

The Rt. Hon. Priti Patel MP,
Secretary of State for the Home Department,
London SW1

October 13th 2020

Dear Home Secretary,

British nationals returning from the EU

We write on behalf of British in Europe, the coalition of UK citizens' groups in the EU campaigning to preserve our former rights after Brexit. You will be aware of the amendment to the Immigration and Social Security Coordination (EU Withdrawal) Bill in the House of Lords which, if allowed to stand, will preserve our right to return to the UK with non-British family members on the same terms as before. The purpose of this letter is to ask that the Government reconsiders its opposition to the amendment.

Summary

In this letter we give six reasons why the Lords' amendment should be allowed to stand:

- The new Immigration Rules discriminate *against British nationals* covered by the Withdrawal Agreement when compared with their EU counterparts. The Lords' amendment levels us up.
- The change to the Immigration Rules is already causing widespread anxiety to British nationals in the EU and their close relations in the UK, all of whom are directly affected.
- The unfairness in the change is that it operates with retrospective effect.
- Removing the obstacle to children returning to care for their own elderly parents would help meet the Prime Minister's promise to solve the care crisis and "*give every older person the dignity and security they deserve*", a promise which will be that much harder to achieve if the Lords' amendment is overturned.
- The Lords' amendment will not open the floodgates to indefinite EU immigration.
- The *Surinder Singh* right, which we seek to preserve, itself contains protections against those admitted becoming a burden on the social assistance system of the host country.

We then deal point by point with the arguments which have been raised against us.

Why this amendment should stand

The amendment now appears as clause 5(6)-(8) in the Bill as passed by the House of Lords.

The Government's change in the Immigration Rules will cause unjustified discrimination against British citizens. It leaves EU citizens in the UK in a better position than British citizens in the EU. EU citizens in the UK will have their lifelong Withdrawal Agreement rights to family reunification in the UK and their *Surinder Singh* right to return to their country of

origin with family members of different nationality. If an ageing parent is in need of their care, they can choose freely between returning with their new family to their country of origin or bringing their parent to live with them in the UK. British citizens will not have that choice if they cannot meet the MIR. If a frail parent is unable to face leaving their home and moving to a country where they do not speak the language, their child will have to choose between staying with their nuclear family and abandoning their parent or leaving their family behind while they look after their parent. Such discrimination is the last thing that voters would have expected of this Government.

The Minister, Baroness Williams of Trafford, will have told you of the powerful speeches in support of the amendment by Peers across the political spectrum. She will also have told you that they read out a few of the many emails they had received which tell harrowing personal stories of the anxiety that the rule change in March 2022 is already causing, both for Britons in the EU and their relatives in the UK. As a coalition of groups around the EU, we can confirm that the concern they evidence is widespread.

The particular vice in the removal of our existing right of return is that it operates with retrospective effect. The key date is not the date in the future when someone wants to return but the date in the past when they made the life-changing decisions to leave the UK and/or make a family in the EU. The vast majority of those affected did these things, safe in the knowledge, or so they thought, that they had entrenched EU rights to return to the UK with their families should the need or wish arise. Whatever the rights and wrongs of EU membership, those UK citizens who seized the opportunities which free movement gave them should not be unjustifiably penalised. As the Prime Minister's recent Conference speech suggests, Britain has always been proud of those who left its shores "to seek their fortune" or more prosaically to get a job, advance their career or simply see more of the world. And inevitably those who did so met people, often from other countries, formed relationships and made families. The clock cannot be turned back and those families cannot be un-made by a change in the Immigration Rules so they will now have to live with the consequences. Many of them could be forced to live apart from their partners, with children divided from one or other of their parents, or to abandon their frail relatives in the UK because they cannot return with their families to look after them.

Upholding the Lords' amendment would also help the Government meet the Prime Minister's pledge on the steps of Downing Street to "*fix the crisis in social care once and for all with a clear plan to give every older person the dignity and security they deserve*". The care crisis has of course become far more serious with Covid-19. There are over 100,000 vacancies in the care system and over 1.5 million over-65's with an unmet care need. Deaths from Covid contracted in care homes are a tragedy which would be avoided if the elderly could be looked after by their own children in their own homes. What better way can there be of giving the elderly dignity and security than enabling their own children to return to care for them for as long as should be necessary? And what better policy to solve the shortage of carers at a time when public money is fully committed to unavoidable expenditure elsewhere, than to allow British children to look after their own parents?

The Lords' amendment will not open the floodgates to indefinite immigration from the EU for two reasons. Firstly, the right it confers is closely circumscribed to a closed group. It only applies to those covered by one of the Brexit agreements, so nobody leaving the UK after

the end of this year will be included. It also only applies to relationships (other than children) existing at Brexit and continuing to exist, so it does not give young (or not so young) Britons in the EU the right to come to the UK with partners they have met since January or meet in future. Secondly, the number of people who would take advantage of the Lords' amendment is very much lower than the number of people to whom the new Immigration Rule is causing real anxiety now. The anxiety is caused by not knowing if it will be possible to move should the need arise, and is experienced by all those who might have that need at some point in the future. Although there is no way of knowing how many would actually return – ie how many will have relatives needing the care of their children or how many will simply want to return to the UK - in a recent survey no respondent had concrete plans to return and only 10% said it was very likely that they would. Over a third of respondents had lived in their host country for over 20 years, so the prospect of many of these uprooting their families unless they have to must be low.

It is also important to note that the right we seek to preserve, the so-called *Surinder Singh* right, is itself not unconditional. The UK national sponsor in question has to satisfy the conditions which apply to EU citizens exercising their right of free movement – ie the conditions laid down in Art. 7 of Directive 2003/38/EC. They have to:

- either be workers/self-employed, or
- have (a) sufficient resources for themselves and their families not to become a burden on the social assistance system of the host state as well as (b) sickness insurance, or
- (a) be students in a recognised institution as well as (b) having sufficient resources for themselves and their families not to become a burden on the social assistance system of the host state and (c) having sickness insurance.

The reasons why the Lords' amendment was opposed

We set out briefly the principal reasons why Ministers opposed the amendment in both Houses with our responses thereto.

That we are seeking to “forever bypass” the Immigration Rules

This is a very loaded way of characterising what we are seeking to do. We had a right guaranteed by EU law, which we relied on. Following Brexit, the Government has decided to remove that right. We are simply trying to preserve it – no more, no less.

That we are seeking unfairly to get a benefit which UK citizens seeking to bring families from other parts of the world do not have

We make no attempt to disguise our opposition to the Minimum Income Rule in principle, whoever it is applied to, but the Lords' amendment is not as far-reaching as that. The reason we oppose the extension of the MIR is that its application to us with retrospective effect is unfair, is already causing widespread and serious anxiety and will cause significant hardship in the future. All this was evidenced by the emails which made such an impression on so many Peers of different political complexions who spoke at the Report Stage in the House of Lords. When most of us left the UK our EU rights seemed solid. The *Surinder Singh* right is an aspect of EU citizenship established in EU law and not vulnerable to political change.

The only way that we could lose that right was with Brexit, an event which very few foresaw at the time when the vast majority of us left the UK. But it was not on the cards even then, as Vote Leave's case was that citizens' rights would not be affected at all. As Michael Gove said in a Sky News debate in June 2016, *"Even if your home country votes to leave the EU, all your rights, all your privileges, are carried on and respected...your future will be safe whatever the decision on 23 June."* There was no qualification here or anywhere else saying, *"Unless of course you are British and want to return to the UK."* Nobody voted for us to lose this right and the unfairness is not in our seeking to preserve it but in the proposal, made long after the Referendum had been won on those terms, that it now be removed.

There is no cut-off date by which the UK national must return to the UK

The suggestion seems to be that our claim that we are being treated worse than EU citizens in the UK is wrong because, in order to have family reunion rights, they have to be resident in the UK by the end of the transition period whereas we would not. Frankly we do not see the point. In order to maintain their *Surinder Singh* rights, UK nationals would have to be covered by the Withdrawal Agreement (or the EEA or Swiss agreement). To have that cover they have to be resident in their host country by the end of transition. Both EUinUK and UKinEU have the same cut-off date by which they have to be in their host state, so each group is closed by the same criteria. There is a precise equivalence.

UK nationals have been given "a reasonable period to plan" in that this right is not to be removed until March 29th 2022

Even ignoring the massive practical difficulties of uprooting adults from work and children from school at a time when there may be no need to do so, in Committee, Baroness Hamwee had a devastating response to this suggestion:

"I simply ask the Minister what she would advise a couple, one British and one an EU national, who both have elderly parents. She is suggesting that they should pick between them for future care by the end of 2022. Is this really a humane approach?"

The Supreme Court has endorsed the Government's approach

The Supreme Court rejected claims that the MIR was illegal. They were not asked to adjudicate on the fairness of the rule, simply its legality. In the course of the judgment, however, they said, *"There can be no doubt that the MIR has caused, and will continue to cause, significant hardship to many thousands of couples who have good reasons for wanting to make their lives together in this country, and to their children."* They also went on to find both the guidance and the instructions unlawful and to allow the only appeal which was before them on its facts. It is hard to see this as a ringing endorsement of the Government's current approach.

The MIR does not contain a Catch-22 as claimed by proponents of the amendment

The Catch-22 relates to the non-British partner's earnings. These can only be taken into account in deciding whether that partner can enter the UK if the partner has been working in the UK for six months. But how then did s/he get into the UK in the first place? Ignoring the reality of most modern relationships in which both partners work, only the earnings of the British partner are taken into account. But if, as will be the case so often, the British partner has returned to care for a sick relative, if s/he can work at all it is likely to be only part time, making the MIR even harder to achieve.

A question

We end with a question. Had you told a room full of Witham voters in May 2016 that in 2020 you, as Home Secretary in this Government, would be taking back control to prevent British citizens from moving back to the UK to look after their elderly British parents in the middle of a care crisis whilst allowing EU citizens to bring in their elderly parents for life, do you think they would have been impressed? That is not why your constituents voted for Brexit, or for you in 2017 and 2019, and it is not a policy that any UK Home Secretary should be pursuing.

We very much hope that the Government will recognise the strength of the case for leaving the Lords' amendment intact. As a first step we would welcome a virtual meeting with you and/or Departmental Ministers before the Bill returns to the Commons.

Yours sincerely,

Jane Golding
Co-Chair British in Europe

Fiona Frank-Godfrey
Co-Chair BiE

Jeremy Morgan QC
Vice-Chair BiE