PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Seventh Delegated Legislation Committee

IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) ACT 2020 (CONSEQUENTIAL, SAVING, TRANSITIONAL AND TRANSITORY PROVISIONS) (EU EXIT) REGULATIONS 2020

Tuesday 8 December 2020

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not later than

Saturday 12 December 2020

The Committee consisted of the following Members:

Chair: †Mrs Sheryll Murray

† Baker, Duncan *(North Norfolk)* (Con)
† Costa, Alberto *(South Leicestershire)* (Con)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
Cryer, John *(Leyton and Wanstead)* (Lab)
† Elmore, Chris *(Ogmore)* (Lab)
† Foster, Kevin *(Parliamentary Under-Secretary of State for the Home Department)*
† Hill, Mike *(Hartlepool)* (Lab)
† Jenkyns, Andrea *(Morley and Outwood)* (Con)
† Lewer, Andrew *(Northampton South)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Corby)* (Con)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)
Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Whittaker, Craig *(Calder Valley)* (Con)
† Young, Jacob *(Redcar)* (Con)

Sarah Ioannou, *Committee Clerk*

† attended the Committee

Seventh Delegated Legislation Committee

Tuesday 8 December 2020

[Mrs Sheryll Murray *in the Chair*]

Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020

The Chair: Before we begin, I remind Members about social distancing; spaces available to Members are clearly marked.

9.25 am

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): I beg to move,

That the Committee has considered the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020, No. 1309).

It is a pleasure, as always, to serve under your chairmanship, Mrs Murray.

For the sake of time, I will refer to the statutory instrument as the consequential amendments SI. Parliament has approved the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which will end free movement on 31 December at the end of the transition period. The Act represents an important milestone in paving the way for the new points-based immigration system to operate from 1 January 2021 and to deliver our promise to have a single immigration system, which judges people by their talents and skills, not by where their passport comes from. The consequential amendments SI is the next step in ending free movement, and it completes the legislative changes necessary for that historic act. The SI is made under the delegated regulation-making power in section 5 of the 2020 Act, the scope of which was debated extensively in both Houses during its passage, including in the Bill Committee on which many members of this Committee served.

The Government were pleased to share an illustrative text of the SI in early September, and there are only limited changes to it in the version before the Committee today. The SI amends primary and secondary United Kingdom legislation as a consequence of, or in connection with, the provisions in part 1 of the 2020 Act, which end free movement and make provisions for the new status of Irish citizens. It amends legislation relating to immigration, nationality, benefits and services. It also amends devolved matters where changes are required for an immigration purpose to reflect the end of free movement, but not devolved legislation more generally.

As hon. Members will have noted, the SI is rather lengthy given the breadth of amendments to domestic legislation required, based on the number of times free movement has been mentioned in UK legislation during our membership of the European Union of more than 40 years. The effect of the legislative changes is to align the immigration treatment of European economic area citizens and their family members who are not protected by the withdrawal agreement and the UK's implementation of that agreement with non-EEA citizens under the UK's immigration system. Once free movement has ended, newly arriving EEA citizens and their family members will be subject to the same UK immigration law as non-EEA citizens; they will need to meet the requirements of the new points-based immigration system set out in the immigration rules made under the Immigration Act 1971. As members of the Committee may know, many of those routes opened for applications last week on 1 December.

The SI provides clear protections for Irish citizens and EEA citizens, and their family members granted status under the EU settlement scheme. It also removes references in domestic legislation to the UK's membership of the EU and EU-derived law that has been retained by the European Union (Withdrawal) Act 2018, as amended by the EU (Withdrawal Agreement) Act 2020, at the end of the transition period.

Most of the changes will come into force at 11pm on 31 December—the end of the transition period—but there are some exceptions; the provision to bring EEA citizens within scope of the immigration skills charge came into force on 1 December to coincide with the opening of the new skilled worker route. That means that the charge will apply to EEA citizens who arrive in the UK from 1 January 2021 onwards under that route, and it is part of ensuring equality of treatment between citizens of the rest of the world and EEA citizens.

Various provisions to bring EEA citizens within the scope of the sham marriage and civil partnership referral investigation system do not come into effect at the end of the transition period. They will come into force on 1 July 2021, after the deadline for applications to the EUSS, at which point it will be easier for the Anglican Church in particular to differentiate between EEA citizens with status under the EUSS and those without. That reflects a range of other provisions that we have in place during the grace period next year before the deadline for applications.

The consequential amendments SI reflects the repeal of free movement at the end of the transition period, as enacted by Parliament's approval of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. It makes the statute book coherent and terminates arrangements relevant to the operation of free movement law in EU legislation—the latter legislation will no longer be appropriate once free movement has ended—and implements our obligations under the withdrawal agreement. It is an essential step in fulfilling our promise to end free movement and to deliver on the referendum vote. That is something that the Government are determined to do, even if others would rather that the referendum result were ignored.

9.31 am

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under you, Mrs Murray, as we consider this very important secondary legislation. I thank the Minister for his opening remarks, but I suspect that Labour's opposition to the regulations will not come as a surprise to him, as we rehearsed a great deal of the debate during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. Then, however, we did not have any of the detail that is contained in the SI. We

were greatly concerned that the Act granted the Government powers to bring forward the changes to the law contained in the SI. A 90-minute delegated legislation Committee is no way to scrutinise law changes of such magnitude.

The SI is 64 pages long and if I am not mistaken, it changes well over 70 existing Acts and regulations. We have been working hard to follow the changes to understand the implications for people's lives but we would need to consult the country's leading experts and lawyers on everything from immigration to housing and equalities to devolution even to scratch the surface of the regulations.

To put the changes in context, the regulations document is five times bigger than the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which ran to only 14 pages. Bizarrely, the explanatory notes accompanying the regulations constitute just 14 lines.

We sought a number of improvements to the process at various stages of the Act's passage in the hope that we would not be in the current position. We called for limits to its Henry VIII powers or for the changes in the regulations to be included on the face of the Bill, as called for by experts at the evidence sessions, so that we could all exercise due diligence and allow for proper Parliamentary scrutiny. Sadly, our efforts were in vain.

I have had the chance to discuss the detail of the legislation with experts and they have expressed their real concern about what they believe its impact will be. They have voiced concern not least that some Acts of Parliament are to be amended when not strictly necessary to give effect to Brexit and the withdrawal agreement. To quote from one of the country's leading experts on this matter, other changes will leave the law in a state of "bewildering complexity". That is contrary to the Minister's suggestion that the regulations will render the statute book coherent. Those changes risk errors in interpretation by public officials and those private persons including landlords and employers who will have to apply the regulations.

Feedback from those working in the field has flagged up that the regulations amend some fairly recent Brexit-related statutory instruments, but leave other parts unamended when it would have been a significant improvement simply to have replaced the regulations with new ones that could have been followed and understood.

That principle applies to at least three changes including those to the Citizens' Rights (Application Deadline and Temporary Protection) Regulations 2020, the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006—if I am not mistaken, that amends a Brexit-related SI but leaves parts unamended, which means the amended 2006 regulations have to be read with schedule 4 of the amending regulations—and the saved parts of the Immigration (European Economic Area) Regulations 2016. It is painfully complicated and completely at odds with the Government's aspiration to simplify the immigration system. A leading expert described it to me as a "Frankenstein-like patchwork quilt" of 20 years-plus of immigration changes, layered on top of each other.

It is the combination of the process and the content of today's regulations that make for such a toxic mix. They lay bare the architecture of the hostile environment to be extended to a brand-new cohort of people. We fear some of those most vulnerable, who have made their lives in the UK, perfectly within the rules, will stand to fall into its trap, without even being aware that they will do so come the end of June next year.

If we consider just some of the details, the Minister has outlined the variations in the start date for some of the changes. We were particularly interested in the regulations relating to changes to marriage and sham marriages, which come into force on 1 July 2021. I appreciate the Minister's explanation about why that might make life easier for those who conduct such ceremonies, but I still wonder whether there is scope to push the start date for other changes back to coincide with that July date. That would give everyone the chance to be aware that all those changes are on the way.

I note that the Aliens Employment Act 1955 is changed by the SI; EU citizens and family members with leave to enter or remain on a basis outside the scope of the EUSS—for reasons such as family members or as skilled workers—will have restricted access to civil service jobs. Why do that when they are lawfully resident? That is just one of the anomalies thrown up in the time that we have had to consider the regulations. However, our substantive concern with the legislation is that it is highly likely that a significant number of individuals will not apply to the scheme before next June's deadline—the Minister and his colleagues have previously acknowledged that risk—for a multitude of reasons. That means that a significant number of individuals with full rights to be in this country will lose those rights overnight.

We are about to launch our own campaign to encourage all local authorities to reach out to those who have not yet applied, or who do not know that they need to do so. The Minister will have seen the utterly depressing statistics released by the Home Office on 13 November, which revealed that only 46% of children in the care of local authorities have made an application to the EUSS. The Children's Society fears that those figures are worse again. We argued for a declaratory scheme for that group of children as an absolute minimum during the passage of the Bill, and those figures are simply just not good enough.

I have outlined examples of groups who will be affected by the proposed changes. We believe that the Government's disregard for those groups by attempting to enact such significant changes through secondary legislation is totally inappropriate, given their scale. The regulations, which will have such major long-lasting effects, should be examined line by line, in detail, by all Members of Parliament, who should have their say. We have argued for that time and time again.

We have grave misgivings about the substance of the regulations, as well as about the procedure governing their introduction. Those apprehensions relate to the possible consequences of the regulations for those who fail to meet the deadline for whatever reason and therefore fall prey to the hostile environment created by them.

We cannot vote for the regulations in good faith, and I call on the Minister to withdraw them and reintroduce them in primary legislation, which would enable the House to exercise proper and appropriate scrutiny of the proposed changes.

9.38 am

Alberto Costa (South Leicestershire) (Con): It is a pleasure to serve under your chairmanship, Mrs Murray.

[Alberto Costa]

Personally, the regulations represent the most difficult element of having accepted the EU referendum result: we are putting an end to people's freedom of movement. I support the regulations before the Committee, however, and I would like to make some helpful points about how we should understand the Government's position.

The explanatory memorandum states that the SI should be read alongside the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. I would be grateful if the Minister could say something about the reasonable explanations that the Home Office might accept in the event that those who have been lawfully resident, exercising treaty rights, until the end of the December this year are unable to register for the settled status scheme, for whatever reason. I remember two years ago, when we first discussed the matter, being told that there were about 3 million EU nationals living in this country. Of course we find, as I have always argued, that a larger number of individuals have registered as part of the settled status scheme, and that is to be welcomed.

I would like the Government to look very carefully at what the reasonable explanations and excuses are. I did write to the Minister about a month or so ago, and I look forward to his response.

We should note that the corollary of what we are doing today is that we are ending the freedom of Brits to move to the EU. It is right that we do that, because it respects the EU referendum result. It does not matter whether people voted for Brexit to control immigration or to regain sovereignty; one of the effects of leaving the European Union is to end the free movement of people. That includes British people being able to move freely to work and reside in the EU, as many Brits—indeed, more than 1 million—have done over the past few decades.

In conclusion, I will vote for the regulations, but I want it noted on the record that I will scrutinise the Government over the next seven months to ensure that they honour the personal pledges that have been made to me over the past two years as I have championed the rights of citizens, be they British nationals in the EU or EEA nationals here in the United Kingdom.

The Chair: I call the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, Mr Stuart C. McDonald.

9.41 am

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It would be good to rename my constituency for the benefit of colleagues, but it is good to see you in the Chair, Mrs Murray. I hope you can hear me okay. Colleagues might prefer not to hear me, but I will have my say anyway.

Kevin Foster: Always a pleasure.

Stuart C. McDonald: Thank you, Minister.

I am grateful to the Minister for the way he introduced the regulations. I concur with 99% of what the shadow Minister, the hon. Member for Halifax, had to say. It will be no surprise to the Minister that we, too, oppose the regulations. The SNP very much regrets the end of free movement. We believe that the hostile environment is a disaster. It is important to say that the regulations do not really end free movement; they are about extending the hostile environment. The two do not have to go together.

We have always argued for a declaratory scheme, and we maintain that that would have been a much better approach. However, there is no point going over all that old ground again. We have debated these points a million times and we are where we are. It is incumbent on us all to try to make the arrangements the Government have decided to put in place work as best we can.

When the Minister came before the Home Affairs Committee recently, I think it is fair to say that we had a fairly constructive exchange about how EEA citizens would be able to access the NHS and other public services in various hypothetical scenarios. In that vein, I want to probe him on another four brief scenarios. If he cannot answer the questions today, it would be useful to have the answers in writing. The shadow Minister said that these are very complicated regulations—I will come back to that point in a bit—and I genuinely do not know the answer to all these questions, despite my best efforts.

The first scenario is that in January—in the grace period, but after the transition period—two EEA nationals, an uncle and a niece, who could have applied to the settled status scheme but have not yet done so, go to rent a new property. The uncle is a worker, so his rights are protected by the grace period regulations, but the niece is not and does not have comprehensive sickness insurance. Arguably, she was therefore not exercising her treaty rights prior to the end of the transition period. As I understand it, that means she has no protection under the grace period regulations.

My first question is: is it the case that the worker—the uncle—would be able to rent, but not the niece? I understand that in the past, the Government have said, "We will not ask employers and landlords to make these checks," but legally speaking, is it the case that the regulations would exclude the niece from the right to rent? Secondly, if they realised that they needed settled status and applied for it, would that situation remain the same, regardless of the fact of their application, until such time as a decision on the application was reached? Similarly, am I right in thinking that the uncle could access homelessness assistance, if he qualified for it—ironically he does not need to because he has the right to rent—whereas the niece could not access it, even though she is the one who would need it because she would struggle to access the right to rent?

The second scenario is the same as the first, except that it takes place in July, which is outside the grace period. In this case, as I understand it, neither the uncle nor the niece can rent or access housing assistance. Let us say that they can prove that they were negligently advised by lawyers that they did not need to apply for settlement because of a misunderstanding about nationality law—something I very much hope the Home Office would accept as a reasonable excuse for a late application. They make a late application, arguing that they have a reasonable excuse. Is it the case that while they wait for the application—even if it takes six week, eight weeks or two months—in the meantime neither of them would be able to rent and, similarly, they would not qualify for homelessness assistance?

Scenario three of four is the same as scenario two, but it is now July and one of the couple—the uncle and the niece—needs two small operations. They are not

lifesaving, but they will fix some pretty serious pain. The first of the two operations happens just before they make the late application and it costs £10,000. The second happens after they make the application and it costs £15,000. Am I right in thinking that because of separate regulations made on 3 December—just last week—even the making of the late application means that the person continues to qualify for NHS treatment? Therefore, even while they could not rent or access homelessness assistance under the regulations that we are debating today, they could access the NHS.

If my understanding is right, why is there the inconsistency that while an application is outstanding, someone can get NHS treatment but not homelessness assistance? Is it not arguable that the regulations before us infringe the withdrawal agreement, particularly article 18(3), by not making a similar provision where a person has an outstanding late application? As I say, the Department of Health and Social Care published regulations last week that seemed to acknowledge that it has to give rights to those with outstanding applications, even if they are late; the Home Office does not appear to have recognised that.

Am I right in understanding that the £15,000 operation would not have to be paid for, because it happened while the application was outstanding? What about the £10,000 operation that happened just before the application went in? Even if the uncle and niece subsequently do get settled status, will they still be chased to pay the £10,000 for the operation that happened just before they submitted their application?

The fourth and final scenario again concerns a couple in a very similar position: they were badly advised and did not apply in time, so they have a reasonable excuse. Late next year, the Home Office charges them with illegal working. They apply in September for the settled status scheme and that is granted late. However, is it the case that the couple were, legally speaking—regardless of what practical answer the Home Office comes up with—guilty of a criminal offence from July, after the end of the grace period, until the application was decided? Because settled status is not retrospective, there would be a gap where they did not have status.

As I say, this is all very technical and I might have completely misunderstood some of the scenarios, but I have no doubt that we could go through every single one of the 60 or 70 regulations and conjure up scenarios that involve similar complications and technicalities. There are ways that the Home Office could make this easier. A declaratory scheme would be one, but putting that aside, there are things the Home Office should think about.

First, if a public body is approached by an EEA national without settled status and it appears that they could still apply for that settled status, perhaps we should put a duty on the public body to signpost them to the scheme. Rather than just saying, "You are not entitled to support," there would be a duty on people to say, "Just now you are not entitled to support, but if you put in an application, you would be able to access it." At the very least, I hope that is something the Home Office is encouraging of all people who are involved in checking immigration status, of whom there are many.

Secondly, if a person makes an application late—a situation I have alluded to—the Home Office should provide them with a certificate of application that makes it clear that they continue to be entitled to access support and all their rights while the application is outstanding. If there are clearly no reasonable grounds for the late application, the Home Office will be able to refuse immediately and no damage would be done. Otherwise, my view is that there is little to lose and much to gain from ensuring that they continue to be able to access all these rights while the application is outstanding. That seems to be the approach the Department of Health and Social Care has taken in the NHS regulations that were published last week, so I do not understand why that approach cannot be taken in the regulations before us today. It seems to me that that is arguably required by the withdrawal agreement.

Thirdly, if such a late application is successful, why do we not make settled status backdated so that there is not a break in the continuity of residence? When he was before the Home Affairs Committee, the Minister talked about how he was looking to ensure that that did not impact on nationality—for example, in the case of kids born during that period. I am aware that the Home Office is alive to this issue, but why not just make it retrospective in a blanket way, so that there is no gap in status?

I have one final request of the Minister. At the Home Affairs Committee, he was generous in agreeing to meet a couple of organisations. One to add to that list is the3million. It is a very sensible, pragmatic organisation. It accepts where we are at, and is just keen to work through all the scenarios and to work with the Government. If he is happy to meet it, that would be very helpful.

There are a million other issues I could raise today, such as access to national insurance numbers, which appears to be incredibly challenging for EU nationals.

I emphasise what the shadow Minister said about the complexity of the regulations. That is why we opposed the sweeping Henry VIII clauses when we debated the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. It is why my party proposed an equivalent to the Social Security Advisory Committee. This issue is so technical that we need experts on housing law, marriage law, family law, social security law—it covers such a huge range of subjects. The regulations are much more detailed and technical than the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, yet we have 90 minutes to consider them, with no witnesses and no access to experts, whereas the Bill essentially went through Parliament twice and we had lots of expert evidence to help us.

I have tried my best to scrutinise the regulations. Indeed, I think there might be a typo in regulation 12, if the Minister wants to note it down. The placing of the quotation marks and the stray "(3)" to my mind means that part of that regulation has no effect or has the opposite effect of what was intended. That is why this sort of regulation, which has important consequences, needs line-by-line scrutiny. I think that there is a mistake, but I do not know how we fix it, because we cannot amend the regulations, unlike the Bill.

My final question is: why rush this? Much as I hate it, free movement is coming to an end. Even if the regulations—or 90% of the regulations—were not passed until late next year, free movement would still end; it would simply mean that all these aspects of the hostile environment would not be applied to EEA nationals. There could be mistakes in here and we need to think

[Stuart C. McDonald]

about it much more carefully. Again, I echo what the shadow Minister says: let's put this off and do it properly. As MPs, let us do our job of scrutinising the proposals properly by withdrawing the regulations and bringing them back as a Bill.

9.52 am

Kevin Foster: I thank members of the Committee for the debate we have had and for the observations they have made.

I will start with the comments of my hon. Friend the Member for South Leicestershire and then move on to the shadow Front Benchers. To be clear, we have said that we will publish a non-exhaustive list of examples. In each instance, a decision-maker should be able to use discretion if it is fair in the circumstances to do so. I have given examples, such as those who were under 18 on deadline day and their parent or local council, who had a duty to apply for them, did not. As I reassured my hon. Friend, when they hit the age of majority, which could be in 10, 13 or perhaps even 14 or 15 years' time, and realise that there was no application, we would see it as reasonable for them to have assumed that their parent or guardian had done it.

Again, other circumstances include ill health or mental incapacity to make an application. I reassure Members that we will look at situations where someone has clearly received faulty or negligent legal advice in relation to their status. Generally, we will ensure that decision-makers are able to look at the circumstances and see whether there are reasonable grounds, rather than having a list and saying, "If you don't meet that list, you can't apply."

Neil Coyle (Bermondsey and Old Southwark) (Lab): If that extra discretion, and the complexity and anomalies that my hon. Friend the Member for Halifax mentioned, were being added to a functioning, gold-plated, brilliant system, Members might be assured, but it is being added to a dysfunctional Home Office that is failing many of our constituents week in, week out through delays and erroneous decisions that leave people destitute.

Kevin Foster: I am sorry to hear that description of the EUSS that has already had 4.26 million applications. I give the hon. Gentleman a tip that it is about to hit another milestone in numbers of applications. We think that it is working fairly well. For most people, making an application is a 15-minute job at home, using a smartphone.

We want to take the lessons from how the EUSS has worked into the wider immigration system. Hon. Members may not have picked this up, but in the skilled worker route, an EEA national can use their smart phone from home to apply rather than making a trip to a visa application centre. Building on the experience of the EUSS, we have been able to provide secure identity checks from home. For obvious reasons, I will not go into all the details of what we do to verify identity, but this has been a real success and I am sorry to hear that description of it.

To reassure my hon. Friend the Member for South Leicestershire, we will have a range of circumstances listed along non-exhaustive lines. The longer the delay, the more there is a chance that someone knows that they do not have entitlement under the withdrawal agreement, but is claiming that they do. We want decision-makers to have flexibility and to treat this as faces, not cases. There will be a list, but it is not exhaustive.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East always makes well thought-through contributions, even though we have fundamental policy disagreements on this and a range of other issues. I will provide a detailed written response to him and the Committee, but I shall deal with a couple of points now. He mentioned two EEA nationals. Let us assume that they are in England, because as he will know the right to rent checks do not apply outside England. If they were renting before 30 June a landlord is perfectly entitled to accept an EEA passport or national identity card as proof that they meet the compliant environment checks. If anyone has concerns, they can regularise and make their application via the EUSS straight after. We will not be asking landlords to make retrospective checks if they have accepted an EEA passport or identity card, just as we would not expect employers on 1 July suddenly to check that every member of their staff has EUSS status. Up until that point, landlords and employers cannot insist on it, provided that someone has presented an appropriate document. They can, of course, use it and we are finding that it is very popular. Between April and June there were 400,000 checks under the new improved service, 100,000 of which were to look at EUSS status. Those who have it are already finding it a handy and convenient way of meeting the checks.

Stuart C. McDonald: I am grateful to the Minister for saying that he will set these things out in writing, and I get that the Home Office is not requiring landlords and employers to do those checks. I would like clarity on this: is the Home Office saying to landlords, "You do not need to do that check even though in the niece scenario she does not have the right to rent?" I am concerned that there is a danger in saying to landlords, "You don't need to worry about the fact that you are renting to someone who does not have the right to rent." Given everything that we know about how the right to rent operates, is that not just going to ramp up professional indemnity, so that landlords will take the safe course and not touch these people with a barge pole?

Kevin Foster: My next point relates to that example. He gave a clear example of a worker here in accordance with the EEA regulations on free movement. His second example was of someone who did not have retained rights because they were not here in strict accordance with those regulations. As he will know, the criteria for the EUSS is not strict compliance with EEA free movement regulations – it is residence in the United Kingdom. He would support the notion that it would produce some harsh outcomes if we based it purely on the free movement regulations. The situation that he has described would be that of the landlord in England who is renting today. He is talking today about someone who is not here strictly in accordance with the free movement regulations and who does not have free movement rights to be retained at 11 pm on 31 December – although I accept that someone could get a job and create new free movement rights before 31 December. It would be exactly the same legal position in January. No one has fewer

rights or less ability in January than they have at 11 pm on 31 December. However, beyond the transition period new free movement rights cannot be created. That is the core difference.

Moving on to what would be a reasonable excuse for a late application, on some of the finer points – for example, someone being badly advised – it would probably be better for clarity to respond to those in writing.

I met representatives of We Belong last week. It was a productive conversation and we look forward to taking forward some changes. The3million group is on some of the Home Office's advisory panels that are regularly engaged at official level. Once we have published the new guidance on the next milestones for the EUSS – the late grounds guidance – we will review ministerial engagement with the groups. I will be looking to meet the3million group at that stage – although by then we may have hit another milestone in millions of applications. We very much welcome all the applications coming in. We genuinely welcome all groups that promote the message that it is time to get in applications. If people have any concerns about their position in the United Kingdom beyond 1 July next year, now is the time to get in their application. Support is available on the phone, online and through our grant-funded organisations if people have any queries or concerns, or genuinely need assistance with the application.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said that it would be no surprise that, as a member of the Scottish National party, he will opposing the legislation. No, it is not. I recognise that the SNP has a long and fairly solid policy on free movement. I was slightly more surprised at the position being adopted by the Labour party, given that we are only a few days away from the anniversary of the general election, in which an inability to respect the referendum result became a decisive moment for many former Labour Members of Parliament. This SI is about ending the references to free movement in UK law. Free movement is ending. There will not be a reciprocal arrangement on the continent of Europe beyond the end of the transition period. We published a draft of this regulation while the Bill was being debated in the House in order to allow more time for scrutiny. We accepted that just publishing it under the usual SI rules would not be the best way of ensuring good scrutiny and debate. We do not imagine that some of the changes – for example, designating every registry office as a designated place – will be particularly controversial, given that it will make life easier for many non-EEA citizens to get married in the UK. It is a surprise to see the resistance to ending free movement, and to having a single immigration system that judges people by what they have to offer to the UK and their talents, not by where their passports were issued, continuing a year after the general election, but I am sure that it will be noted with interest across the now blue wall.

There are many areas of law to be changed. We joined the European Union – or the EEC as it was called then – in 1973. That means that, unsurprisingly, there is a large number of references across legislation to free movement. Any immigration law that has been passed since then by Governments of both colours will inevitably have referred to the fact that EU citizens had free movement rights. That free movement is coming to an end. That policy has been supported and it was clearly part of our manifesto commitment. In terms of the civil service rules, it is right that someone who works in the civil service has the appropriate immigration permission for the UK, as was of course covered by the withdrawal agreement. I want to reassure anyone who is working in the public service, who is an EEA national and who will inherently have free movement because they are working here, that the EUSS is there for them and we very much look forward to them making an application.

It is a surprise that, a year later, we are still hearing reasons from the Labour party why they do not support this core part of implementing the referendum result. I accept that other parties have a clear view on continuing freedom of movement, but I was not aware that the Labour party did: one day it argues that it does, and other days it argues that it does not. For this Government, the focus is on ensuring a functioning statute book, that we have an EUSS that is effective in protecting the rights of our friends and neighbours who have come to this country and who make a huge difference to it, and that we move forward and deliver our promises. Therefore, I ask the Committee to support the regulation.

Question put,

The Committee divided: Ayes 9, Noes 6.

Division No. 1]

AYES

Baker, Duncan	Pursglove, Tom
Costa, Alberto	Simmonds, David
Foster, Kevin	Whittaker, Craig
Jenkyns, Andrea	Young, Jacob
Lewer, Andrew	

NOES

Coyle, Neil	Lynch, Holly
Elmore, Chris	McDonald, Stuart C.
Hill, Mike	Owatemi, Taiwo

Question accordingly agreed to.

Resolved,

IThat the Committee has considered the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020, No. 1309)

10.6 am

Committee rose.