

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT CESSATION OF EU LAW RELATING TO PROHIBITIONS ON GROUNDS OF NATIONALITY AND FREE MOVEMENT OF PERSONS REGULATIONS 2022

Wednesday 16 November 2022

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The Committee consisted of the following Members:

Chair: MR PETER BONE

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| † Bacon, Gareth (<i>Orpington</i>) (Con) | † Pursglove, Tom (<i>Minister for Disabled People, Health and Work</i>) |
| † Buck, Ms Karen (<i>Westminster North</i>) (Lab) | † Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/Co-op) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † Shelbrooke, Alec (<i>Minister for Defence Procurement</i>) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>) (Con) | † Smith, Chloe (<i>Norwich North</i>) (Con) |
| Johnson, Dame Diana (<i>Kingston upon Hull North</i>) (Lab) | † Vickers, Matt (<i>Stockton South</i>) (Con) |
| † McCartney, Karl (<i>Lincoln</i>) (Con) | † Wild, James (<i>North West Norfolk</i>) (Con) |
| † McDonald, Andy (<i>Middlesbrough</i>) (Lab) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) | Stella-Maria Gabriel, <i>Committee Clerk</i> |
| † Mishra, Navendu (<i>Stockport</i>) (Lab) | |
| † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 16 November 2022

[MR PETER BONE *in the Chair*]

Draft Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022

9.25 am

The Minister for Disabled People, Health and Work (Tom Pursglove): I beg to move,

That the Committee has considered the draft Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022.

It is a pleasure to serve under your chairmanship, Mr Bone. The draft regulations will further the Government's aim of ensuring that all UK law is right for the UK by disapplying certain retained EU provisions that have been redundant since the end of the transition period. Before the UK's exit from the European Union, the retained provisions granted European Economic Area and Swiss citizens the right to access benefits, services and educational entitlements on the same basis as UK nationals if their presence in the UK was in the exercise of specific freedom of movement rights.

The UK voted to leave the EU and, as a result, freedom of movement between the UK and European countries came to an end on 31 December 2020. As the provisions the draft regulations disapply were based in EU freedom of movement arrangements, they became redundant on that date. The withdrawal agreement provides the necessary protections for EEA citizens and their family members who were resident in the UK before the end of the transition period. This statutory instrument disapplies the retained EU equal treatment provisions, so that they cease to be recognised and available in domestic law in relation to access to social security, statutory payments, social assistance, housing assistance, education and training, apprenticeships and childcare-related matters.

In line with our manifesto commitments, EEA nationals coming into the country via the points-based immigration system are treated equally to those coming from elsewhere in the world. They are protected from individual discrimination by equal treatment and non-discrimination provisions enshrined in UK law.

The regulations clarify the situation already in effect, which is that there is no longer distinct treatment of EEA nationals, compared with non-EEA nationals, with regards to immigration and access to benefits, services and entitlements. The exception to that is those EEA and Swiss nationals residing in the UK under the EU settlement scheme. They continue to be able to access benefits, services and entitlements on the same basis as they could before the UK left the EU, in accordance with the terms of the UK-EU withdrawal agreement and equivalent agreements with the EEA and Switzerland. Their ability to do so is protected by the European Union (Withdrawal Agreement) Act 2020, and will not be altered by the regulations.

In summary, the draft regulations do not introduce a change in policy for any group of EEA or Swiss nationals in the UK. They simply tidy up the UK statute book to ensure that it functions effectively and with legal clarity. I am satisfied that the regulations are compatible with the European convention on human rights. I commend them to the Committee.

9.28 am

Ms Karen Buck (Westminster North) (Lab): It is a pleasure to serve under your chairmanship, Mr Bone. I am grateful to the Minister for setting out an explanation of the regulations. I do not intend to detain the Committee long, but I have a few questions. Regulation 3, "Cessation of free movement of persons", refers to rights and powers that

"continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and...are derived (directly or indirectly) from"

the relevant articles of the treaties and agreements. The phrase "directly or indirectly" does not occur in regulation 2, "Cessation of prohibitions on grounds of nationality", which states merely that prohibitions "are derived from" the relevant provisions of the treaties and agreements. Can the Minister clarify why there is that difference in wording? Does it have any meaning, and what is the scope of "indirectly" derived rights, powers and so on?

The schedule goes into some detail on most of the matters relevant to the regulations, but for housing it offers little detail, other than mobile homes being included, but not railway carriages or tents. Can the Minister tell us why the schedule does not detail the relevant matters for housing, and what sorts of rights and powers are envisaged under that heading? What effect will the regulations have on housing rights, and on protections for EEA citizens who arrived after the transition period ended?

I understand—the Minister can correct me if I am wrong—that the intention of the regulations is to end the grounding of entitlements and rights in the treaty, and in the agreement's provisions on freedom of movement and equal treatment. That makes sense, but a number of the "relevant matters" refer to rights and entitlements that we might expect to apply to all people, without any nationality conditions, once they have a right to live or work here, such as the right to statutory sick pay or the entitlement to child care vouchers. I assume that in many cases, the grounding may have changed, but the rights remain the same. For the avoidance of doubt, can the Minister confirm that it is not the intention that all the rights listed under "relevant matters" will cease to apply to EEA citizens who arrive after the transition period?

9.30 am

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): I understand why the Government are bringing in these regulations: they want to tidy up the statute book and put the final nail in the coffin of any rights that EU and EEA citizens might have had in this country. The problem with their policy approach is that it is a race to the bottom. Rather than raising the standards and rights of other nationals who are here, they are treating EEA nationals in the appalling way that non-EEA nationals have continued to be treated in this country.

Let me give an example of how non-EEA nationals are treated. One in my constituency is here on a spousal visa. He has fallen on hard times—he has lost his job—and his spouse is a care worker on minimum wage. Neither can apply for housing assistance, because if either of them did, they would immediately have their visa removed. He is a spouse, and so is likely to be here for the indefinite future, but as he has not yet been here for five years, he cannot apply for indefinite leave to remain. They have four months of rent arrears, and are facing eviction, but the council cannot help them.

It is now proposed that we give that same treatment to EEA nationals. That is abhorrent. We should be raising, not lowering, standards. I am dreadfully disappointed that the Government are taking this approach of a race to the bottom—a race to a nasty, brutish Britain. But that of course is what the Conservatives want, and what they are doing.

9.32 am

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to see you in the Chair, Mr Bone. As the Minister knows from his previous roles, my party fully regrets the end of free movement for a variety of reasons, but we have had that debate—and will probably have it again another day. If we do, regrettably, bring it to an end, we should be careful in how we go about it.

The measure is framed as being technical, but it has significant implications for those impacted by it. Even the title of the regulations is slightly misleading. What the regulations will cease is not prohibitions on grounds of nationality, but the prohibition of discrimination on grounds of nationality. The regulations will entitle the Government to discriminate against EU nationals.

Furthermore, the Minister's statement that equalities legislation is untouched by the regulations is questionable. Discrimination on the grounds of nationality is, of course, prohibited under the Equality Act 2010, section 9(1)(b) of which makes it clear that race includes nationality. Of course, there are exceptions relating to immigration status, but paragraph 17 of schedule 3 of that Act was amended by the Equality (Amendment and Revocation) (EU Exit) Regulations 2018, so that it now refers to "anything which forms part of retained EU law by virtue of" sections 2 to 4

"of the European Union (Withdrawal) Act 2018".

Basically, all I am saying is that despite ministerial assertions to the contrary, equalities legislation is impacted by the regulations, so Ministers should be a little more careful about their assertions on that subject.

My second and probably slightly more important point is on what the regulations say nothing about: the position of people who are within scope of the withdrawal agreement. The Minister touched on that in his description of the regulations. Currently, people who are protected by that agreement are left to rely on it, and on international law. The question is, why do we not have an equivalent set of domestic protections for them, along the lines of the 2019 regulations to which I have just referred? Currently, those people are left to rely directly on just the international treaty. Imagine how difficult it is to walk into a social security office or anywhere else and say, "Never mind these regulations that your Government are producing at an incredible rate; here is an international

treaty, and I have rights under it." We need an equivalent domestic protection for those people, so they can say, "Here the Government set out that I have those rights, as someone protected by the withdrawal treaty." That is what I would like to see in the draft regulations, but they are silent on that point. By endlessly passing such regulations, we make life more difficult for people who should be protected.

Finally, I will mention another set of regulations to illustrate my conclusion. A lot of exceptions were set out in a piece of legislation called the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. In schedule 4 of those regulations, all sorts of exceptions are set out—rights that continue, notwithstanding other measures that brought free movement to an end. Again, the draft regulations are silent about that, and it is not absolutely clear to me how the sets of regulations relate to each other.

That brings me to my concluding point. It is becoming incredibly and hellishly difficult to work out where we are at. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 was introduced a couple of years back; a lot of the provisions we are debating should have been in primary legislation, so that we could debate and scrutinise them properly, but instead we are trying to follow five, six, seven or eight pieces of delegated legislation at a time. It is becoming really hard to understand what is going on. On that note, I will listen carefully to what the Minister will say, but I am not attracted by the draft regulations.

9.36 am

Tom Pursglove: I am grateful to Members for their contributions to the debate. I repeat that the draft regulations are a technical rectification to ensure that UK law functions with legal clarity by disapplying retained EU law that is now redundant.

On the point made about discrimination, it is important to recognise that we have our own domestic equalities protection framework in place. We do not need to look to the European Union for that. On the philosophical argument made by the hon. Member for Brighton, Kemptown, I think it is fair to say that he was covering old ground; the decision to leave the European Union was made by the British people back in 2016, and this Government got on with delivering on the mandate that we were given by the British people. Ending freedom of movement, and having a points-based system that treats people equally regardless of where they come from in the world, is the right thing to do. That is reflected in the system we have in place. If Opposition Members take a different view of the form that the immigration system should take, I wonder whether those views will be put forward in their manifestos at the next general election.

I reiterate that the draft instrument will not change the policy in place regarding the rights enjoyed by EEA nationals in the UK. It will, however, correct a deficiency arising from retained EU law and bring greater clarity to the UK statute book. That goes directly to the heart of the point made by the shadow Minister, the hon. Member for Westminster North. This SI delivers absolutely no substantive policy change; it simply clarifies the situation that is already in effect.

Stuart C. McDonald: First, will we ever see something in domestic law that is designed to protect the rights of those who are protected by treaty? Secondly, on the list of exceptions in schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020—quite a mouthful—a huge list of rights are retained under that SI. Are they affected by the draft regulations? Will the Minister answer that, now or later?

Tom Pursglove: I am grateful to the hon. Gentleman for his intervention. It reminds me of times gone by,

when we regularly debated immigration-related matters in the House, and probably at times in this Committee Room. My clear understanding is that, given the protections in the withdrawal agreement, no rights are being taken away. However, I am happy to take away his substantive question, and to come back to him on it in writing. With that, I commend the regulations to the Committee.

Question put and agreed to.

9.39 am

Committee rose.

