

European Scrutiny Committee

Oral evidence: EU Withdrawal, HC 763

Wednesday 21 February 2018

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Members present: Sir William Cash (Chair); Steve Double; Geraint Davies; Richard Drax; Mr Marcus Fysh; Darren Jones; Mr David Jones; Kelvin Hopkins; Stephen Kinnock; Andrew Lewer; Michael Tomlinson.

Questions 1 - 101

Witnesses

I: Rt Hon Caroline Nokes MP, Minister for Immigration; Glyn Williams, Director General, Border Immigration and Citizenship System, Home Office.

Examination of witnesses

Witnesses: Rt Hon Caroline Nokes MP and Glyn Williams.

Q1 Chair: Thank you very much for coming this afternoon, Minister. Of course, we are here dealing primarily with questions of immigration. Congratulations on your new appointment. Also, you have our commiserations on being the first to appear before this Committee with regard to the very important Brexit questions that we are pursuing from now, with other Secretaries of State, into the period before 22 March as a phase.

I will ask the first question. Under the agreement that was reached in December on citizens' rights, some EU citizens or their family members in the UK on exit day may not be protected. There are, for example, elderly people who are regarded as not self-sufficient, or so called Zambrano carers, who are third-country nationals looking after dependent EU citizens in the UK. My question is: do the Government intend to extend protection to these individuals, and, if not, what will happen to them?

Caroline Nokes: I would like to kick off by talking about perhaps, but not exclusively, elderly people, who may be in the UK and may have been in the UK for some considerable time, but who are not necessarily exercising treaty rights under the free movement directive. We intend to make sure that the settled status scheme is as straightforward and easy as possible. Anybody who can demonstrate residency for five years will certainly find it an easy process to get through. We are not going to apply any tests about whether they have been working and exercising their treaty rights; it literally is just if they can demonstrate residency.

For those who have not been working, they will not be able to demonstrate any record with HMRC, but they may well have a driving licence, for example, or may well have utility bills showing their address. For them, we are confident that we would be able to demonstrate the five years' residency and that they will be able to go through the process smoothly.

You make a very good point about the Zambrano carers. I am conscious that the Home Secretary has recently written to the HASC about this, and that is certainly something that we will be looking at going forward; it may well form part of our future negotiations. What I would like to emphasise is that we want people who have been living here and contributing to our society, community and economy to find it as easy as possible to apply for and be granted settled status. This is not a scheme that we are setting up with failure in mind. Actually, we want people to be able to succeed in achieving their settled status.

Q2 Chair: I think the Prime Minister might have indirectly referred to this during Prime Minister's Questions today regarding the cost that might be



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involved in ensuring that they were given protection. I do not know whether you were there and heard this. She seemed to suggest that it would not cost any more than applications for a passport would.

Caroline Nokes: It is absolutely our intention that the cost of applying for settled status will be less than the cost of applying for a passport.

Chair: That is very interesting.

Q3 **Mr Fysh:** The Government have said that they intend to extend the protection given to EU citizens to the EEA nationals of Norway, Iceland, Liechtenstein and Switzerland. I was just wondering if you could say a little bit about how you intend to give effect to that commitment. What sort of agreement are we negotiating with the EEA on that, and how will that work in the future?

Caroline Nokes: It is absolutely right to point out that there is a difference in that those who are EEA nationals do not fall within the withdrawal agreement. We are separately negotiating with them, and it is our intention to make sure that they have broadly the same rights as those from within the EU. We are not seeking to penalise those who have been living here and are a valued part of our community. We want people who have been here for, as we have indicated, the five-year period to find this as easy as possible. That is absolutely a matter that is part of ongoing discussions with those countries.

Q4 **Mr Fysh:** What are the timescales that we can expect around those nationals relative to what we are discussing with the EU, and will it be a reciprocal arrangement for our nationals there?

Caroline Nokes: That is a very good question and absolutely what we would wish to establish. In the same way as we went into negotiations with the EU seeking to secure the rights of EU nationals living here and British citizens living in EU countries, it is absolutely our intention to secure a similar agreement for those British nationals who are living in Norway, Iceland, Liechtenstein and Switzerland, and make sure that we can hopefully secure those reciprocal arrangements. What I cannot give you is a definitive time as to when we hope to have secured those agreements, but those negotiations are ongoing as we speak.

Q5 **Geraint Davies:** Moving on to Irish nationals, my understanding is they will not be required to apply for settled status to protect their rights to work, study, access social security, et cetera, in the UK. Will Irish nationals in the UK and dual British-Irish nationals in Northern Ireland be able to rely on the rights enshrined in the withdrawal agreement, including family reunion rights? Will, incidentally, they have free movement across the Irish border?

Caroline Nokes: It is absolutely our intention to secure and uphold the common travel area. The Prime Minister has very been clear on this. These are rights that go back a long, long way, before the EU was ever established, and we are determined to make sure that those living both in the Republic of Ireland and Northern Ireland will see no change at the



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border. They will be able to continue to travel backwards and forwards; they will have exactly the same rights as they do now and indeed have done since the 1920s.

- Q6 **Geraint Davies:** If people from the broader EU have freedom of movement across Ireland, people in Ireland have freedom of movement into Northern Ireland, and people in Northern Ireland into the UK, what barriers are going to be put in place to stop people from the EU simply having freedom of movement into the UK?

Caroline Nokes: The Prime Minister has been very clear on this. There will be no physical border. Obviously we wish to retain the integrity of the United Kingdom, of which Northern Ireland is a valued partner. It is really important to us and the Prime Minister has been very clear on this. I do not know if Glyn wants to add anything, but we are determined to make sure we can have something that retains the constitutional integrity of the United Kingdom.

- Q7 **Geraint Davies:** If I live in Italy, for example, and just moved over to Ireland because I had freedom of movement, and then went over to Northern Ireland and then over to Holyhead, what is to stop me? Presumably you will have to have some sort of physical surveillance metrics. What are you going to do to stop this happening?

Glyn Williams: In future, that EU citizen would be in the same position as is, say, an American, Australian or Canadian who is in Ireland now. They could cross the border and come to the UK as a visitor. If they wanted to reside, work or study, they will require the necessary permission and visa from us. It is the situation that applies now, if you like, to non-EU citizens, and it will apply in the future correspondingly to EU citizens.

- Q8 **Chair:** Can I get this quite clear? The essence of it turns on their Irish nationality, partly because of policy but also partly because of the historical context of the special status given to Irish nationals in relation to the UK. How would you deal with, for example, somebody who is Irish and also French, or Irish and also Italian? How do you work that one out?

Glyn Williams: If they have an Irish passport—

- Q9 **Chair:** Yes, in their own right, irrespective of whether they also have a passport from some other EU country.

Glyn Williams: If they can produce an Irish passport to the Home Office or whoever in the UK is enquiring to see it—

- Q10 **Chair:** I think there are going to be quite a lot of these people, because the Irish have moved around Europe for a long time and there are a lot of people with that kind of dual-nationality. Does the fact that they are Irish give them special status?

Glyn Williams: Yes.



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Q11 **Geraint Davies:** Obviously their children and relatives who then get Irish passports or dual-nationality can have free access to the UK.

Glyn Williams: Yes.

Q12 **Mr Fysh:** As a follow-up, where are we with discussions with the EU on the passenger name records? It seems to me that as we are both outside of the Schengen area, that is one potential solution as long as we have proper records of the names of those coming across our Schengen borders, whether it is in Dublin or in London. Are you worried at all that up until this point the EU seems to have been taking an aggressive attitude about whether it will share those or not? Would it not be in contravention of the Good Friday agreement if they did not share it?

Caroline Nokes: Without wishing to prejudge future immigration policy, there is absolutely no doubt that passenger name records are important to us for the integrity and security of our borders. Obviously these are all matters that we will have to consider as part of our future immigration policy, and there will be both a White Paper and a Bill coming forward. We do not wish Irish citizens who fall under the common travel area, with whom we have a long and deep relationship, to have any impediment whatsoever in coming across the border. That is important to us. Certainly matters like passenger name records are going to be important considerations going forward.

Q13 **Richard Drax:** Minister, you just touched on the White Paper and the Bill. When are we going to see those?

Caroline Nokes: They will be coming forward in due course. You will be conscious that this was the subject of an urgent question a few weeks ago. When they are ready and when parliamentary timetabling allows, we will be bringing them forward.

Q14 **Richard Drax:** Bearing in mind this is probably going to be the key issue by March next year, time is running out. I am assuming the paper will be sooner than later.

Caroline Nokes: Both the Home Secretary and I have been quite clear that it will be coming forward in the coming months.

Q15 **Mr David Jones:** The joint report that was issued in December by the EU and the British Government did not provide for any rights of residence for future spouses of EU nationals who might be resident in the UK at the time of departure. It did provide that that issue should be addressed at a later stage and "will inevitably be linked to the level of ambition of the future partnership between the EU and the United Kingdom". Could you expand on that? What is the British Government's position on that provision?

Caroline Nokes: The withdrawal agreement very clearly set out the position for current spouses, durable partners, civil partners and dependents. Future relationships are obviously something that will be a



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matter for negotiation and discussion, and I cannot prejudge that at the current time.

- Q16 **Mr David Jones:** Yes, but it did refer to the level of ambition, and what I am interested to establish is the British Government's ambition so far as that is concerned.

Caroline Nokes: Immigration policies as they currently stand allow people to bring spouses here. We will be bringing forward an immigration Bill in due course that I hope will include matters about future spouses. It is really important to look at the mechanisms via which people from countries other than the European Union can already bring their spouses to this country. We certainly have a job to do deciding what our future immigration policy looks like and whether the same rules or different rules will apply. That is something that will come forward as part of the immigration Bill, and not today.

- Q17 **Mr David Jones:** Both the European Parliament and the Commission are getting quite animated about this particular issue. The Commission has said that there will be a price to pay in future relations between the EU and the UK if the UK does not budge on this issue, and the European Parliament says that it could actually scupper the entire withdrawal agreement. This is a particularly important issue.

Caroline Nokes: It is a really important issue that we will continue to negotiate on. You will be as aware as I am that part of our decision to leave the European Union is about giving us control over our own future immigration policy and borders, and this is all part of the discussion.

- Q18 **Mr David Jones:** But of course you are granting rights of residence to a vast swathe of European nationals under what is currently proposed. We are talking about very small numbers. Why is this such a sticking point?

Caroline Nokes: The withdrawal agreement is very important to recognise those EU citizens who are currently here, who we value and wish to have certainty and be able to remain here with confidence. Our future immigration policy is exactly that: for the future, and for us to determine. Certainly there are negotiations and discussions to continue with the European Union, but it is important to us that we use this as an opportunity to set our future direction of travel and not for the EU to.

- Q19 **Mr David Jones:** It could, it seems, prove quite a sticking point. The European Parliament is suggesting it could wreck the negotiations. It does seem to be a point of principle that you are using, which is quite possibly a dangerous point of principle to be using.

Caroline Nokes: None of us went into this thinking that the negotiations and discussions with the EU would be easy. Inevitably, we all have our particular views and negotiating points, and those are matters for colleagues largely in the Department for Exiting the EU to discuss on our behalf.



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Q20 **Chair:** Would I be right in saying that we are going to have an immigration Bill anyway and that for practical purposes that will be the decision taken by the House of Commons, from whatever side of the debate they come from, and therefore, that Bill would contain elements that could be amended, and these are the kinds of things that might be involved in it, irrespective of the withdrawal agreement? Would that be right?

Caroline Nokes: Yes. However, we want to, and we will, take very seriously the international commitments we have made as part of the withdrawal agreement. Certainly, our future immigration policy will be a matter absolutely for the House of Commons to agree through legislation.

Q21 **Michael Tomlinson:** Minister, just on that point about spouses and family members, you have quite rightly said there will be a Bill in due course. In terms of a level playing field, surely it will be the intention that UK citizens will be treated in the same way, or there will not be greater rights for those EU members who come after the implementation period and the transition has finished. The intention will not be for their rights to be greater, above and beyond those of UK nationals in relation to spouses and family members. Is that right? Are you able to comment on that?

Caroline Nokes: I absolutely agree with you on that.

Q22 **Michael Tomlinson:** On that same point in terms of a level playing field, so far we have spoken about EU nationals. You mentioned reciprocal arrangements as well. Is it the intention that during the implementation period, UK nationals who choose to move to the EU will be able to remain thereafter?

Caroline Nokes: That is a really important point. We have focused hugely on people from the EU 27 coming here during the implementation period, and actually there has been very little commentary on British nationals who might choose to go over to the EU. These absolutely are matters for the negotiations to determine, but it is a really important point. We must focus not just on EU nationals who are here or might come here during the implementation period, but also our citizens who choose to go overseas.

Chair: Could I just mention that I have a direct interest in this? To declare an interest, if I may, I have three grandchildren living in Spain. For practical purposes, I have a very considerable agreement with what you have just said. We need to protect them and be suitably protective of all those people who wish to come here under the rules as they are.

Q23 **Mr Fysh:** I have just a technical follow-up, Chair. When it comes to rights for spouses, children of other nationals and the reciprocal rights that we might seek for ours, would the granting of such rights be something that would oblige us to equal treatment of other nationals who live here, who might not be from the EU, for example? Would there be an obligation on us, under equalities laws or other UK laws, to extend



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those rights more broadly?

Caroline Nokes: I will let Glyn answer that one.

Glyn Williams: I will try. It is true that the Equality Act prohibits discrimination on grounds of nationality except if there is an objective justification for so doing. We would consider that because we have reached some agreement with the EU, as set out in the joint report and to be enshrined in the withdrawal agreement, which concerns matters like family reunion rights, that those would be protected and insulated, if you like, from an equal treatment requirement.

Q24 **Richard Drax:** The December agreement says that there will need to be a mechanism to incorporate future changes to EU rules on the co-ordination of social security systems. What mechanism is envisaged, and how far have you got in the negotiations?

Caroline Nokes: The implementation of social security systems will be a matter both for DExEU and the Department for Work and Pensions to decide. Certainly, as negotiations proceed, we want resolution on all such matters, and indeed on mechanisms that might be available for dispute resolution. I am very conscious that you are seeing my colleague, Minister Walker, tomorrow, and these are matters that they will be negotiating on our behalf.

Glyn Williams: Just to be clear, there is an existing co-ordination mechanism under Regulation 883/2004 for social security issues such as, for example, pensions and healthcare. What the December agreement does is basically perpetuate that in respect of the citizens within the scope of the agreement. There is an existing mechanism that we will continue to participate in.

Q25 **Richard Drax:** Is there any danger of this binding us to EU law through the back door, as it were, when we have left?

Glyn Williams: No. It binds us to the provisions that we have agreed to in this agreement, which is basically saying that where you have worked in another member state, for example, and have paid social security and pension contributions there, and then you have moved back or to another member state, those contributions will not be lost; they are accumulated through this central co-ordination mechanism. In this example, you are paid your pension that is due to you based on your previous contributions regardless of which member state they have been made in.

Q26 **Kelvin Hopkins:** We are told you are designing a new system from scratch to handle the 3 million-plus applications for settled status that are expected to be made by EU citizens and their family members in the UK. Your predecessor as Immigration Minister told the Lords EU Justice Sub-Committee in December that he expected "very soon after Christmas to be able clearly and publicly to outline exactly what that system will be". I have three questions. Can you tell us when you expect the new system to go live, what documentation EU citizens will need to provide, and how



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long it will take to complete an application, given your predecessor indicated he thought it would take literally a few minutes online?

Caroline Nokes: He is absolutely right that we are designing a digital system from scratch that will be completed online. There will be, it is fair to say, different levels of time taken, and certainly different levels of complexity. We had a question earlier from the Chair about people who do not necessarily have HMRC records. Certainly for somebody who has a National Insurance number and an up-to-date connection with HMRC, we anticipate this to be very smooth and very quick.

There will be more complicated cases of people who do not have those records. We are currently designing, testing and working with user groups to make sure that the system is as simple and straightforward as possible. That is critically important. It has to be something that can be done on a phone or a tablet. It has to be something that people find user-friendly and easy to use. What we know of digital systems is that you have to design them in as straightforward and intuitive a way as possible. We very much hope that after testing, it will be going live on a voluntary basis—it is important to emphasise that—from the autumn.

Q27 Kelvin Hopkins: Your predecessor said soon after Christmas, so it is taking a bit longer than you thought, presumably. This is a simple question, and you touched on it. There are some applicants and some of us of a certain age who are less IT-literate than others. How will you be able to help those who are not IT-literate?

Caroline Nokes: There will still be the possibility for those who cannot use technology at all to be able to apply by paper means. That will necessarily be an awful lot slower. I sometimes take issue with the slightly ageist assumption that those who are older cannot use IT; both my parents are 75 and they have a phenomenal capacity not only to send me endless emails but also to buy all sorts of things online. It is not necessarily an age thing.

I do think we have to be mindful, and it is really important when designing any digital system, to think particularly of those who might have accessibility issues, for example those who might be visually impaired or have learning difficulties. We know from previous government digital projects that if you design something for somebody with learning difficulties, then actually the whole population finds it easy to use and intuitive. That is a really important component: that we have to make them as straightforward as we possibly can.

Q28 Kelvin Hopkins: There is one more question from me in this little group. Will the evidential requirements and application process be the same for EU citizens applying for settled status and those applying for a temporary residence permit?

Caroline Nokes: That is a good question. I might have to ask Glyn to answer that.



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Glyn Williams: For both types of person, there will be three things they have to satisfy us on. First, are you European? Secondly, how long have you been resident? Thirdly, we want to satisfy ourselves as to whether they have any criminal record. It will be those three areas. The only difference is whether someone has accumulated five years' residence or not. If they have five years' residence, they will immediately get what we are calling settled status or indefinite leave to remain. If they have less than that, they will be given permission to stay on in the UK until such time as they have the five years, and they will then get settled status.

Q29 **Darren Jones:** Are you able to say who is building the system for the Government?

Caroline Nokes: We are dealing with them now.

Q30 **Darren Jones:** It has not been outsourced to an external company to build.

Glyn Williams: I am just hesitating, because the Home Office has arrangements. We have not put a new contract out for this. We may be using our existing contractors. I can check and write to confirm that.

Q31 **Darren Jones:** The only reason I ask is because I have had a lot of casework about the childcare system, which does not work. I wonder what mitigations you have put in place for citizens who find that the computer system either crashes or does not do what you say it is going to do.

Caroline Nokes: That is why we are going through a significant process of testing before we launch this. It is really important to me that we make it work. I am conscious this is a huge number of people who we wish to go through the process in two years. What you can absolutely guarantee is that they will not do it in a smooth and uniform fashion. As I have often repeated, if they were all to do it in a completely structured way, that would be 5,000 applications per day. You and I might recognise that it is very likely to be an enormous number at the beginning, a trickle through the midway point and then a peak at the end.

What we are hoping to do is manage that flow and look at whether it is possible to implement cohorts at a time, so that we avoid the peaks and the troughs. I am really conscious that we have to be able to have something that will be robust and that will not fall over should there be massive demand on day one. I look at some IT schemes, and I would point in particular to voter registration, which actually demonstrated just last year that it could cope with enormous peaks on specific days. It is absolutely imperative that we have a system that works, which is why we are going through a testing process that is as rigorous as it is.

Q32 **Darren Jones:** Thank you, Minister. I am conscious that colleagues said the same about the childcare system and it still did not work, so I would



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hope you would keep pushing that message to your development team. If, as we expect, there is a peak towards the deadline, what would be the Government's position if people are unable to make their application on time because the system fails?

Caroline Nokes: That is a really important point, and we should not just be considering people who cannot make an application because the system fails; there may well be applicants who for good reason have not been able to apply within the two years, for example through ill health. We do not intend to be draconian in this. Obviously, if there is any sort of problem with us managing demands on our own IT system, of course we will have a proportionate response to those who have not been able to apply within the two-year period.

Q33 **Darren Jones:** There has been talk about having an assisted digital service. What does that actually look like?

Caroline Nokes: I would struggle to describe that.

Glyn Williams: This goes back to the point that was made earlier on about people who may not easily be able to apply online. First, there will be a telephone call centre service to give them help, if they are online, as to how to go through the process. We are also considering making application terminals, if you like, available in public places such as libraries for those who do not have access to their own computer, for example. It will be a service to help people through the system, either over the phone or to point them to a place where they can make an application from.

Darren Jones: When you write to the Committee to confirm who is doing the website, could you also confirm who is doing the telephone service and the capacity-building for that? I would be interested to see that detail. Thank you.

Q34 **Kelvin Hopkins:** Minister, the Government have said that it will not be necessary for EU citizens to prove that they have comprehensive sickness insurance to obtain settled status. Can you clarify the circumstances in which EU citizens in the UK would need comprehensive sickness insurance?

Glyn Williams: The free movement directive provides that those EU citizens here exercising treaty rights who are not workers and not economically self-sufficient—say, for example, students or spouses who are not working—should have comprehensive sickness insurance. The citizens' rights agreement that we have done to a large extent follows the free movement directive.

We have said that as a matter of policy, we will not make that a requirement of obtaining status under the settlement scheme, because there are people who have been in this country for some time who have found that in practice they have not had to furnish the NHS with comprehensive sickness insurance; they have been treated. We have had cases of them applying to the Home Office and they have not been



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able to satisfy this requirement. Moving into this new world, as it were, we have said that we will disapply that requirement.

Q35 **Kelvin Hopkins:** Would this be made clear in the withdrawal agreement?

Glyn Williams: No. We have stated this on the record as a matter of UK policy. The withdrawal agreement allows us to be more favourable and more generous, as it were, than the minimum standards in the agreement. This is one example of that.

Q36 **Kelvin Hopkins:** Minister, your predecessor as Immigration Minister recognised that there needed to be, in his terms, a big culture change in the Home Office, with the presumption being to grant status. What steps are you taking to mitigate the risk that ineligible applicants may slip through the net?

Caroline Nokes: Do you mean may slip through the net in the sense that they do not get granted?

Q37 **Kelvin Hopkins:** No, that they do get granted, but some may slip through the net that are not really eligible.

Caroline Nokes: We have to be mindful that people may seek to get through the system when they are not entitled, but it is important to us that we make it clear that this is a system that is welcoming, and that we are not going to be seeking to set people up to fail; we want them to succeed. Part of the process will be them producing a valid identity document, and part of the process will be demonstrating that they do not have a significant criminal record. We have to be mindful that some people may seek to exploit the system and get through, but actually we are very conscious that this is a system that is set up to make sure those 3.3 million EU citizens who are here already and living lawfully succeed and get through the process as smoothly as they can possibly can. Of course, we have to be mindful of those with criminal records.

Q38 **Kelvin Hopkins:** Moving on to associated questions, how will employers, landlords and public service providers know that an EU citizen is lawfully resident in the UK after 29 March 2019, given the time it would take to process these applicants for settled and temporary status, and indeed to register new arrivals?

Caroline Nokes: The anticipated two-year implementation period is an important component. What we certainly know is that in that two year period, there will be people who have not yet applied through no fault of their own. Not everybody is going to have settled status on day one; that is abundantly clear. The two-year implementation period is important. Once they have achieved settled status, we anticipate there being a digital record of that. There is not going to be an ID card issued, but there will be a digital record that those with settled status can show to landlords, employers and to banks if required.

Q39 **Kelvin Hopkins:** How are the Government going to help employers,



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landlords and others to be aware that the rights of EU citizens are protected during the two-year grace period?

Caroline Nokes: There is a very important communications message that we have to give to employers, business and landlords. We want them to understand that the 3.3 million EU citizens who are here are able to continue living and working and are a valued part of our community. It is important that we are repeating that message whenever we have the opportunity.

Q40 **Kelvin Hopkins:** Will there be any sanction if there is evidence of discrimination or unfavourable treatment of EU citizens?

Caroline Nokes: If there was discrimination, that would be unlawful.

Q41 **Kelvin Hopkins:** Indeed. The *Times* reported on 12 February that work on a separate registration period for EU citizens arriving in the UK after Brexit had “barely begun” and almost certainly, as they put it, “would not be ready in time”. Do you expect to have two registration schemes up and running by the end of March 2019, one for EU citizens already in the UK on exit day and one for EU citizens arriving after exit day?

Caroline Nokes: That is an important point. EU citizens who come here after we have left the EU will have done so knowing that we are leaving the European Union and will have different expectations to those who have been here for some time and are entitled to settled status. We are designing—I hesitate to use the words—two systems. We are designing a system for those with settled status, but also in parallel a system that will enable those who come here after 29 March to register. There will be common components, as you might necessarily imagine, but there will also be different elements. We are building that at present.

Q42 **Darren Jones:** On proving whether someone has a criminal record, will your system do the criminal records check for the user, or will the user have to go somewhere else to get their DBS certificate or whatever it is? Is there a separate process, or is it integrated?

Caroline Nokes: The question will be asked of the individual, and there will have to be an element of checking. I am not sure how that is yet going to work, so I will defer to Glyn on that.

Glyn Williams: They will not have to go to the Disclosure and Barring Service. They will be asked as part of the application process to make a declaration, and the Home Office will run checks against its own and police databases.

Q43 **Darren Jones:** They will be asked the question, “Are you a criminal: yes or no?”

Glyn Williams: I am not going to say what the exact question is on the form.

Darren Jones: But it will be a self-declaratory tick-box.



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Glyn Williams: Yes, but obviously if you lie on the form, there will be consequences for that.

Q44 **Geraint Davies:** I want to ask whether the Government had ruled out any movement of labour concessions in future trade deals. If they have not, would you be using the same sort of system, where we give a certain allowance of immigration from a country with which we struck a new trade deal? Have you actually ruled out any freedom of movement in the future?

Caroline Nokes: That is absolutely a matter both for future immigration policy and with regard to movement of labour with EU countries. It is absolutely part of the negotiations that my colleague, Minister Walker, will no doubt wish to expand upon tomorrow.

Q45 **Geraint Davies:** But at the moment, there is no hard and fast rule from the Home Office to say that future trade deals cannot allow extra immigration in exchange for other trading concessions.

Caroline Nokes: I am not going to speculate on future immigration policy.

Q46 **Geraint Davies:** It might be the case that extra immigration was let in as part of a trade deal.

Caroline Nokes: I cannot reiterate further: I am not going to sit here and speculate on future negotiation positions as part of future trade deals.

Q47 **Geraint Davies:** In other words, extra immigration in trade deals has not been ruled out.

Caroline Nokes: I do not have anything to add to my earlier answer.

Geraint Davies: That is clear.

Q48 **Chair:** If I could ask a question relating to numbers, how many do you expect will be likely to come in addition to the 3 million we have already discussed? I know that it is almost impossible to answer the question precisely; it goes without saying. Are you making contingency plans for a significant number? By any reasonable standards, from what I am hearing, it seems to me that we are being extremely generous in our attitude, although sometimes, listening to the emanations of Mr Barnier and others, you might think that we were trying to impose unnecessary restrictions on people. I congratulate the Government on that. However, the question is also about how many people would be likely to come in. Do you have a sense of that? If you do not want to answer that question, perhaps Mr Williams can; it is up to you.

Caroline Nokes: It is fair to say that there is some important work going on with the Migration Advisory Committee at the moment looking at flows of EU workers, the areas of the country that they are most likely to work in, and the sectors of the economy you are most likely to find them working in. We expect the MAC to report in September. I think you



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answered the question yourself: it is impossible to speculate how many more or how many fewer people from the EU might come here over the course of the next two years.

The point you made is absolutely valid. We are being very generous. We are making it very clear that we wish our European citizens who are already living here to continue doing so. We are not imposing restrictions after the date of withdrawal, but we will expect people who come here for more than a visit to register. It really matters that we get the answers to these questions right. It is worth reflecting that the immigration statistics are out tomorrow, so I am not going to pre-empt them, but when you look at the last set of statistics, the number of people coming here from the EU was down.

Q49 Chair: Of course, the truth is that we are dealing with UK apples and EU pears. The systems for acquiring health benefits are very significantly different, and the administrative arrangements and the payments are different as well, because we have a National Health Service and all that sort of thing. For practical purposes, it is going to become rather a hot potato, because a lot of people may think there are going to be a significant number of people, and very many more than people anticipated. We saw what happened with Tony Blair, when they allowed everybody in and had this enormous increase. If we are being properly sensible about the degree to which we are being sensible and generous, that is one thing. If it gets disproportionately out of kilter, then that is another story. Do you have any comment on that as a matter of policy

Glyn Williams: Sorry, Chairman. Does your question relate to the number of EU citizens who may come during an implementation period?

Chair: I am speaking about that in relation to this whole question of health and sickness benefits, and the extent to which we could see a surge in health tourism. That is really what I have in mind.

Glyn Williams: Some people said there might be a surge before Brexit in order to benefit this agreement. We have not been seeing that. In fact, we have been seeing the opposite.

Chair: I think you have answered my question.

Q50 Geraint Davies: Am I right to say that, in the transition period, both people could come from the EU and work, settle and stay here, and, similarly, people from Britain can go to the EU in the next two years and settle there? If they do that, do they gain some sort of EU citizenship they can keep? Millions of people might want to go, work for a year, then come back and go back again.

Caroline Nokes: It is important to make the distinction with people who come here before 29 March next year. After 29 March, they will not be subject to the same rights as we have set out in the withdrawal agreement. That of course is a matter of ongoing negotiations with the EU. You have to look at the evidence, which is that immigration from the



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EU to this country is down. I am looking for the figures. EU net migration was 107,000, which was down by 82,000 on the previous year. It is a significant reduction.

I do not have a crystal ball. I cannot predict what might change over the next 12 months and, as I said, the migration statistics are out tomorrow. Regarding the picture you paint of people suddenly disappearing off to another EU state for a year hoping to accrue those rights, you have to remember that somebody who has only been here a year will have to earn those additional four years before they are entitled to settled status.

Q51 Chair: There is an issue here. I do not want to press you too hard on the legal question of sovereignty and the European Court of Justice, but it is important to get some sense from you of where this is going. The Government have said that they will establish "an administrative review mechanism to quickly resolve any case-working errors", and that applicants will also have recourse to "an independent judicial authority, as now".

It goes on to say, "This will mean that EU citizens and their direct family members will have recourse to a statutory right of appeal, allowing the UK courts to examine the legality of the UK authorities' decision to refuse or revoke status, as well as the facts or circumstances on which the decision is based. They will be able to remain in the UK pending conclusion of the appeals process, unless a deportation decision is made, or the individual is in the UK in breach of a deportation or exclusion order". You can see where I am coming from.

The current discussion post Florence, which I have discussed with the Prime Minister relating to the question of EU structures and continuing European Court jurisdiction, is to say the least a hot potato. I wonder whether the reference to the UK courts has in any way been modified by development in policy, because if it were the case that the European Court were to be the ultimate appeal in relation to questions of this kind, then we are moving into a completely new dimension. At the moment, unless you correct me, I understand it to be that the UK courts will examine the legality. What is your comment?

Caroline Nokes: It is my understanding as well that it will be UK courts that will determine the legality. They will, however, be able to refer to case law, and as the ultimate arbiter they could refer matters to the European courts. However, this would only be for a period of eight years.

Q52 Chair: We are getting into the arena of the ECJ, about which we cannot spend the rest of the afternoon talking. I do point to the fact that there are big issues here. Perhaps Mr Williams could comment on this as well. The concept of the European Court and the issues relating to rights that people have accrued under a pre-exit situation even under the withdrawal Bill is a matter that gets into the entrails of this question of who calls the shots judicially at the end of the day.

We may have regard to the European Court judgments, but the question



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is whether or not we are ultimately going to find that in very sensitive matters of this kind, including citizens' rights and the accrued benefit that come as a result of their coming here, the European Court is not excluded. The next question is simply about whether you have been given a briefing on the question of dispute resolution. There is no comment or statement as yet, even in the speech the Prime Minister gave at Munich, about the issue of dispute resolution.

I will just ask you that one question. Is the department aware that there are serious discussions going on about the issue as part of the negotiations, which would effectively mean that we would end up, if we had our way or if they listened to us, with a dispute resolution mechanism along the lines that Martin Howe QC, I and others have put forward? This would be a little like the arrangements you see with the EFTA court, but not for the same premises. Effectively, therefore, are you aware of a dispute resolution discussion that is going on at the moment that would not give exclusive jurisdiction to the European Court in matters of this kind?

Glyn Williams: Chairman, could you clarify? Do you mean a dispute between the UK and the EU as to the meaning and the way we have implemented the agreement, or are you talking about a private citizen?

Q53 Chair: This is how it will happen in practice, I rather think. The EU citizen involved in all this administrative procedure will end up having a dispute about whether or not they are entitled to a particular benefit or so on. Therefore, they would, on the face of it, at present have the right to be able to go to the courts and then to expect a reference to the European Court in relation to their own personal circumstances.

This does not just apply to health benefits; it could apply to trade issues and all sorts of things. What I am asking is whether there is a serious interdepartmental discussion going on in relation to the question of dispute resolutions for issues of this kind, whether it is citizens or companies, so that we do not end up with exclusive European Court jurisdiction. I will just remind you what the Prime Minister said only two days ago. She referred to our "sovereign legal order". That suggests to me that we are not saying that the European Court would have exclusive jurisdiction. All I am asking you is whether you have had serious discussions about who ultimately calls the shots judicially.

Caroline Nokes: My understanding is that we plan to negotiate an approach to enforcement and dispute resolution that meets the key objectives of both the UK and the EU. The short answer to your question is yes.

Q54 Chair: It sounds as if there is a question mark at the end of your answer.

Glyn Williams: There is state-to-state dispute resolution. That is a mechanism that is still under discussion between the UK and the EU, which was not agreed in December. There is then the question of an EU citizen, or for that matter a UK citizen in Europe, wanting to enforce their



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rights as they see them under the agreement. That is set out in the agreement we reached in December in paragraph 38.

- Q55 **Mr David Jones:** I have a related question. During the transitional period, those EU nationals who were here prior to exit date would of course have certain rights, which would be conferred by EU law. If those rights were to be changed during the transitional period, I take it they would enjoy those additional or varied rights during the transitional period. Is that right?

Caroline Nokes: The citizens' rights for those who have been here for five years are set out in the withdrawal agreement very clearly. We can be more generous, and indeed the UK Parliament could, and I would argue would not, choose to overturn that withdrawal agreement.

- Q56 **Mr David Jones:** I think you misunderstand me. The point I am making is that if citizens' rights for EU citizens generally were to be changed as a consequence of a change in EU law during that transitional period, those EU nationals who were resident in the UK prior to exit date would enjoy those new additional rights. Is that right?

Glyn Williams: There are negotiations going on at present with the EU about how an implementation period as requested by the Prime Minister in her speech in Florence would work exactly in terms of those sorts of questions. I am sorry not to be more helpful, but that is under discussion.

- Q57 **Mr David Jones:** My concern is that we might not have a full understanding of what rights those EU nationals have on exit date for the duration of the transitional period. If there were a dispute over those rights, presumably those would be referred to the European Court of Justice during the transitional period.

Glyn Williams: We have so far agreed the December document relates to those EU citizens who were in the UK, or Brits in Europe, by the specified date, which is the date of the UK's withdrawal. Paragraph 38 sets out what would happen in those circumstances as regards to the relationship with the UK courts. First, there would be a process with the Home Office to try to sort out administrative errors.

- Q58 **Mr David Jones:** I understand that. I am just interested in the ultimate jurisdiction. I take it that that would still reside with the European Court of Justice during the transitional period.

Glyn Williams: There is a voluntary reference mechanism set out in paragraph 38. The UK courts, having had regard to whether there is existing European case law to resolve the question, may refer the question to the European Court of Justice, or they may not; they may feel perfectly competent to take a decision.

- Q59 **Mr David Jones:** Yes, but the fact remains that the jurisdiction would reside within the European Court of Justice during that period. They



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would have the relevant jurisdiction during the transitional period.

Glyn Williams: As set out in paragraph 38.

Q60 **Chair:** Are you referring to the words "have regard to"?

Glyn Williams: I am just referring to what is written here.

Q61 **Mr David Jones:** It is potentially the case that EU citizens' rights could be extended or changed in some way during the transitional period, and any dispute about that could be referred to the European Court of Justice during the transitional period.

Glyn Williams: There are two different things. It is theoretically possible that during a transitional period, the European Union could make amendments to the free movement directive. That is one thing. Let us say there was a dispute referred to the European Court by a French court that had nothing to do with this agreement but which referred to the free movement directive. The European Court could make a judgment that is considered to be relevant to some of the provisions here as regards family reunion or criminality.

Q62 **Mr David Jones:** The simple answer to my question is really "yes", is it not?

Glyn Williams: It is a complicated question. I am not trying to be difficult; it just does not necessarily have a simple answer.

Chair: Could I help you a little? We have a withdrawal Bill going through the House of Commons at the moment, Clause 1 of which unequivocally states that the European Communities Act 1972 is repealed. That is uncontentious as far as the current proceedings in Parliament are concerned. It has been through the House of Commons, the elected chamber. There is no evidence at the moment, as far as I am aware, that there is any attempt in the House of Lords to change that.

The question of the European Court is exclusively tied in our domestic law to Section 3 of the European Communities Act 1972. Therefore, if in fact you are relying on case law and/or any development in that case law, or for that matter any new provision that would require or enable the European Court to take jurisdiction, and if you have repealed that provision in UK law, the effect of that means that you cannot then refer to a court that, for the purposes of the treaties, first, no longer applies, and, secondly, is not effective in the UK law in our domestic courts. I just leave it with you that this is on the face of it a complicated question, but for me, it is a terribly simple question: you repeal the 1972 Act, including Section 3, which really means that you are now in a position where you would not expect the European Court to be given that jurisdiction.

Mr David Jones: Unless of course a provision is made in the transition agreement and the subsequent legislation.

Chair: That is absolutely the case.



Mr David Jones: That is what I am interested in.

Q63 **Chair:** Indeed, but the question that relates to that is whether in fact there is a sufficient power to be able to make that kind of change in our law, given the fact that we have already passed the legislation under the withdrawal Act on its own account. David is right that this is an issue that we really need to resolve. Do you have any further thoughts?

Caroline Nokes: I do not think we can add anything more at this point. If you want us to write to you afterwards with some considered legal opinion, then that would be better.

Mr David Jones: That would be really helpful.

Chair: That would be very helpful. Thank you very much.

Q64 **Steve Double:** Of those that applied for settled status or temporary status, there will be those who are refused, which opens up the possibility of an appeal. Will legal aid be available for those people to fund their appeal process?

Caroline Nokes: That would presumably depend entirely upon their fiscal circumstances.

Q65 **Steve Double:** Would it be available for those that would qualify?

Glyn Williams: I think the normal legal aid rules will apply. I am not an expert in what they are. We are not trying to make any particular carve-outs from the normal application of those rules.

Q66 **Steve Double:** The possibility is that it would if they qualified.

Glyn Williams: Yes.

Q67 **Darren Jones:** I just wanted to dig in a little to the figures, if I might. We have the 3 million figure. Just so I am clear, is that the 3 million EU citizens who are currently here who we anticipate will apply for settled status? Is that right or is that wrong?

Caroline Nokes: No, that is right.

Q68 **Darren Jones:** The Chair asked earlier about estimates for those who might apply for temporary status, and obviously that is a hard number to estimate. In trying to estimate that figure, are we doing it based on any particular outcome from Brexit, or are we modelling against all of them? For example, if we have, as some of us call it, a hard Brexit and fall out on to WTO rules, there might be an expected larger decline in the number of EU nationals seeking temporary status compared to if we stayed in the European Economic Area, for instance. Are projections based on various outcomes or are they based on a particular outcome?

Glyn Williams: All that is being said here is that it is estimated that there are about 3 million—some say 3.3 million and it depends whether you include Irish nationals or not—EU citizens resident in the UK. We do not know how many of those are going to apply, in the sense that it



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depends on whether they decide to remain in the UK. We hope they do, but that is the maximum number we are expecting to apply.

Q69 Darren Jones: We have the 3 million maximum for settled status and we have X for temporary status.

Glyn Williams: No, sorry. If I may, there are, let us say, 3 million EU citizens in the UK. Of those 3 million, some will already have been here five years and, therefore, will immediately qualify for settled status. Some will have been here less and they will be given temporary leave to remain in the UK and they can come back when they have done five years and get settled status. The 3 million consists of those who will have five years and those who have not.

Q70 Darren Jones: Is that including projections of those who might come between now and exit day? When was the 3 million figure the snapshot?

Glyn Williams: That has been the estimate for some time and we have not made any other projections.

Q71 Darren Jones: It is fair to say, then, that there will be a bucket of EU citizens who will come, who are not in the current projections, but who are hard to estimate for.

Glyn Williams: Yes, but as the Minister has pointed out, over the last year more have been leaving than coming.

Q72 Darren Jones: Sure, but there will still be that bucket, will there not?

Glyn Williams: Yes.

Q73 Darren Jones: We have those who are here and those we expect to come. We touched upon it earlier, but for those people who come but do not apply on time, will those citizens have a particular legal status and how will they be treated after the end of the two-year period, if they were here before but did not apply on time?

Caroline Nokes: As I said, we anticipate having a proportionate response to that. We do not intend this to be a system that punishes people who are here, quite properly exercising their treaty rights up until the end of the implementation period, but we do expect those who come here during that period to register, unless they are only coming for a visit. It is, of course, correct to say that at the end of the implementation period, for those who cannot demonstrate their status, there is the suite of compliant environment policies that we have in place that they would then need to be able to demonstrate to landlords, to employers and to banks that they had a right to be here. We want them to apply for their settled status in good time and encourage them to do so and, after that time, it will begin to be an imperative for them to make sure, in order that they can continue working, renting property, that they do so.

Q74 Darren Jones: What does "proportionate response" mean?



Caroline Nokes: I have been quite clear about this. We want people to know that they are welcome here. We do not intend to be issuing penalties in any draconian fashion. It is really important that we react so that people are given help, advice and encouragement to make sure that they have applied for settled status and achieve that.

- Q75 **Darren Jones:** Okay, but with respect, Minister, when you say, "I have been clear" but then you are not clear, it does not mean you have been clear. For these people who will want some reassurance, it might be useful, as we get nearer to that, to set out what legal status, if any, those EU citizens might have if they have not applied on time but did arrive before the end of the period.

We have those buckets of citizens. Do you think that two years will be enough, or are you mitigating a risk by, perhaps, having—I do not want to call it an implementation or transition period—an extension of the two-year period if you find, at the end of those two years, that you just have a number that is unmanageable, which has not been able to be processed on time?

Caroline Nokes: One of the motivations for wanting to start a voluntary scheme ahead of that is to mitigate against exactly that. It lengthens the period, and certainly when the scheme is open I hope to see people applying earlier rather than later.

- Q76 **Darren Jones:** There will be flexibility in there, will there? For example, I am assuming you will have a smaller resource for post than online, but if citizens prefer to apply by post, will there be flexibility in the system to be able to deal with that choice of application type?

Caroline Nokes: We want people to apply digitally and, in today's world, that is not unreasonable. When you look at, for example—and I would cite this, would I not?—online passport applications, which people have discovered are much quicker, easier and generally a more satisfactory way to do business, I anticipate that the vast majority of people will be able to apply digitally. It is only in extremis that we expect people to have to use other means, but, as Glyn pointed out, there will be assisted telephone lines to help people through the process. That certainly is what we wish to achieve and when you look at the digitisation of government systems, whether it be passport applications, driving licence applications or universal credit, these are systems that are proving the vast majority of users can do them successfully.

- Q77 **Darren Jones:** Presumably, the Government will report, through that period of time, on how it is going and what changes might need to be made, if you need to provide that flexibility towards the end, will they? In terms of the process and the number of applications, if it is going well or if it is not going well, will you report that information during the two-year period?

Caroline Nokes: I see no reason why we should not.



Darren Jones: I would agree. Thank you, Minister.

Q78 **Chair:** We now move on to the question of enshrining citizens' rights in primary legislation. In the Florence speech, the Prime Minister acknowledged that there were concerns that, over time, the rights of EU citizens in the UK and UK citizens overseas will diverge. She went on, "I want to incorporate our agreement fully into UK law and make sure the UK courts can refer directly to it".

It has been suggested by academics that the commitment to enshrine the phase one deal on citizens' rights in primary legislation—the Withdrawal Agreement and Implementation Act—and to provide within this Act that there will be provision that will "prevail over inconsistent or incompatible legislation, unless Parliament expressly repeals this Act in future" is, as they put it, "constitutionally contentious". First, do you agree? Secondly, can you explain how it would be possible under UK constitutional arrangements to disapply inconsistent or incompatible rules and provisions?

I ought to add that we have been in correspondence with the Prime Minister herself over the question of the disapplication of legislation, which is on our website and on which we are going to be sending her a further letter very soon. This is, if I may say, quite a big area and I would be grateful if you could answer the question, but if you felt that that should be absorbed, in some way, into taking legal advice from the Home Office lawyers so as to answer the question with the degree of accuracy that we would expect in this Committee, then we would probably understand that. First, would you like to answer the question? Do you agree that such an arrangement as is proposed is constitutionally contentious and then, if you can, please explain how it would be possible, under UK constitutional arrangements, to disapply inconsistent or incompatible rules and provisions?

Caroline Nokes: Presumably because Parliament remains sovereign, so we could repeal it. We take our international commitments—and I regard this as an international commitment—very seriously, but we have said that the citizens' rights will be enshrined in UK law. We could repeal that. Parliament could repeal that. You will know better than I that no Parliament can bind its successor, but we believe that our Parliament is sovereign and that UK courts should determine control over UK law.

Q79 **Chair:** Mr Williams, do you have any further thoughts on that?

Glyn Williams: Not really. It is set out in paragraph 36 of the agreement. Neither the Minister nor I are constitutional lawyers and if you are in correspondence with the Prime Minister over this, Chair, it may be better to pursue that correspondence through that channel.

Q80 **Chair:** It might be better, if I can put it this way around or, shall we say, parallel to that, for the Home Office legal adviser to provide an answer to this question in writing to us, so that we are able to assess the basis on which that decision and that policy has been devised as a matter of law,



which really refers back to your previous point. I do feel that it is one thing to expect Ministers, if I am being quite blunt, to come before a Committee, but not to be, if I may say, a judicial authority. The nearest we can get to understanding the fundamental basis of the decision that has been taken in this area of law comes from legal advisers whose advice has then been adopted by Ministers, including the Prime Minister. What I am interested in is whether you could give us the legal advice that underpins the questions that I am putting.

Glyn Williams: I do not want this to sound like an evasive answer, but the Home Office does not own the whole of the withdrawal agreement; that is a matter for DExEU and I, personally, do not feel competent to give you answers on these matters.

Chair: If I told you that it is my understanding that neither the Attorney General nor the Lord Chancellor was invited to give advice on the question of the striking down of Acts of Parliament, which became very contentious and led us to put a letter to the Prime Minister, to which she replied on 9 January, you will understand that this comes through in a way that really needs to be resolved. The Home Office advisers must have been involved in this, or DExEU. I will leave it on the table at that point, to ask simply for an interdepartmental discussion, the result of which is that we receive advice to this Committee in relation to the questions that we put. Thank you.

Sitting suspended for a Division in the House.

On resuming—

Chair: Thank you very much. We would have moved on to another set of questions relating to the European Court, but we have just had an informal chat and we believe it would be preferable, given what we have already discussed, to park that one, but to ask for your legal adviser to let us have the advice that they are able to provide within the Home Office. We would also tell you that because of the interaction with other matters, which I did touch on, relating to the Prime Minister and the letter that is already on our website, et cetera, that these questions are effectively interdepartmental and are within the framework of the decision-making process in Number 10 as well as in DExEU and other departments. We think the best way to go about it is to rely on the fact that the Prime Minister has indicated that she would be prepared for us to have access to the legal advisers who have been putting together all this, so that, as a Committee, we can then, through our own legal advisers and ourselves, sit down and go through the analysis so that we can be satisfied, rather than to spend a huge amount of time this afternoon dealing with these matters with you. If I may say—and I picked this up during the discussions in the lobby—we are very glad to say that we think the evidence that you have given has been extremely helpful. We are now moving on to another set of questions, but so far, so good.

Q81 **Kelvin Hopkins:** The UK will be required to entrust oversight of EU



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citizens' rights in the UK, after Brexit, to an independent national authority. When will you reveal details of this independent authority?

Caroline Nokes: Citizens' rights obviously go wider than the specific immigration remit that I have, but I am sure that colleagues from DExEU, amongst others, will be able to expand on this in due course. I cannot, at the current time.

Q82 **Kelvin Hopkins:** You could not tell me, at this stage, what progress there has been in determining the role and functions of the independent authority. These must be set out in the withdrawal agreement, as I understand it.

Caroline Nokes: Yes, and it will be reflected in the withdrawal agreement.

Q83 **Kelvin Hopkins:** What powers and resources do you think it should have to do the job properly?

Caroline Nokes: As I have said, that is going to be set out in the withdrawal agreement. It would be invidious of me, at this point, to determine what resources a body that has not yet be set up should have.

Q84 **Kelvin Hopkins:** It is clearly the EU that would want this body to be set up, so that it would be genuinely independent and so on, and no doubt they will have some say. You do not necessarily have to take their advice, but no doubt the EU will have some say in what they think it should be like.

Caroline Nokes: I am sure they will have a view.

Q85 **Stephen Kinnock:** In her Florence speech, the Prime Minister said that the existing structure of EU rules and regulations would apply during an implementation period of around two years. Do you agree with that statement and do you agree, then, that it would apply to all of the issues we are discussing today, and that, in essence, it is a continuation of the status quo?

Caroline Nokes: Yes, I absolutely agree that an implementation period, particularly when it comes to looking at new immigration rules, is necessary. But the Prime Minister has been very clear that EU citizens coming here during that implementation period will be expected to register. It is going to take us in the region of two years to get the EU citizens through the settled status scheme and registered, and it is important that we allow ourselves adequate time to do that.

Q86 **Stephen Kinnock:** Why do you think it is, then, that in China the Prime Minister seemed to be rowing back from the statement she made in the Florence speech, where she said that people who came when we were still a member of the EU had certain expectations, but now for those who come after March 2019 it will be different, because they will be coming to a UK they know will be outside the EU? Does that not contradict directly the statement she made in the Florence speech that there will be a



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continuation of EU rules and regulations?

Caroline Nokes: She was very clear that we will require time to implement these changes, but equally, on 29 March next year, we are leaving the EU and anybody who comes here after that time, I do not think it is unreasonable that they will know that we have left the EU and have different expectations from those who will have come here under free movement. It is important that we have enough time and particularly when it comes to implementing new immigration policies, when it comes to making sure that we have those 3 million or so citizens registered, it is going to take time.

Q87 **Stephen Kinnock:** Obviously the existing rules and regulations include the 2004 free movement directive. We have to assume, based on what the Prime Minister said in Florence, that that directive would apply lock, stock and barrel throughout the transition period. That includes building up residency rights. The 2004 directive explicitly allows the building up of residency rights. Therefore, any time that an EU citizen spends in the UK during the transition period would contribute to their residency rights. Do you agree with that?

Caroline Nokes: This is absolutely something that is a matter for the future negotiations.

Q88 **Stephen Kinnock:** But in her China statement, the Prime Minister seemed to be explicitly saying that that would not be the case, and that the period in the UK during the transition period should not contribute to the building up of residency rights, because she made that point about the expectation of the citizen, when they came, based on the political situation in the UK.

Caroline Nokes: It is reasonable to say that anybody who comes here post 29 March next year will not have the same expectations as somebody who is covered by this withdrawal agreement. However, I am very conscious that there are differences of view between ourselves and the European Union, and those are matters for negotiation.

Q89 **Stephen Kinnock:** Minister, I am just a little bit confused about this, because you said that you think the 2004 free movement directive should apply throughout the transition period.

Caroline Nokes: I do not think I did say that.

Q90 **Stephen Kinnock:** Did you not?

Caroline Nokes: No.

Q91 **Stephen Kinnock:** I misunderstood then, sorry. The Prime Minister in Florence, in effect, was saying that the 2004 free movement directive should apply, because the Prime Minister said, in terms, that the existing rules and regulations must apply during the transition period.

Caroline Nokes: During the transition period, we absolutely expect and want EU nationals to be able to come here, live here and work here.



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However, as she has been very clear, the Prime Minister said they will have different expectations from those who are here pre 29 March. They will have arrived after we have left the EU. These are absolutely matters for future negotiation.

- Q92 **Stephen Kinnock:** They are not really, because the 2004 directive is very clear that you build residency rights for the period of time that you are in the United Kingdom. While we will have left the EU on 29 March, we will, in effect, be in a standstill position; it will be a carbon copy of the status quo, as confirmed in the negotiating directives for this period of the talks. The critical point here is: do you or do you not agree that EU citizens who are here during the transition period, while they are here, that period should contribute to the residency period in the UK, as defined under the 2004 directive?

Caroline Nokes: I absolutely think that that is a matter for the negotiations.

- Q93 **Stephen Kinnock:** That is a very difficult message to send to EU citizens in this country and, indeed, to UK citizens, because this applies in a reciprocal manner to the 1 million-odd UK citizens across the EU, that there seems to be a difference of opinion within the Prime Minister herself, between what she said in Florence and what she said in China.

Caroline Nokes: The Prime Minister has been very clear. Anyone who comes here after 29 March will have different expectations, because we will have left the EU. You undoubtedly will have heard the interview with Mr Verhofstadt on the television over the last weekend. The EU regard that differently. These are matters for the negotiation. Anyone who is here now is protected by the withdrawal agreement. Anyone who comes here afterwards should have different expectations.

- Q94 **Stephen Kinnock:** The EU have, of course, made it very clear that the transition period will be a carbon copy of the status quo. Do you not think that the Government risk looking like they are just posturing on this issue and that they will, ultimately, have to back down and accept the basic premise that the Prime Minister herself set out in the Florence speech, which is that the transition period will be a carbon copy of the status quo minus our seat in the European Council and the Commission and MEPs?

Caroline Nokes: This is something for the negotiations.

- Q95 **Chair:** There is one question that I would like to ask. Migration Watch suggests that giving ground on the questions we have just been discussing could "increase the pool of EU nationals over whom the UK has no immigration control by as many as a million people". Have the Government made an assessment of the number of EU citizens who might come to the UK during the transitional period and seek to remain indefinitely? I touched on this a bit earlier, but, in a nutshell, do you think that Migration Watch UK's figures are credible?



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Caroline Nokes: I want to wait for the Migration Advisory Committee and their reflection on the UK labour market, where EU workers are already working and indeed which sectors of the economy they are working in. We saw in the last set of immigration statistics that the numbers coming here from the EU were down, and I am not going to prejudge the statistics tomorrow, but they are worth reflecting on very closely.

Q96 **Chair:** Will you be requesting an interim report to inform the Government's position on EU migration, including residency rights, during the transitional period?

Caroline Nokes: We are expecting the Migration Advisory Committee to report in September. We would be well advised to keep a very close watch on any changes that come from our regular collection of migration statistics and to continue doing that throughout the transition period.

Q97 **Mr Fysh:** On the migration expectations, I just wanted to know whether the Home Office has done any work, thinking about the different types of trade deals with the rest of the world, on what different types of scenario with leaving the EU might mean for levels of immigration from the EU. Have you done any modelling or fed any numbers in?

Caroline Nokes: That was loosely touched on earlier. Certainly, future immigration policy is not something I am going to speculate on today, but it is a matter for the Department for International Trade and the Department for Exiting the EU to make sure that we are in a position to do good trade deals around the world. It is incumbent upon us in the Home Office to keep a very close eye on levels of migration both from within the EU and the rest of the world.

Q98 **Mr Fysh:** In a situation where we were able to achieve a good free trade agreement with the EU and then do our own deals, do you have an expectation or have you fed in numbers about what the change in the level of immigration to the UK might be in such a scenario?

Caroline Nokes: These are matters for the Migration Advisory Committee. You will be conscious that they are very busy at the moment, reflecting on EU migration and the impact on the UK labour market, the sectors and whereabouts in the country.

Q99 **Mr Fysh:** Assumptions have been made in a very negative direction in the Brexit impact assessments that have been the subject of some discussion recently. Those are assumptions that have not come from the Home Office.

Caroline Nokes: I am not going to comment on either the leaked documents or the fact that we have to be looking at all scenarios. We have to be working towards a special and deep partnership with the EU going forward, and it is important that we do so with as much information as we can obtain as possible.



Q100 Darren Jones: Just a quick point on this transition negotiation. For something to be in a negotiation it must be negotiable. I am a vegan; you might have a very nice piece of steak, but I am absolutely not interested in it. To quote Guy Verhofstadt's comments from last week or the week before, he said, "Citizens' rights during the transition is not negotiable. We will not accept that there are two sets of rights for EU citizens. For the transition to work it must mean a continuation of the existing law with no exceptions". When you say that it is subject to the negotiations, do you recognise that maybe that is not of interest to the European Union?

Caroline Nokes: I would imagine that for the European Union it is the same as it is for us; they wish there to be a successful implementation period and a good deal going forward.

Q101 Darren Jones: I look forward to seeing whether you are more successful at selling me steak or the European Union transition right changes.

Caroline Nokes: You would struggle to sell me a nut cutlet.

Chair: If I may conclude the session, thank you very much for reminding us all that nothing is agreed until everything is agreed, which seems to be somewhat implicit in your previous answer to Darren Jones. At the same time, thank you also for the competence with which you have addressed these questions. I also mention the fact that we are embarking on a proper analysis of all questions, from our perspective. Different Committees have different perspectives. We have a perspective that is evident from the questioning you have received. We have been in existence since 1972-73 and we will continue to ask all the questions that seem to be important to us, from Secretaries of State and from Ministers, such as yourself. We are very grateful and we look forward to the continuation of these sessions in future. Thank you very much.