rules might allow them or not allow them?

Kevin Foster: Let's assume we are talking about a brother. Assume there is not a father or mother relationship there. There is part 11, which is the area that covers a slightly wider group, where the tests of the child's best interest, compelling and compassionate circumstances and the ability to care and accommodate come into effect. We are happy to look at the position of wider groups. Uncle is definitely one that has traditionally been in there, relating to children. Finally, the catch-all under all that is the family migration rules as well if people do not qualify via the reunification rules.

Q36 **Chair:** I do not see how a younger sibling in this circumstance would qualify. We are talking about someone who is vulnerable and has nobody else to look after them. This is a relatively small number of children and young people simply being able to be reunited with family who care for them. Safe Passage has also warned us that already young people are starting to panic and are starting to pull out of the safe and legal routes that they were applying through because they see that December deadline approaching. They are instead disappearing and, in all probability, getting involved with smuggler gangs or trafficking gangs, which we know can put young people's lives at risks.

Kevin Foster: Absolutely. This is why, for example, we do not want to have a two-tier system with an advantage if you get yourself into the EEA versus being in Turkey, Lebanon, or the first safe country you have arrived in.

Chair: That does not answer my question about January.



HOUSE OF COMMONS

Kevin Foster: We do have provisions there. We are one of the biggest countries for resettlement in the world. We will take stock of where our Immigration Rules sit as we exit the Dublin system at the end of the transition period. It is only a small group of people. It is worth pointing out that the Immigration Rules apply globally, not just within the EEA. Those within scope, certainly in the regions, are in the millions, potentially, rather than in the numbers who have made it within the EEA.

Q37 **Chair:** How many young people who were alone outside Europe have rejoined siblings in the UK?

Kevin Foster: I would be happy to supply the figure.

Q38 **Chair:** I am surprised that you do not have these figures. If this is your argument for a debate this afternoon in Parliament on amendments that have come back from the House of Lords again, I would have assumed that you and your officials would have done full assessments of the number of people affected, whether lots or a small number, and the scale of the impact. I am slightly shocked that you are avoiding giving me a firm answer about the siblings, even though we assume from what you are saying that they will not be able to rejoin, and you are not able to give factual answers about the number of people affected.

Kevin Foster: Chair, if you want to go into our published data, for the year ended June 2020, non-EUSS intake into the asylum system was 29,555 and EUSS was 2,868.

Q39 **Chair:** What is the number of young people who have come through the non-EU, non-Dublin family reunion system and who are asylum seekers or refugees to rejoin family in the UK who are not their parents?

Kevin Foster: The reunification routes are there. I would certainly be happy to supply the detail of the figures. This afternoon we will set out happily to the House the details of the review and we will ask the House to make a judgment on the amendment.

Q40 **Chair:** Perhaps by the time you speak in the House this afternoon, you could provide us with those figures and have them ready to be able to let the House know the number of people coming through this new route currently from non-EU countries.

Kevin Foster: To be clear, it is not new, Chair. It has been there for some time.

Q41 **Chair:** Safe Passage has estimated that 90% to 95% of young people are not now going to qualify. Could you provide us with the Home Office assessment of the proportion of young people currently coming through the system under Dublin who will not qualify under the new system?

Kevin Foster: We can certainly provide our estimates of what we feel the impact of our Immigration Rules will be, and that will be part of the review.

Q42 **Chair:** Can you provide us with that information? You must have it. It is



HOUSE OF COMMONS

factual information. You must have done it.

Kevin Foster: Yes, I will certainly bring officials in. I presume there is no particular reason why we could not. Ms Rouse might be able to say if there is any reason why we could not provide the information.

Philippa Rouse: I am just having a look at some of the figures we have to hand. I do not have the number of people coming in through the refugee family reunion route to hand. I am sure we can get that for the Minister this afternoon.

Chair: That would be helpful.

Q43 **Tim Loughton:** Why do they not have it already? Surely that is crucial to this afternoon's debate. Not to have it to hand or give it to the Minister in a briefing when he is going to be answering questions about it in front of this Committee, let alone on the Floor of the House this afternoon, seems an extraordinary omission. The main defence is that another scheme will substitute for the existing scheme. You do not know how well it will substitute because you cannot even provide the figures. We know that that scheme is a poor relation of the Dublin III family reunion scheme regulations, which will no longer exist on 1 January unless an agreement is reached before then, which is highly unlikely. Why was this information not put in the public domain?

Philippa Rouse: Apologies. I have now pulled out at least some of the information we have here. In the year ending March 2020, over 7,400 refugee family reunion visas were issued to partners and children of those previously granted asylum or humanitarian protection in the UK.

Q44 **Tim Loughton:** How many of those were part of the Syrian vulnerable persons and the Dubs numbers?

Philippa Rouse: This is separate from the Syrian resettlement figures. These are people coming through the route the Minister described in terms of refugee family reunion.

Q45 **Chair:** How many of those are lone children?

Philippa Rouse: I only have the total number here for partners and children.

Q46 **Chair:** Okay. It would be helpful to know the number of lone children. Do you have an estimate for the change in the number of young people and children who are currently able to apply through the Dublin route and who will still be able to come here through the broader Immigration Rules?

Philippa Rouse: I am afraid I do not have that figure.

Q47 **Chair:** Is that because the figure does not exist or because you do not have it in front of you?

Philippa Rouse: I am afraid I cannot answer that question, so we will make sure the Minister gets his briefing for this afternoon.



Q48 Chair: I am shocked by this. I accept that you may take a different policy position to me or to other members of the Committee on individual issues. I am finding it hard to understand that you have not done any assessment of the impact on people. Surely one of the conclusions of Wendy Williams's Windrush report was that the Home Office needed to do proper assessments of the impact of its immigration policy decisions on the people who are affected, in particular vulnerable people. Why do you not have an assessment of the number of people who will be affected by this decision?

Kevin Foster: In terms of where we are going with our migration decisions, we made an offer up to the European Union for a reciprocal arrangement, which is our first opportunity. That is more than just a discretionary thing. We will then have bilateral negotiations with countries we can, again subject to them. We are keen to look at where our rules are. We will have the review. We will ask the House to make its judgment later today. We will be doing this on the basis of having a global system, which is very much—

Chair: That is not an answer to my question. This is a serious concern for the officials in the Home Office as well as to Ministers because this is about your analysis of the impact of your decisions so that when decisions are taken, they are taken in full knowledge of the impact. We will also raise this with the Home Secretary and the Permanent Secretary in the light of the Windrush recommendations as well.

Q49 Dame Diana Johnson: I would like to move on to the EU Settlement Scheme but continue on the issue of children. From the latest quarterly statistics, we know 466,000 children under 18 have concluded applications against an estimated eligible child population of more than 900,000. Minister, what do you say about that? What is your view about those figures?

Kevin Foster: We are pleased that so many have applied so far. There is still work to do before the deadline of 30 June next year. We have recently announced a range of funding for 72 grant-funded organisations, some of which work directly with children. Of course, there are specific issues we are working on with local authorities around those children in care where effectively corporate parenting is with the local authority. We are pleased to see the overall number of applications we have had so far. There is more work to be done before 30 June next year.

Q50 Dame Diana Johnson: If I could move on to the issue of corporate parenting and the responsibilities of local authorities, you will know because this was raised in the Committee stage of the Immigration Bill recently that the Children's Society found that only 11% of children in the care of a local authority or care leavers who were eligible for the scheme had applied. What is the Home Office's current assessment of the number of children and young people in care or care leavers who have made that application?



Kevin Foster: Our assessment is that over 40% of those who are in care or are care leavers have now made the application having already applied for status. I am not saying that about those who have come later, but that is where we are and we are making good progress. As you know from being on the Committee, we have already made clear that there will be a number of protections in place, not just for children in care but for under-18s, if the person making the application does not do so by the deadline.

Q51 **Dame Diana Johnson:** So that I am clear, you said 40%, so that still leaves 60% of children in the care of local authorities or care leavers who have not made the application yet?

Kevin Foster: That was the most recent published figure. More applications are coming in every day. We will be publishing updated figures shortly, but the most recent published figure is 40%.

Q52 **Dame Diana Johnson:** What do you say to local authorities, which are struggling with all sorts of other issues at the moment, including Covid particularly, and do not have access to specific legal advice and are relying on social workers to make these applications? What do you say about the pressures that local authorities are under and whether the Government ought to take a different approach now that 60% of children and young people have not been able to make an application so far?

Kevin Foster: We would say that, first, we are grateful for the good progress and the work that many of them are doing. The EUSS is a simple process to apply to. The qualification criteria are deliberately simple. You have to prove your identity as an EEA national, have residence in the UK and not have criminal convictions or any other well-known reasons why we may not permit you to stay in the United Kingdom, which are—

Q53 **Dame Diana Johnson:** Why do you think 60% have not applied if it is that simple?

Kevin Foster: That is the latest published figure. We expect that figure to go up. Probably by the time we have sat here today, the figure will already have increased. We still have about seven months to go before the deadline, plus there are protections in place. Your figure at the start was 11%. It is now 40%. That tells us there are more coming in each day. We are confident about the support we have been providing. There has been good work with local councils. It is a simple process to engage with the team to get the people the status they deserve.

I know there were arguments that we should have a declaratory status so that people could go for the rest of their lives declaring they were a child in care. We made clear our views on that not being a particularly appropriate outcome. We believe that this is there and it is working well. We will get good engagement with local councils before 30 June next year. Most have found, to our understanding, that the system has worked well.



Q54 Dame Diana Johnson: It would be interesting to know what your target is for the number of children you think should go through this system by the end of June next year. When do you think the Government will start to think that they need to take some different action to make sure that children are not left in a position where their status is unclear? We could end up with another Windrush scandal with children and young people not having their immigration status confirmed.

Kevin Foster: We would have potentially ended up with a Windrush scandal if we had taken the idea that we should give children in care a declaratory status that they could not evidence and that they went through the rest of their lives declaring a status rather than having the secure status that the EUSS provision provides. That is a point I made quite firmly in the Bill Committee, as you will remember.

We are not waiting to take action. We already have grant-funded organisations out there helping us to support families and children to apply, not just those who are strictly in care. We recognise that there is a wider range of vulnerabilities than just children who are in care. We are working well with local authorities and we are seeing good progress to identify and support local cases.

Our goal and our target would be looking towards all EEA nationals who are in the care of a local authority to have an application made on their behalf by the deadline. As we have already said, there will be significant and effective protections in place for, for example, a child under a team where their parent has not made the application for them in terms of late applications as well.

The Government are already taking action and have set out a process that we believe will protect the vulnerable, unlike the Windrush situation where people were granted a status under an Act of Parliament with no record taken of it and then decades later struggled to prove they qualified to that status when, understandably, they did not have the type of documentation to hand that they would have had on 1 January 1973. This is why we have set up the EUSS. The EUSS is the key lesson learned from the Windrush era. It has simple rules, effective processes and an ability for late applications with reasonable grounds, such as a child in a care where the local authority did not make the application it should have done and failed in its duty to that child.

Q55 Dame Diana Johnson: On the issue about people who do not make application in time, when are the Government going to publish that guidance about the extenuating or reasonable grounds for not having made that application in time?

Kevin Foster: We intend to publish that in the early part of next year. To be clear, there was perhaps a difference in the wording of the question. It will be non-exhaustive guidance. We do not expect that there will be this list of circumstances and that is it. We are clear that, yes, there will be examples like children in care and children under 18 where someone else should have made the application for them, but it should not be a tick-



HOUSE OF COMMONS

box process that if you meet one of the criteria we will accept it as reasonable and if you do not we will not. There will be a catch-all if there are reasonable grounds like someone has been unwell. There will be a range of issues.

The core focus we have at the moment—and the absolute right focus—is that if anyone has concerns about the position on 1 July, get your application into the EUSS today.

Q56 Stuart C McDonald: I am going to carry on with the theme on the EU Settlement Scheme in a moment, but since the Minister was kind enough to agree to a meeting with We Belong, could I also add another couple of groups on a similar but distinct issue? There are lots of young people who were born here but are not British citizens at birth. They struggle to access their right to British citizenship through registration, partly because of a lack of knowledge and also because of the £1,000 fee.

Would the Minister be willing to meet with the Project for the Registration of Children as British Citizens or the campaign group Let Us Learn to discuss that side of things as well?

Kevin Foster: There is a slight issue that you will understand about some ongoing litigation that may affect the timing of a meeting but, in principle, yes.

Q57 Stuart C McDonald: That is welcome. Thank you very much indeed.

Turning to the EU Settlement Scheme, members have already expressed concern about the lack of assessment of the impact of the withdrawal of Dublin transfers potentially at the start of next year. One impact assessment that definitely exists is the one in relation to the EU settled status scheme and it has existed since the summer of last year at the latest. The Government committed to publishing it by the spring of this year. The Information Commissioner ordered the Home Office to publish it by 26 August. I cannot see that it has been published yet. Why not?

Kevin Foster: We have published it or are imminently publishing it. Perhaps the officials can come in about our timescale for publishing it if we have not done so already.

Philippa Rouse: Absolutely, Minister. It remains our intention to publish as soon as we can. We continue to update the equality impact assessment in line with the fact that we need to refresh—

Q58 Stuart C McDonald: With respect, there was a parliamentary answer to that effect on 21 October, but there was a parliamentary answer to that effect in June last year that it would be published soon. Can we expect it within the next 14 days? How are we supposed to do our jobs as MPs if we cannot see that document? Is there any reason why it cannot be published in the next fortnight?

Philippa Rouse: Minister, perhaps we can take away a commitment to give the Committee a commitment as to when we can publish it by.



Stuart C McDonald: We deserve a commitment to publish it by a certain date, frankly, because it has existed since the summer of last year. This process is well under way. Huge changes are going to happen at the start of next year and then in June of next year. I look forward to that correspondence but we would prefer a commitment to a date, particularly by the end of November.

Q59 **Chair:** Can you confirm that it is completed?

Philippa Rouse: We certainly do have an equality impact assessment because it is an ongoing duty. It is a product that we continue to refresh and update. We absolutely do intend to publish it as soon as possible.

Q60 **Chair:** Why has it not been published already?

Philippa Rouse: It is work that we have continued to improve and refine as we have finalised some of the further policy elements underneath the withdrawal agreement and also reflecting the view of the new Government.

Kevin Foster: Chair, we will either publish it in 14 days or we will make clear to the Committee in writing why it is not able to be published within the next 14 days.

Q61 **Chair:** That will be helpful. Do you have any explanation as to why it has not been published already?

Kevin Foster: An element of it is a document that is regularly updated and is worked on. We want to make sure it is a document that is a live consideration. As we have touched on with some of the issues that we are discussing today, this is an ongoing consideration. We cannot draw a line in the sand in terms of the impact of the process given that free movement still runs until 31 December. We need to consider the changes in flows and the impact on equalities of recent times as well. If it is not published in the next two weeks, I will write to the Committee to give the reason for that.

Q62 **Chair:** This is about a settlement scheme that is already up and running so we are well into it at the moment.

Kevin Foster: It has had 4 million applications, yes.

Q63 **Chair:** The legal system changes in a matter of months and weeks as well. Is it in keeping with the pledges that you, the Home Secretary and the Permanent Secretary made in response to Wendy Williams's review not to have published an equality impact assessment of this crucial policy?

Kevin Foster: It is in keeping with Wendy Williams's review that we have made the EUSS a simple process to apply to. Four million have applied and 3.8 million statuses have already been granted. We have grant-funded organisations and have taken on board a range of stakeholder feedback on how it operates. We meet our promises in how it is being delivered.



Q64 **Chair:** There are all sorts of aspects of the EU Settlement Scheme that we have welcomed as a Committee. The concern is the impact on those who are most vulnerable. We want to see transparently that you have done that assessment and that it exists and to have some scrutiny of it.

Kevin Foster: Chair, we have certainly not been short of opportunities to discuss the EU Settlement Scheme and we welcome the scrutiny, particularly the interest many members have shown in the impact on children in social care. We have outlined a range of considerations that we have put in place to provide protections for them, in fact in some cases better protections than what we were being asked for in terms of timescales and not having a time limit to them. We will either publish in 14 days or I will set out to the Committee the exact reason why we are not able to.

Q65 **Stuart C McDonald:** I look forward to that publication. Even if it has to be updated after publication that is not a problem, but it is important to see that.

I take the Minister back to the issue of people who apply late to the EU Settlement Scheme. You have fairly given an example of a child who has been in local authority care and the local authority has not made that application. Ten years on they apply for a job or whatever and realise that they do not have status in the country. That would be a reasonable excuse for making a late application.

I want to drill down into the implications of that. If the first time that young person becomes aware that they do not have status is when they go to hospital and require non-emergency treatment costing, say, £50,000, because they do not have that status they would not be entitled to free medical care at that point in time, would they?

Kevin Foster: My understanding is that if we had accepted that it was reasonable that it was a late application—by the way, the application could be resolved reasonably quickly—they would. They certainly would not become subject to the immigration health surcharge or anything.

Q66 **Stuart C McDonald:** I get the point that after they have fixed their status they will be able to access free NHS care. But you can understand that in light of the examples under Windrush, having to wait potentially weeks or months for some EU Settlement Scheme applications—thankfully not the majority—to resolve their immigration situation is a worrying prospect.

Kevin Foster: I can appreciate that, although in the circumstances you give there would be opportunities to expedite applications where needed. As you have touched on, the vast majority are dealt with within a few days. The evidence is simple if you are an EEA national resident in the UK before 31 December. If you are giving an example sometime in the distance, then it is likely that the differential between the pre-settled and settled will have disappeared because of people having been here for over five years. They are the protections we are looking at.



We are making sure that we review whether there would be any specific implication and looking at a potential legislative change, for example, if they had a child during that time and ensuring that the child is still automatically British as if they had had settled status, assuming that at that time, had the application been made on time, they would have been entitled to it.

Our intention is that if it is deemed reasonable grounds that someone has made a late application, it would be inherently unreasonable for them to have an immigration penalty because of a reasonably late application on the reasonable ground that they believed their immigration status had been settled. To be clear, we apply this to all under-18s, not just to children in care, for example, if a parent has not made an application either.

Q67 **Stuart C McDonald:** It is important and—

Kevin Foster: I fully appreciate the importance, Mr McDonald, and why people want clarity.

Q68 **Stuart C McDonald:** Although you say the application might be simple, if you are talking about five to 10 years after the event, it is not necessarily the case. If you have to go back a significant period in time, you are not going to be able to be much more clear than you have been already. I just wanted to—

Kevin Foster: It will certainly be better than a declaratory scheme, where they would not have had any chance to apply at all, but the evidence—

Q69 **Stuart C McDonald:** Absolutely. I was not going to go back to that, but that is absolutely not the case. If it were a declaratory scheme, that person would be entitled to NHS treatment. Yes, they would still have the difficulty in—

Kevin Foster: How would they evidence it?

Stuart C McDonald: They would evidence it by applying to the EU Settlement Scheme, which would still exist.

Kevin Foster: Well, there you go. Thanks for your point.

Q70 **Stuart C McDonald:** No, it does not make the point. You have brought this up. Say, for example, that this person cannot wait and the situation is dragging on. If you do not get this right and it takes three or four months and they decide to pay £54,000, they are £54,000 out of pocket and they will not get that back because the status is not retrospective. If it were a declaratory scheme, they would have been entitled to that NHS treatment and they would get that back. That is the difference between our two points.

Kevin Foster: Discretion can be shown. I would expect that where someone has been found to have a reasonable ground for a late application in the circumstances we have been talking about, in the same



way as we would not hold it against them in terms of future migration implications, we would not deem them to have been an overstayer for that period of time. That is a common concept in some of our Immigration Rules. With the issue of comprehensive sickness insurance under the free movement regulations, we showed discretion for the obvious reason that it would produce harsh outcomes if we did not.

Q71 Stuart C McDonald: That is helpful, but if the person had paid £54,000 because they were in a lot of pain and could not wait any longer for their application to be resolved, would they get £54,000 back?

Kevin Foster: In my understanding—and some areas of health policy are devolved but I could not see why the Scottish NHS would wish to take a different view to the one I am about to expand—if someone has been found to have a reasonable ground for a late application, it would be hard to then hold against them a penalty in the form of not getting access to treatment or being deemed an overstayer. That would seem a bizarre outcome that I cannot imagine any court would uphold. I would expect that if, for example, they had been doing activities in the UK, it would be covered by the fact that they had made a reasonable late application.

It is a fair point that is raised and I appreciate that people would wish to see that clarified as to the impact of it, not just in this instance but in more general terms. They are not going to be considered an overstayer. If they then go on to apply for citizenship, we are not going to consider that a period of unlawful residence for naturalisation purposes. There are a few other elements that, rightly, people would want to see clarified.

Q72 Stuart C McDonald: On that note, I have one issue. Say we throw into the mix that in fact this person had realised their lack of status only when they lost a tenancy and they were homeless. There have been changes to the Immigration Rules that now allow rough sleeping to be used as a ground for removal. How would that factor into the consideration of the person's late application?

Kevin Foster: Before any decision on using removal in a rough sleeping circumstance, one test would be to look at whether there was entitlement under other migration routes and other support services available. I would expect it to be considered whether this person, once they are identified as an EEA national, could have been eligible for the EUSS. This could be a wider consideration when someone has had, for example, wider substance misuse issues, mental health problems or whatever has happened in life to drive them to end up on the streets. A consideration would be whether they would be entitled to do a late application to the EUSS as well. That provision should be the last resort for someone who has not engaged with the support services on offer.

Q73 Stuart C McDonald: Turning to the future immigration system, we have had several debates about potential flexibilities for the devolved nations in particular. With the end of free movement, we will need to see more flexibility in our immigration system to account for the needs of different parts of the country that devolved Administrations are well placed to



represent. What would your response be?

Kevin Foster: My response would be to point to the Immigration Advisory Committee's recommendations on the idea of having differential salary thresholds. I would also look at the evidence given to the Immigration Bill Committee around these issues, pointing out, for example, the variations between the nations themselves in terms of Edinburgh versus far more rural parts of Scotland. In the debate we had, there was one suggestion of trying to do it on a council basis. For example, Argyll and Bute also covers areas close to Glasgow, which presents certain challenges.

It is right that we have a system for the UK that leads to UK status and ultimately to naturalisation. We welcome those who come here and want to settle on a more permanent basis and take up British citizenship. We are guided by that advice. We believe that the system we are putting in place provides clarity and a level of flexibility for employers. Also, particularly in the current circumstances, it makes clear to employers that the first priority has to be to get those who have sadly been affected by Covid-19 back into work and to invest in our own workforce, particularly in social care.

Q74 **Stuart C McDonald:** I will pass that on because that was your former ministerial colleague Douglas Ross making that suggestion two days ago.

Even taking part of the suggestion that you engage with devolved Administrations to discuss this, your predecessor used to meet the Scottish Immigration Minister pretty much quarterly. Am I right in thinking that you have not met the Scottish Immigration Minister once since you took up the post?

Kevin Foster: This is a reserved policy area, so there is not actually a Minister with ministerial powers in any of the devolved Administrations. We have met with stakeholders across Scotland. For example, only the other week I wrote to the First Minister and Deputy First Minister of Northern Ireland. I have also written to the Scottish First Minister. There is engagement with those who have devolved powers.

No, we are not planning to have meetings with spokespeople on reserved matters from the DAs but there are strong engagements with the nations.

Q75 **Stuart C McDonald:** Do you understand how condescending that comes across as? Yes, they do not have powers but these are hugely important issues for these devolved Administrations. They have budgets to balance on the back of shrinking populations thanks to UK immigration policies. Why was it all right for your predecessor to meet quarterly with the Scottish Immigration Minister, but since the new Prime Minister took office his Home Office team has refused to meet a single time? Why can that not just happen?

Kevin Foster: We regularly engage with stakeholders in Scotland. My colleagues engage with those in direct DA areas. For example, around housing, health and education, we have engaged directly where the



HOUSE OF COMMONS

person we are talking to is a Minister with ministerial powers. On a wider basis, for example, I will be appearing before one of the Scottish Parliament's committees in the not too distant future as well.

At the end of the day, Mr McDonald, my priority is to create an immigration system that works for the whole of the United Kingdom, delivers for Scotland, delivers for Scottish businesses and sets out an aspirational plan for the Scottish economy. It is not to get into arguments with spokespeople about whether there should be an economic migration border through this island.

Q76 **Stuart C McDonald:** Are you still refusing to meet with the Scottish Immigration Minister?

Kevin Foster: We are not planning to arrange meetings but we are with stakeholders and Ministers where they have direct devolved powers.

Q77 **Andrew Gwynne:** Minister, this has been woeful throughout, so let us hope you can do better on a slightly different issue.

We are about to have a one-off session on visa and settlement routes for Hong Kong British national overseas citizens. Given that the Home Secretary, your boss, has said that there would be no limit on the numbers that could apply for the new Hong Kong BNO visa but that, "We need to be realistic about the volume of people that we in this country could credibly and responsibly absorb", what level of migration from Hong Kong can the UK credibly and responsibly absorb?

Kevin Foster: We published our impact assessment of what we believe there. This is about honouring an obligation to the people of Hong Kong who wanted to maintain a clear and explicit link to the United Kingdom when the former colony was handed over to the People's Republic of China. We are working closely with stakeholders across the UK to deliver that. Many of these people are entrepreneurial and have links to this country but the situation in Hong Kong will drive the numbers. We will see where the actual figures are, but we have made our central assessments, which we believe we can accommodate.

Q78 **Andrew Gwynne:** What are the figures that you think Britain can credibly and responsibly absorb?

Kevin Foster: This is over a five-year period. Our central estimates are between 258,000 and 322,000. There is a higher figure for what we think the absolute maximum potentially could be because we do not expect the entire population of Hong Kong to wish to relocate to the United Kingdom, not least given other Commonwealth countries are similarly making offers in respect of the position that Hong Kong citizens find themselves in with China breaking the Anglo-Sino agreement. We believe that is an appropriate way of meeting our commitments to Hong Kong. We believe we can plan for and accommodate those numbers and we have plans if there is a much higher number to welcome those people to our shores.



Q79 **Andrew Gwynne:** What level of take-up do you expect and how is that calculated?

Kevin Foster: With such a unique product and unique offer, it is not necessarily based on a specific immigration offer but is looking to honour a promise to those who have a clear link to the United Kingdom. Our central estimates are between 258,000 and 322,000, based on past migration patterns and what we have seen in terms of some interest in previous migration.

Hong Kong BNOs can apply through our general migration system as well. We have the Youth Mobility Scheme, which has a reasonable take-up as well, for Hong Kong residents and nationals. We estimated that 123,000 to 153,000 of those will arrive in the first year. We expect that the first year will probably be the most popular, although circumstances in Hong Kong, as you will appreciate, could change dramatically one way or the other. If China withdrew its national security law and adopted a different set of policies in Hong Kong, the numbers may reduce. If there was a different scenario, they may increase above that number. Those are the general assessments we have made based on past migration trends, the interest we see there and some evidence around things like passport applications for BNOs, although, to be clear, you will not need a BNO passport to apply for this route.

Q80 **Andrew Gwynne:** Given that, what discussion have you had with the Commonwealth countries that you refer to in terms of sharing these numbers across those countries? How convinced are you that these figures are robust?

Kevin Foster: We are not looking to burden share. These are people who have a British identity. They are people who call themselves British nationals. Many have strong links through family to the United Kingdom and do not just happen to have lived in the colony at the time. Some ancestors will have served in our armed forces. The figures I have given you are what we estimate will come to the United Kingdom. These are not the figures that we think will leave Hong Kong in total. We believe it is right that, given it is the United Kingdom with which the special link is, we make this offer generally and we do not look to divvy up Hong Kong's population between Commonwealth nations. We understand that Australia and others will make similar offers, but we believe it is right that the background to this is the breach of the Anglo-Sino agreement that we put in place with an offer that we believe is fair and reasonable to British nationals overseas and a route to permanent settlement here in the UK. If others wish to join that and similarly send a statement to China about its breach of those agreements, we welcome it, but we are not looking to divvy up the population of those who may need to leave Hong Kong as a policy objective.

Q81 **Andrew Gwynne:** How are we going to deal with the younger people of Hong Kong who tend to be the pro-democracy campaigners? They tend to be in the younger age range and do not qualify for BNO status. What are



you going to do to ensure that we do not end up penalising the people who are on the front-line of the pro-democracy campaign in Hong Kong?

Kevin Foster: That is a fair point. As you will know, we have made a slight change to allow adult dependants who are in that gap between 18 and now 23—it will soon be 24—who will be adults but were not old enough to have applied for BNO status prior to handover. If they are in a household with a BNO, they will be able to migrate here. We have things like our wider migration offer as well, which many younger people in Hong Kong take up each year. That will become slightly easier with the new rules, particularly around skilled workers, compared to the current tier-two skilled worker route that applies to them. That certainly was explicit. Normally we would not, for example, have adult members of households between 18 and 23 considered as part of a household application. But given the unique circumstances of Hong Kong, particularly the points you make, we will include them as part of household applications rather than having them apply separately as they would normally do.

Q82 **Andrew Gwynne:** Given that the Government require applicants for the new visa to be free of serious criminal convictions, how are you going to treat political prosecutions and convictions, particularly those stemming from pro-democracy activism in Hong Kong?

Kevin Foster: It is a fair point. We appreciate that, given the implication of this national security law and some of the approaches of the Chinese authorities, people may be convicted, so to speak, of offences that we would not consider criminal matters but would just be political expressions of views here in the United Kingdom. While we will look at whether there is a criminal record disclosed, if they were convictions that we were satisfied were effectively political convictions, they would be disregarded. There are a number of countries that do that. I am sure from your own experience you will realise that that is not an uncommon concept in the immigration system. We sometimes have to look at what the convictions are for, given some of the more repressive legislation, particularly around LGBT issues.

Q83 **Andrew Gwynne:** Lastly, I want brief answers on some of the detail of the visas. What will the visa fee be?

Kevin Foster: The visa fee, I believe, will be £250 for the five-year one and £180 plus your IHS.

Q84 **Andrew Gwynne:** Would you consider reducing those fees if an applicant can demonstrate that the cost would be a barrier to application?

Kevin Foster: When they are resident, if someone has come here for a three-year period and then was applying for leave to remain, that is when fee waivers would come in. This is a reduced fee compared to the fee we normally have as part of the recognition of the type of offer we are making. We do believe it still represents a good offer.

Q85 **Andrew Gwynne:** Have you considered that there will be some people



HOUSE OF COMMONS

for whom this is still a barrier and who may be at risk of persecution? Will there be flexibility?

Kevin Foster: If someone is at risk of persecution, there are separate protection routes that they could potentially avail themselves of that do not include a fee, to be clear on that front. This does not mean that this is the only route you can come to the UK on if you are a BNO. There are other prospects there. We believe that the fee is reasonable. We believe it provides a good settlement offer that will be attractive, judging by the numbers we estimate may well take it up.

Q86 **Andrew Gwynne:** Visa holders will have the right to work in almost any capacity. What are the restrictions?

Kevin Foster: There will be standard restrictions around not accessing public funds when they come here and being able to support themselves. That is standard migration policy. As you have rightly pointed out, there will not be an immigration restriction on what jobs they do. They will need to have any relevant qualification, but there is not a minimum salary or a particular type of role they need to take on. They just have a general right to access. Children under 18 will be entitled to go to school here in the UK after arrival.

Q87 **Andrew Gwynne:** On education, will BNO status holders and their dependants be subject to international student fees or home student fees for higher education?

Kevin Foster: It would almost certainly be, I suspect, international until they have achieved ILR. That is a common position across the migration system. This would be a temporary leave to remain but it is a clear path to settlement after five years.

Q88 **Chair:** Thank you very much. Can we return finally to border security issues? Michael Gove has said that you are not expecting to have access to SIS II after 1 January. How many times do you currently check SIS II at the border?

Kevin Foster: Perhaps I will bring officials in for the specific number. We do not have Border Force with us.

Chair: Do either of the officials have the answer to that? How many times do you currently check SIS II at the border?

Philippa Rouse: I am afraid I do not have that information.

Q89 **Chair:** Do you check every person coming into the country currently against SIS II?

Kevin Foster: Given the open border into Ireland, it would not be possible to check on the border into Ireland.

Q90 **Chair:** Of the people coming in, you currently have 140 million people in a normal year. What proportion of those people would you be expecting currently to check against the SIS II database?



HOUSE OF COMMONS

Kevin Foster: Officials may wish to come in on the detail.

Chair: Just a ballpark.

Philippa Rouse: I am sorry, Minister. I do not have that information to hand. I can see if I can try to get it in the next—

Kevin Foster: For those coming through airports, we would expect everyone to be checked.

Q91 **Chair:** Fine. Everybody coming through airports and then everybody having their passports checked, for example, under the juxtaposed controls through Calais and Dover?

Kevin Foster: Yes, you would expect that people coming through would be checked against warnings lists and the various things you would expect from your own knowledge and time in government.

Q92 **Chair:** Of the 600 million times a year that the UK checks the SIS II database, will a significant proportion of those checks be coming through people arriving at the borders as well as police checks?

Kevin Foster: Yes.

Q93 **Chair:** What will the new system look like if there is no SIS II?

Kevin Foster: In the work we are doing, we are looking to continue discussions about what the fallback options are and where we can take intelligence and also looking to modernise our system at the border anyway in terms of the checks we do as part of the future system.

Officials may wish to come in on perhaps the details of some of the work we are doing.

Philippa Rouse: Yes, of course, Minister. Some of the key fallback channels through Interpol provide a tried and tested mechanism for exchanging alert information and, indeed, was the primary means by which the UK exchanged warnings and alerts with the EU as recently as 2015. We will continue to use channels such as this when we do not have access to SIS II.

Q94 **Chair:** If somebody arrives at Heathrow, will you be able to do an instantaneous check on them against a database of alerts to find out if they are a wanted criminal?

Philippa Rouse: At the moment, we already have our border systems in place so that we check people against our existing alert system as they come through the border as their passport is being swiped.

Kevin Foster: Yes, I think is the answer there in terms of warnings.

Q95 **Chair:** Okay. Let me just check then. Can we be absolutely clear about this? Currently, somebody arrives at Heathrow, or at juxtaposed controls at Calais, and their passport can be swiped and you can check them



HOUSE OF COMMONS

immediately against the SIS II database, correct?

Kevin Foster: Today, yes.

Q96 **Chair:** Yes, today, fine. In January, if Michael Gove is right and if SIS II is not available for the UK to use, if that same person arrives at the border at Heathrow or at Calais, what instantaneous checks at the border will you be able to do on whether or not they are a wanted criminal in France, Germany or Spain?

Kevin Foster: They will be checked against the range of information that we would have and potential domestic fallbacks. Officials, again, can detail in, but certainly the idea that they would not be checked against databases of who we are looking for—of course, it is not just European ones because there are suspects who are of interest to us on a more international basis.

Q97 **Chair:** But which databases will you be able to check them against?

Kevin Foster: There are our domestic ones in terms of our own intelligence areas, and the information-sharing arrangements we have. Again, officials may wish to come in on some of the work we are doing around central fallback options because that is one of the two—

Chair: Please, yes, somebody.

Philippa Rouse: Apologies, Minister, Chair, I simply do not have this information to hand, so I do not want to give you misinformation.

Q98 **Chair:** Okay. This is the system that is going to come into place in January. Minister, surely you can tell us, if you are the Minister for immigration and borders, what system will be in place in January.

Kevin Foster: To be clear, as the Minister for Future Borders and Immigration, that is my—

Chair: Future borders, exactly. January is the future.

Kevin Foster: Yes, I know. It is one of those things. We are more looking towards 1 July and ensuring that everybody's immigration status can be checked to ensure any [inaudible] at the border. We are certainly working on a range of products that will ensure that as people come through the border we can check against a range of databases and information, obviously including our own. We have surprisingly large amounts coming through. We hope, of course, we can have constructive agreements on information sharing with the European Union, which is a mutual benefit because, of course, they benefit from our information as well.

Q99 **Chair:** Exactly. We are completely behind you on that. We would like you to have maximum access to all of the EU databases. We would urge the EU to provide and to agree to that as well. But Michael Gove has told us that we will not have access to SIS II, and I am still at a loss as to what databases you will be able to check anybody against. If you have



HOUSE OF COMMONS

somebody that is not on the UK alert system because they are a wanted criminal in Spain, or in Poland, or somewhere else in Europe, what database will you be able to check that person against at the border?

Kevin Foster: There is ongoing work to make sure we have the security systems that we need at the border. Of course, from 1 January we can also apply some of our own criminality standards at the border, which will again be an improvement in the security that we have.

Q100 **Chair:** How are you going to apply those criminality standards if you cannot tell whether somebody is a criminal or not because you do not have a database to check them against?

Kevin Foster: We will have a database to check information against and ongoing work on transition continues.

Q101 **Chair:** Which database?

Kevin Foster: Ideally, we would like to have a constructive discussion with the European Union. I would expect if we were able to move forward, others things may.

Q102 **Chair:** We would love that, too, but which database?

Kevin Foster: But if not, there will be domestic fallback options.

Q103 **Chair:** A domestic fallback option that has information about somebody who is wanted in France or in Germany? What domestic database will that be?

Kevin Foster: Our domestic databases can have information about whether people are wanted for offences in New Zealand, as you know from the recent discussion we have had around having provisional arrest and modernising our extradition proceedings. There is a range of information that we have access to, not just from Europe, of those who are a potential threat to our country. Certainly, in ending the transition period we will be able to apply our own standards at the border, which will mean that we can enhance the security of our nation, and likewise generally also the work we can do around—

Q104 **Chair:** How are you going to enhance the security without the information? Sir Rob Wainwright described to us somebody arriving at our border who was a sex offender, who might be suspected of child abuse or wanted for child abuse in France or Germany, and that information is currently on SIS II. It is not currently on any UK database. At the moment we are able to identify that person at the border, potentially to stop them coming into the country, or to choose for the police to monitor them or to take action that protects UK security and UK children. What action are you going to be able to take if you do not have access to SIS II at the border?

Kevin Foster: As we have just said, Chair, we will continue to work with the European Union on information sharing. It has to be said—it perhaps might be a radical point to make—that we have very strong information



HOUSE OF COMMONS

sharing with countries like the United States and Canada, who flagrantly are not part of the European Union, around offenders like the ones you have just suggested, to intercept them at our borders and to hand them over for custody. In terms of the juxtaposed controls, of course, you would have come through the French immigration system as well, in your example.

Q105 **Chair:** We do not get anywhere near as much information from America as we currently get from Europe. We have millions of alerts, millions of alerts, on the SIS II database. That is really important for us and really helpful. I am just trying to understand what you are going to put in place by 1 January if SIS II goes.

Kevin Foster: As we said, Chair, first we are looking on 1 January to be able to introduce rules that mean we can exclude more foreign national offenders from the EU.

Q106 **Chair:** How will you know who they are?

Kevin Foster: Some argued we should continue the type of position where we would not be able to do that. Thankfully, the Government have not accepted that view.

Q107 **Chair:** Please tell me how you will know.

Kevin Foster: We will continue to work on and build domestic alternatives in partnership with our European colleagues.

Q108 **Chair:** Okay, but how will you know? Somebody who is a foreign criminal, who you want to exclude, how will you know who it is?

Kevin Foster: Again, that is part of the productive conversations we continue to have with our colleagues in Europe about information sharing. Under your scenario, what you are arguing is that friendly nation states are going to refuse to share information about wanted sex offenders. I would be embarrassed—it would be odd if we didn't do that in exchange. No, I would see that is where the domestic alternative comes in.

Q109 **Chair:** But where do they put the information? Where is the information going to be? Let us suppose they are very willing to share this information with us. At the moment it is on the SIS II database. Where is that information going to be? What is the procedure for putting it on to a new database? Is there going to be a database in place with that information on it on 1 January?

Kevin Foster: I think your actual question is: are there systems where we can flag at the border people who are of interest, or we have concerns about domestically, as well as the SIS II systems that we are part of as former members of the European Union currently in transition? The answer is yes, and we will look to expand them and, again, alter our rules in a way we can now do with the transition period coming in to make it easier for Border Force to take a decision to exclude someone who has a poor record in this country or elsewhere.



HOUSE OF COMMONS

Q110 **Chair:** I would love them to be able to take that decision if they had information, but at the moment they are not going to have that information. Richard Martin yesterday, who is responsible in the Met for the Brexit preparations, said, "Yes, it is still a capability gap and a massive impact for us. Do I worry about losing SIS II? Yes, I do." David Armond, former deputy director of the NCA, said you cannot do the same checks at the border without SIS II. There are not any other databases that have all of this information on them. I was really hoping you would be able to tell me about some database you were working on creating; some system you had to put this information on. You do not seem to be talking about any actual databases at all.

Kevin Foster: We are talking about domestic fallbacks. I have said it to you several times.

Q111 **Chair:** The domestic fallback has domestic information on it. That is great, but where is the French, German and Spanish information going to come on?

Kevin Foster: You just said a minute ago, "If they share information with us, what happens to it?" That was in direct response to your point.

Q112 **Chair:** Okay. You have not even mentioned the Interpol databases. Are you looking at using those at the border?

Kevin Foster: Interpol database information is available to law enforcement, not just at the border, but more generally. Obviously, we filter elements of the alerts because, as you will be aware, Chair, from your own time in Cabinet, some nations do not use the Interpol system in the way that we would all hope. For example, the confidence we can have in alerts from countries like New Zealand, Canada and Australia, which have a fully independent criminal justice system, as opposed to some nations who make different use of Interpol. That type of information is generally available not just at the border. Of course, we are looking to change the law, and to be fair we have had a good degree of cross-party support to make it easier to use that information by the police without a more truncated process.

Q113 **Chair:** I am concerned that neither you nor your officials even mentioned the Interpol databases today. We have been told that there were some efforts being made to use Interpol databases instead, even though they have far, far fewer alerts or pieces of information on them, but nevertheless at least trying to use them. Can you perhaps tell us: will it be possible for Border Force officials to check those Interpol databases instantaneously at the border at Calais or at Heathrow?

Kevin Foster: My understanding is if someone is flagged on an Interpol system, they would be able to check that at the border. The normal process would be someone would be flagged to be queried, and then, for example, if they were attempting to use an eGate it would be actioned, and then a Border Force official would determine, first, whether they



HOUSE OF COMMONS

should be entering the UK and, secondly, whether they should be detained in terms of law enforcement purposes.

Q114 **Chair:** Can officials confirm that? Will you be able to fully use the Interpol databases at the border in live time?

Philippa Rouse: It is the intention to use Interpol alerts and upload them on to our databases that support the checks at the border.

Q115 **Chair:** Are they fully loaded now?

Philippa Rouse: I would need to come back to you on that one.

Q116 **Chair:** David Armond gave evidence to the Foreign Affairs Committee and said he was concerned that there would not be up to the minute checks. He proposed introducing the TDAWN system, which still does not compare with the SIS II system, but he said it would at least give more up-to-date information than what we have at the moment. Are you looking at introducing the TDAWN system?

Kevin Foster: I will certainly look at anything that could assist our law enforcement capabilities and our border security systems.

Q117 **Chair:** This is for 1 January. Is anybody looking at it at the moment?

Kevin Foster: Certainly I can bring the officials in.

Q118 **Chair:** You do not know, Minister?

Philippa Rouse: I am afraid I am not aware, but we can probably come back on that.

Q119 **Chair:** David Armond said that this was the system we had had in place during the Olympics. He did, in fact, raise concern that he thought it was not being looked at right now but it should be, because it might at least help a bit. It does not sound like you have any work under way on it at all.

Philippa Rouse: I do not have that information. I cannot say. It may well be.

Q120 **Chair:** The other thing he said was for counterterrorism we do not provide very much material at all to the Interpol CT databases, and I think that does reflect some of the concerns about other countries that have access to Interpol we might not want to have full access to some of the counterterror material. How do you expect to be able to make counterterror checks at the border at a time when the terrorism alert level has increased?

Kevin Foster: Again, first, based on our own domestic systems, which flag if people are of interest. In terms of information, you are saying uploading to Interpol. Of course, we would have access to our own information. Again, continuing via the co-operation we have with other states, which has been very strong and very good, even with the Brexit scenario.



Q121 **Chair:** But if there are concerns about someone in Austria, for example, or in another country being involved perhaps in extremism, but not an explicit terror threat at this point, however, that might be relevant to our counterterror concerns, will you be able to identify that person at the border in the absence of SIS II?

Kevin Foster: As we have just touched on, first, we, of course, hope we can agree reciprocal arrangements with the European Union. Secondly, information that is shared from our law enforcement partners—and again, I see no reason why we would not continue as friendly nations, doing so in the way we do in other areas—would be from our systems available to our border teams.

Q122 **Chair:** You keep giving us answers saying, “Why would they not be able to? We are working on things”, and so on. But where are the systems in place? This is really just a matter of weeks, a small number of months, until we may need to have a new system at the border. Currently, as the Minister responsible, you do not seem to even know what work is being done to keep our borders safe. You do not seem to be able to describe the scale of the challenge in terms of losing this crucial information about people who may be involved in serious organised crime, people who may be sex offenders, or people who may be involved in extremism, and you cannot describe to us any new alternative database that might have this information on it so that Border Force can take these crucial decisions. Why should we have any confidence in you to keep our borders safe?

Kevin Foster: I think the first confidence we can have, Chair, is the work that we are doing and that we have taken forward to secure our borders. Secondly, the fact that we are taking forward changes to our rules, which we have not been able to do in our time at the EU, which I know some people wanted to extend, but that is not going to continue, in terms of those who can come into our country. The fact that we do already operate a range of systems at our borders, based on our own intelligence systems, to profile people in terms of their risk to this country and whether information needs to be there, and a range of other sources that we have and that we will continue to have, working with friendly countries, as we do with many other countries around the world, to secure our border. The idea that there is nothing being done is rather an odd one. Again, the fact that we do check against a range of systems as people come across the border, not just the one you cite.

Q123 **Chair:** I will give you one final time to answer this question. Suppose you have a sex offender from another European country who arrives at the UK border, whose details are not currently on any of our domestic databases because they never have been, and they have not been in this country previously, but whose details are on the SIS II database. How are you going to identify that person at the border?

Kevin Foster: First, you are using the example of a sex offender; that is probably a person where someone may well have used the Interpol process to notify us of their interest in them, to retain them or detain them for return. That would be available to our teams. Again, we



continue our work on ensuring that where information is exchanged it is available to our teams on the border, as we do in many other instances with our international partners successfully, including, in that sort of instance, people from the United States and elsewhere.

Q124 Chair: The former head of Europol said that that information is currently not on the domestic databases, currently not on the Europol database, and we know that there are millions of alerts on the SIS II database that are not on the Interpol database. What are you doing to put the information from SIS II on to Interpol or any other database? What work is taking place to do that?

Kevin Foster: We are working to make sure we have a robust border on 1 January with the information available. Of course, if countries refuse to share it with us, that will make a difference. But I would be surprised if that is the actual instance in the cases you have said, because effectively they would be allowing sex offenders from their own countries to potentially evade justice.

Chair: I slightly despair about the lack of reassurance you are able to give us about what practical measures are going to be in place to keep our borders safe. We have one quick, final question from Stuart McDonald.

Q125 Stuart C McDonald: It is just a quick request for some further information again. First, at some point I understand the Home Office is going to publish an assessment of the impact of fees on levels of EU migration. I think that was referred to by the Home Secretary when she gave evidence in the summer. Does that exist and, if so, when will we see it? Secondly, farmers are really anxious now about the future of the seasonal agricultural workers. They are having to make decisions right now about what to plant for next year, and they still have not the first clue what that is going to look like for next year. When can they expect some information about that?

Kevin Foster: We will publish an impact assessment that details our own thoughts around what the impact of fees on EU nationals in terms of applications may be alongside the skilled worker route, because we are effectively bringing EU nationals into the payment of fees for the ending of free movement.

Secondly, in terms of SAWS, there will be a pilot scheme next year. We have been keen, though, as we say in other scenarios, that the first priority for any sector, including the agricultural one, should be looking to recruit in the domestic market, to have structures in place to recruit, especially from those who are facing difficulties at the moment in finding employment, and that should not be exempting agriculture from doing that. Certainly, we can see over the past summer, first, we did not issue 10,000 visas under the SAWS scheme, which was the pilot number, and secondly, there was an increased level of success in being able to recruit more domestically.



HOUSE OF COMMONS

We are keen that any scheme must, first, primarily ensure that migrant welfare is protected. This cannot be a route to undermining basic terms and conditions by providing a route to overseas migration. Secondly, there should be clear and firm efforts in place to in the first instance recruit from the domestic market, particularly when we look at the potential levels of unemployment we may see in the early part of the new year due to the impacts of Covid-19 on the economy, with migration being a fallback. We are very clear it cannot be used as a route to undermine terms and conditions, and that is, I am sure, a position you would agree with as well.

Q126 **Chair:** Thank you, Minister, and thank you, officials, for your time this morning. We look forward to the further information that hopefully you will be able to provide in the Chamber this afternoon on some of the points raised earlier about child refugees. It would also be helpful to have some of the further information that you have kindly agreed to write to us on. You did say there would be instantaneous access at the border to all of the Interpol databases. Could you confirm whether that is correct? It seems slightly conflicting with some of the other information we have previously had.

Kevin Foster: It would probably be better, Chair, if we just wrote saying what information would be available at the border. That is a very nuanced question.

Chair: I simply want to make sure that the information you have given us today is accurate. Wider information would be very helpful as well, but could you simply confirm whether the information that you have given us today on Interpol instantaneous access is accurate, and also, as part of the wider reply, could you tell us whether the Home Office is looking at the TDAWN system and what the issues are around that as well?

Kevin Foster: Okay.

Chair: Thank you very much for your time today. That concludes our evidence session.