

Immigration and social security coordination bill

Briefing
March 2019

Introduction

1. The Immigration and social security bill had its second reading in the House of Commons on January 18.
2. EU law on free movement for EU citizens and EU social security coordination has been saved into UK law by the EU Withdrawal Act (2018). This bill seeks to repeal these laws so that the UK can bring in a new immigration and social security system for EU citizens after the UK leaves the EU. The details for the new immigration and social security system for EU citizens are not defined in this legislation.
3. The government made proposals for the new system in its white paper on immigration released in December¹, however, the paper stated these proposals are subject to negotiation with the EU.
4. The TUC calls on MPs to raise concerns that this bill (1) stands to undermine the prospect of the UK getting a Brexit deal with the EU that protects jobs and rights; (2) risks limiting the rights and entitlements of EU citizens in the UK and UK citizens in EU countries which will (3) increase the risk of exploitation. Instead of this bill, MPs should call for (4) the government to guarantee the right to remain for EU citizens and decent treatment at work for all.

1 HM Government (2018) 'The UK's future skills based immigration system'
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf

Key concerns

Threats to rights and increasing exploitation

5. By repealing EU laws relating to free movement, this legislation removes the right of EU citizens to work, study and live in UK and their rights to protections at work and rights to equal treatment. While this legislation does not contain details what the future immigration system will be post-Brexit, the government has signalled an intention in the immigration white paper to bring in a work permit system for EU workers post-Brexit (following a transition period). Preference would be given to workers taking up skilled jobs, with low-skilled job visas only available for a 12-month period with no right to extend.
6. The TUC has concerns this will make it easier for employers to use migrant workers to undercut other workers' terms and conditions. Allowing employers to take on workers in low-skilled jobs on temporary contracts will give bad bosses a permanent supply of exploitable labour – increasing the risk of abuse that many migrant workers on precarious contracts already face. Unions know from past experience (such as the Seasonal Agricultural Workers scheme for Romanian and Bulgarian workers that ran between 2007 - 2013) that those on tied visas often can't leave abusive employers without losing their legal status in the country.
7. Furthermore, as the Immigration Act 2016 criminalised undocumented working, a worker whose visa has lapsed and reports abuse to the authorities risks being thrown in prison or deported. This also encourages exploitation as bad employers can force undocumented workers to accept low pay or bad

conditions safe in the knowledge that they'll be too scared to go to the authorities.²

8. Therefore, this legislation will fuel concerns about migration, rather than address them, by increasing the risk that migrants will be used to undercut other workers.

Increased discrimination

9. The Immigration and social security coordination bill would require EU workers to demonstrate they had the correct visa to access employment, healthcare, banking and housing, increasing the number of document checks taking place across society. This risks significantly increasing discrimination against BME groups.
10. We know that BME groups have been disproportionately targeted in the document checks for banking, health services, employment and housing that were introduced or expanded by the Immigration Acts 2014 and 2016. These acts were introduced as part of the intention Theresa May declared, while still Home secretary in 2012, to create a 'really hostile' environment through its immigration policies³ Recently the high court ruled that the document checks required for landlords by the Immigration Act 2014 were discriminatory and breached human rights laws as the evidence showed BME groups had been disproportionately targeted⁴
11. The document checks introduced by the Immigration Acts, combined with the Home Office's failure to keep accurate records

2 TUC (2018) 'Theresa May's post-Brexit plans: a disaster for all workers' <https://www.tuc.org.uk/blogs/theresa-mays-post-brexit-immigration-plans-%E2%80%93-disaster-every-worker>

3 May, Theresa (2012) Speech to Conservative party annual conference, available at: <http://www.politics.co.uk/comment-analysis/2012/10/09/theresa-may-speech-in-full>

4 BBC News (2019) "'Right to rent' checks breach human rights', available at: <https://www.bbc.co.uk/news/uk-47415383>

of immigration status has led to many cases of BME workers losing their jobs and being denied health care and housing as exposed in the 'Windrush' scandal that broke in the media in 2018. Cases that came to light included those of workers such as Glenda Caesar who worked in the UK for 50 years but was fired from her job in the NHS as the Home Office did not have accurate records of her legal status in the country⁵

12. The additional document checks required by the immigration and social security coordination bill would mean BME groups were more at risk of losing access to vital services and their jobs.
13. The TUC has also raised concerns that the document checks rolled out by the Immigration Acts of 2014 and 2016 have led to workers in health, housing, education and banking being told by employers to check people's documents ahead of providing them with care or a service. In the case of health workers, such demands undermine their ability to fulfil human rights obligations to provide care to those in need. The TUC is concerned that further requirements for document checks through the government's new immigration plans would only increase the pressure on workers to be border guards, rather than providers of frontline services.

Threats to pensions and other social security entitlements

14. The TUC is concerned that this bill will repeal EU social security coordination legislation – eg. laws that allow EU citizens who have worked in one country to claim a pension in another country.

⁵ ITV News (2019) 'Windrush generation NHS worker lost job and faces deportation despite living in the UK for more than 50 years', available at: <https://www.itv.com/news/2018-04-11/windrush-generation-nhs-worker-lost-job-and-faces-deportation-despite-living-in-the-uk-for-more-than-50-years/>

15. The white paper on immigration suggests the government intends to implement a more restrictive system for EU citizens' entitlements post Brexit. For example, the paper suggests EU citizens may have to wait until they have attained settled status before they are able to access the benefits system, which is usually after five years.
16. The TUC is concerned that making EU citizens wait five years to claim benefits will increase poverty and hardship for over 3.5 million people in the UK.
17. Furthermore, these restrictions would make it more likely that the EU will introduce restrictions on the social security entitlements of the over 1 million UK citizens living in the EU. This could mean that those who have retired in an EU country and have contributed to the tax system in the UK may not be able to claim a pension in retirement.
18. The EU regulation on coordination of social security systems (regulation 883) is currently undergoing revision and it would be preferable for the UK to wait to see what the new regulation looks like before introducing new UK rules. The closer the UK keeps to the relevant EU provisions on cumulation of contributory periods, exportability of the benefit etc, the more likely it is that UK citizens in the EU will be afforded the same protections as we afford EU nationals in the UK.

Threats to a good Brexit deal

19. In statements ratified by its General Council in 2017 and 2018, the TUC established three tests to be met by any Brexit deal. The tests set out that any Brexit deal must:
 20. - Maintain workers' existing rights and establishing a level playing field so that British workers'
 21. rights do not fall behind those of other European workers

22. - Preserve tariff-free, barrier-free, frictionless trade with the rest of Europe to protect jobs
23. - Ensure no hard border between Northern Ireland and Ireland, to preserve jobs, livelihoods and
24. peace.⁶
25. This bill stands to undermine these tests by sending a signal that the UK plans to introduce a restrictive immigration regime post-Brexit that is incompatible with the rules of the single market or any kind of trade deal that provides tariff and barrier free trade in goods and services.
26. The bill therefore jeopardises the chances of the UK agreeing a deal with the EU that guarantees workers will be protected by the same levels of rights found in the EU and protects the millions of jobs that depend on frictionless trade with the EU.

Right to remain and decent treatment at work

27. The TUC is calling for the government to take a different approach towards immigration policy than that taken in this bill and implement an immigration policy based on rights and decent treatment for all which:
 - is underpinned by strong regulation of the labour market and an end to abuse of agency contracts and zero hours contracts
 - supports collective agreements between unions and employers that ensure decent pay and conditions for all
 - significantly increases investment in public services and training, particularly in areas where austerity cuts have hit hardest, so

⁶ TUC General Council Statement on Brexit, September 2018:
<https://www.tuc.org.uk/news/general-council-statementbrexit>

that everyone has access to the services they need and the opportunity to progress.⁷

28. The TUC believes it is unacceptable for this bill to place over 1 million UK citizens in the EU and over 3.5 million EU citizens in the UK at risk over their future rights and entitlements by failing to provide any detail about what the future UK immigration or social security system will be post-Brexit.
29. Since 2016, the TUC has been calling for the government to unilaterally guarantee the right to remain for EU citizens in the UK. This must include rights at work and the right to continue to claim social security entitlements. The European Trade Union Confederation has been calling on EU countries to make the same guarantee for UK citizens in the EU.

7 TUC (2017) 'EEA workers in the labour market: submission to the Migration Advisory Committee'

<https://www.tuc.org.uk/sites/default/files/TUC%20submission%20to%20MAC%20EEA%20consultation%20final%20formatted.pdf>