

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT SERVICES OF LAWYERS AND LAWYER'S
PRACTICE (REVOCATION ETC.) (EU EXIT)
REGULATIONS 2020

Tuesday 22 September 2020

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The Committee consisted of the following Members:

Chair: JAMES GRAY

Ali, Tahir (*Birmingham, Hall Green*) (Lab)
 Cadbury, Ruth (*Brentford and Isleworth*) (Lab)
 Carter, Andy (*Warrington South*) (Con)
 † Chalk, Alex (*Parliamentary Under-Secretary of State
 for Justice*)
 † Charalambous, Bambos (*Enfield, Southgate*) (Lab)
 Cummins, Judith (*Bradford South*) (Lab)
 † Cunningham, Alex (*Stockton North*) (Lab)
 † Davison, Dehenna (*Bishop Auckland*) (Con)
 † Everitt, Ben (*Milton Keynes North*) (Con)
 † Fletcher, Katherine (*South Ribble*) (Con)

† Gibson, Peter (*Darlington*) (Con)
 † Holden, Mr Richard (*North West Durham*) (Con)
 † Nici, Lia (*Great Grimsby*) (Con)
 † O'Brien, Neil (*Harborough*) (Con)
 † Pursglove, Tom (*Corby*) (Con)
 Rees, Christina (*Neath*) (Lab/Co-op)
 Timms, Stephen (*East Ham*) (Lab)

Nicholas Taylor, Kevin Maddison, *Committee Clerks*

† **attended the Committee**

Eighth Delegated Legislation Committee

Tuesday 22 September 2020

[JAMES GRAY *in the Chair*]

Draft Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

9.25 am

The Chair: Before we start, I remind everyone that social distancing applies in this Committee as elsewhere. The little blue markers indicate where you can sit. Please observe all the other rules and regulations that the House has set out. If you make a speech, it would be very helpful to *Hansard* if you sent your notes by email to hansardnotes@parliament.uk.

The Parliamentary Under-Secretary of State for Justice (Alex Chalk): I beg to move,

That the Committee has considered the draft Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020.

May I begin by saying what a pleasure it is to serve under your chairmanship, Mr Gray? The draft instrument relates to the recognition of legal qualifications and European lawyers' practice rights, and forms part of the Government's preparations for the end of the transition period. It will revoke and replace our existing legislation, which was made in 2019 in preparation for the UK leaving the EU without a withdrawal agreement and is now consequently out of date.

The regulations remedy the deficiency in retained EU law, as such law makes provision for reciprocal arrangements with the EU that will no longer exist. Consequently, by applying that principle of reciprocity, the regulations will remove from our domestic legislation in England, Wales and Northern Ireland any preferential practice rights for EU, European economic area and Swiss lawyers permitted under the EU frameworks for lawyers, so that they are treated in the same way as third-country lawyers after the transition period. I should stress that EU, EEA and European Free Trade Association-qualified lawyers who have already successfully become solicitors or barristers before the end of the transition period will be able to retain their qualifications and related practice rights.

The Committee will be aware that the Government have signed agreements with the EU, the EEA-EFTA states and Switzerland, which contain arrangements regarding the UK's withdrawal from the EU. Those agreements make provision for EEA and Swiss nationals living and working in the UK, and vice-versa. The instrument will give effect to provisions in those agreements relating to lawyers' practice rights and the recognition of legal qualifications for EEA and Swiss lawyers in scope of the agreements. Let me be clear: Scotland will be taking forward its own legislation on this matter.

Before I turn to the detail of the instrument, I will briefly set out the background. EU law currently enables UK, EU and EFTA lawyers from one state to establish

and practise in another state under their home state professional title, without necessarily having to requalify in the other state. The lawyers' services directive allows specified lawyers to provide regulated legal services in a member state other than the one in which they qualified—termed a “host state”—without the need to register with a host state regulator. Lawyers provide services under their existing professional title, which is otherwise termed their home state professional title. The directive clarifies the applicable regulatory rules and the conditions for providing services in a host state.

The lawyers' establishment directive allows specified lawyers from one member state to practise reserved legal activities on a permanent basis in another member state, under their home state professional title, and sets out the conditions for doing so. It also allows lawyers who are practising in another member state to be admitted to the profession in that member state after three years of practice in a host state, without having to go through the usual qualification routes. A European lawyer practising in the UK under the lawyers establishment directive must be registered with a UK regulator as a registered European lawyer—or REL, as they are referred to. As RELs, they have the right to own legal businesses without a UK qualified lawyer.

In 2019, in preparation for the UK leaving the EU without a withdrawal agreement, the Government made legislation that removed the preferential practice rights of EU and EEA-EFTA lawyers in England, Wales and Northern Ireland to come into force on exit day. I will refer to that legislation as the 2019 regulations. A further amending instrument was made—again in 2019—to implement parts of the Swiss citizens' rights agreement, in readiness for exit day.

The 2019 regulations and the 2019 amendment regulations were not designed to come into force at the end of the transition period under a withdrawal agreement—in other words, they were put in place for no deal, in the event that no withdrawal agreement was secured. Given that the UK secured a withdrawal agreement and a separation agreement with the EEA-EFTA states, as well as the citizens' rights agreement with Switzerland, some provisions in the 2019 regulations are either no longer needed or will not function correctly. Furthermore, additional provisions are needed to implement the relevant provisions of the agreements relating to lawyers. As such, we require new legislation to correct those deficiencies.

The draft instrument will revoke the 2019 regulations and the 2019 amendment regulations, as well as the domestic legislation that implemented the lawyer-related EU directives, subject to the transitional provisions required to implement the arrangements relating to lawyers in the agreements. Those are the European Communities (Services of Lawyers) Order 1978 and the European Communities (Lawyer's Practice) Regulations 2000.

The lawyers' services directive and lawyers' establishment directive will no longer apply to the UK. There will be no system of reciprocal arrangements under which EU and EFTA lawyers—including UK nationals holding EU-EFTA qualifications—can provide regulated legal services and establish on a permanent basis in the UK and vice-versa for UK lawyers in the EU, so it is a balanced arrangement. The instrument therefore remedies a deficiency in retained EU law as such law makes provision for reciprocal arrangements with the EU that

will no longer exist, while ensuring that we meet our obligations under the withdrawal agreement and the other previously mentioned agreements.

As I have indicated, EU and EFTA lawyers will be treated in the same way as other third-country lawyers who wish to practise in England and Wales or Northern Ireland. The instrument will also implement provisions in the EU withdrawal agreement and EEA-EFTA separation agreement that allow applications made before the end of the transition period to join one of the legal professions in England and Wales or Northern Ireland to be completed under the current rules.

In addition, the instrument will implement provisions in the Swiss citizens' rights agreement for Swiss lawyers within the scope of that agreement—who are established, registered and providing services in England and Wales or Northern Ireland under their Swiss professional title—to retain their current rights, so long as they remain registered. The instrument will also implement a transition period of four years from the end of the transition period for Swiss lawyers to register as an REL and practise under their Swiss professional title, or to apply to join one of the legal professions in England and Wales or Northern Ireland under the terms of the Swiss citizens' rights agreement.

Additionally, the instrument will implement provisions that allow lawyers who are established and employed in Switzerland to continue to provide temporary services under the lawyers' services directive for up to 90 days in a year, for at least five years, when under a contract agreed and started before the end of the transition period. The instrument will also implement provisions in the agreements to facilitate regulator-to-regulator co-operation in relation to applications for admission to the host state legal profession, and in relation to registration and regulation of an REL under the Swiss citizens' rights agreement. The instrument will make further provision to enable regulators in England and Wales and Northern Ireland to complete any ongoing disciplinary proceedings against EU and EEA-EFTA lawyers that commenced before the end of the transition period.

To conclude, the regulations are a necessary element of preparation for the end of the transition period, and I commend them to the Committee.

9.33 am

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve briefly under your chairmanship, Mr Gray. It is quite a sad business that we have to spend so much of our time preparing for the potential of no deal at the end of the transition period.

The Minister has still given us full value in outlining what the statutory instrument means. As he said, it ensures that the applications of EU lawyers who apply to practise law across England, Wales and Northern Ireland before the end of the transition period can have their applications properly considered. As he said, the instrument also protects the rights of Swiss lawyers who have been practising law in England, Wales and Northern

Ireland before the end of the transition period, and implements a transition of four years after Brexit for Swiss lawyers to register and practise law across the three countries, as well as allowing cross-border co-operation between England, Wales, Northern Ireland, legal regulators and EU regulators.

I see no need to go into much detail about what these technical changes mean—the Minister has done that in tremendous detail—but we have to recognise that the regulations ensure that foreign lawyers who apply to practise here can continue to do so in future, when we will need the benefit of their skills and expertise. I am sure it will be interesting to see how the legal system operates in relation to lawyers after the end of the transition period on 31 December, when we will see an end to the preferential treatment of EU and EEA-EFTA lawyers compared with lawyers across the rest of the world.

It is clear that the Minister agrees with me that it is important that people from overseas are able to practise in this country and that we remove the impediments created by our leaving the EU to allow anyone who has already applied to join one of our legal professions to do so. The regulations have the important provision to allow existing lawyers to be properly subject to disciplinary proceedings that might have been started against them in recent times.

I hope the Minister also agrees that it is only right that we meet all our obligations under the terms of the withdrawal agreement, even though many on the Government Benches would simply rip it up and happily break international law. I seek his confirmation that it is the intention of the Ministry of Justice to honour the law. I would be obliged if he gave us an insight into how the Government will ensure that equally robust measures are put in place to ensure that people from across the wider world seeking to practise here are properly qualified to do so and will be subject to the same standards and codes as UK lawyers. Having dealt with that, I can confirm to the Minister that the Opposition will not oppose the regulations.

9.35 am

Alex Chalk: I thank the hon. Gentleman for his remarks and for his support for these necessary regulations. Yes, the United Kingdom recognises that we are an open society, particularly when it comes to legal practice, and we want that to continue. We want to be a country that continues to attract the brightest and best lawyers from around the world, as long as they are, as he rightly indicates, properly qualified and this is the appropriate place for them to practise.

We will continue to remain an attractive part of the world, because we believe in upholding the rule of law. Long may that continue. I thank members of the Committee for their valuable contributions to the debate, and I commend the regulations to the Committee.

Question put and agreed to.

9.37 am

Committee rose.

