

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT FREEDOM OF ESTABLISHMENT AND  
FREE MOVEMENT OF SERVICES (EU EXIT)  
REGULATIONS 2019

*Monday 21 October 2019*

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**The Committee consisted of the following Members:**

*Chair:* DAVID HANSON

† Aldous, Peter ( <i>Waveney</i> ) (Con)	† Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)
† Chalk, Alex ( <i>Cheltenham</i> ) (Con)	† Spellar, John ( <i>Warley</i> ) (Lab)
† Duguid, David ( <i>Banff and Buchan</i> ) (Con)	† Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)
† Esterson, Bill ( <i>Sefton Central</i> ) (Lab)	† Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)
† Forbes, Lisa ( <i>Peterborough</i> ) (Lab)	Wilson, Sammy ( <i>East Antrim</i> ) (DUP)
Graham, Luke ( <i>Ochil and South Perthshire</i> ) (Con)	† Zahawi, Nadhim ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> )
† Hollinrake, Kevin ( <i>Thirsk and Malton</i> ) (Con)	
† Huq, Dr Rupa ( <i>Ealing Central and Acton</i> ) (Lab)	
Johnson, Diana ( <i>Kingston upon Hull North</i> ) (Lab)	Yohanna Sallberg, <i>Committee Clerk</i>
† Kerr, Stephen ( <i>Stirling</i> ) (Con)	
† Metcalfe, Stephen ( <i>South Basildon and East Thurrock</i> ) (Con)	† <b>attended the Committee</b>

**The following also attended (Standing Order No. 118(2)):**

Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/Co-op)	Rodda, Matt ( <i>Reading East</i> ) (Lab)
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## Third Delegated Legislation Committee

Monday 21 October 2019

[DAVID HANSON *in the Chair*]

### Draft Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

6 pm

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi):** I beg to move,

That the Committee has considered the draft Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.

May I say what a pleasure it is to serve under your chairmanship, Mr Hanson, and congratulate you on becoming a grandad for the first time? [HON. MEMBERS: “Hear, hear!”]

The regulations, which were laid before the House on 11 July, will disapply directly effective rights of establishment and the provision of services derived from article 49, on freedom of establishment, article 56, on free movement of services, and article 57, the definition of “services”, of the treaty on the functioning of the European Union—TFEU—if the UK leaves the EU without a withdrawal agreement. Certain directly effective rights, derived from article 18 of the TFEU, prohibit discrimination on grounds of nationality within the scope of application of the EU treaties. For completeness, the regulations therefore also disapply article 18 of the TFEU in so far as it relates to the disapplication of rights of establishment and provision of services.

The regulations also disapply equivalent or similar articles derived from the European Economic Area agreement between the EEA countries, the free movement of persons agreement with Switzerland, and the Ankara agreement and the additional protocol with Turkey. Henceforth those will be referred to as countries with associated agreements.

Directly effective rights of establishment and free movement of services ensure that nationals from EU member state territories can be self-employed, own and manage a company and provide services on a temporary basis in another member state under the same conditions as that state’s own nationals, and that they can receive services without facing certain restrictions in the EU single market. Rights derived from the TFEU are based on reciprocal relationships between EU member state territories; and rights derived from EU bilateral and multilateral agreements are based on reciprocal relationships between EU member state territories and certain non-EU territories.

The rights are retained in UK domestic law on exit day by virtue of section 4 of the European Union (Withdrawal) Act 2018. The Government have decided to disapply the rights as part of their preparations for Brexit on 31 October. The decision was taken for three primary reasons. First, the rights will no longer be reciprocated. The rights apply only to nationals of one EU member state or country with an associated agreement

operating in the territory of any other EU member state or country with an associated agreement. As a result, once the UK ceases to be a member state of the EU, the rights will automatically no longer be reciprocated.

The second reason is sovereignty. Given that the rights will no longer be reciprocated, failing to disapply the rights in UK law would leave a lack of clarity as to whether EU nationals and nationals of countries with associated agreements had additional rights, compared with nationals of other countries, to challenge the laws and decisions of UK authorities after Brexit. In turn, that could restrict the Government’s future ability to regulate, particularly when UK nationals will no longer have the benefit of these rights in the EU.

The third reason is compliance with international law. Disapplying the rights will facilitate the UK’s compliance with international trade law and specifically the World Trade Organisation’s general agreement on trade in services—GATS—ensuring that the UK is not in violation of the most favoured nation principle.

I want to move on to impact. The Government were keen to ensure that the regulations received proper scrutiny before being brought before the House. I can confirm that the Government sought and received the consent of the devolved Administrations in Scotland and Wales to legislate on this matter, as the treaty rights being disappplied could, in a domestic context, impact on both reserved and devolved policy. This included agreement from the Scottish Parliament’s Economy, Energy and Fair Work Committee. The Government also notified the Northern Ireland civil service of our intention to legislate.

In addition, the Government engaged fully with the Joint Committee on Statutory Instruments. The Committee considered the regulations at its meeting on 4 September and chose not to report them to either House. The instrument was also considered by the Secondary Legislation Scrutiny Committee at its meeting on 23 July, and it drew the instrument to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House.

**Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): I appreciate that I have not been selected as a member of the Committee, but I understand that I have the right to speak and ask questions on behalf of my constituents. The Minister is obviously getting his defence of this highly controversial measure in early. Does he not accept that it has caused great alarm to many self-employed EU citizens who have been operating legitimate and important businesses in our communities up and down the country? I was contacted by a constituent today who was simply unaware of this and is deeply alarmed.

**Nadhim Zahawi:** That is precisely why I am going into some detail on why the regulations will have no impact at all on the work or services provided by EU nationals or nationals of Turkey or Switzerland.

Let me make some more headway on the reasoning given by the Secondary Legislation Scrutiny Committee. For example, the Committee noted that the instrument seeks to ensure that the UK is compliant with WTO law and that it will make it an offence to dishonestly use illicit satellite decoder cards from the EU. I will attempt to address both of those points momentarily. However,

I want to reassure the House on a number of aspects of the regulations: the practical impact that we expect from the disapplication of these rights; the interaction between these rights and EU citizens' rights, which I think was essentially the thrust of the concern of the hon. Member for Cardiff South and Penarth on behalf of his constituents; and the impact of the disapplication of these rights on the immigration regime.

First, with respect to the practical impact of the regulations, they do not impose any additional restrictions on EU nationals or EU-based businesses, or on the nationals and businesses of the countries with associated agreements, at the point at which we exit the EU. This is because existing UK legislation is expected to be compliant with these rights. The Government have prepared as thoroughly as possible to identify policy areas that are reliant on the establishment and free movement of services treaty rights, and therefore have a good understanding of where direct policy impacts can be expected as a result of disapplying these rights today. With the exception of an impact on the use of satellite decoder devices, no direct policy impacts were identified during that preparation. The regulations will impact on the use in the UK of satellite decoder devices intended for EU audiences in order to dishonestly receive a programme with the intent of avoiding a charge. This is as a result of aligning the law with that already applied for satellite decoder devices intended for non-EU audiences.

Secondly, on citizens' rights, the rights disappplied by the regulations should not be confused with the citizens' rights of EU citizens currently resident in the UK, which are being protected separately. The UK's guarantee to EU citizens is that those who are resident in the UK by exit day will still be able to work, study and access benefits and services, whatever the scenario. This is separate to, unrelated to and unaffected by these regulations.

Thirdly, with regard to immigration, these regulations will not in themselves have any impact on the immigration regime applying to EEA, Turkish and Swiss nationals in the UK. The Government have announced that free movement as it stands under EU law will end on 31 October if we leave the EU without a deal. A new points-based immigration system will be introduced from January 2021. Until then, much of the free movement migration framework will remain until the UK Parliament passes legislation to repeal the Immigration (European Economic Area) Regulations 2016.

The regulations that we are considering today carve out the rights in so far as they fall within the scope of the immigration regime applied to Swiss nationals and Turkish nationals. This is to ensure that changes to the immigration regime applied to Swiss nationals and Turkish nationals come into force via primary immigration legislation. These regulations are an important part of the Government's preparation for Brexit. They facilitate the UK's compliance with international trade law and they preserve the UK's freedom to regulate, should this Government or a future Government choose to do so—after we have left the EU, of course.

I commend the regulations to the House.

6.11 pm

**Bill Esterson** (Sefton Central) (Lab): It is an even greater pleasure than usual, Mr Hanson, to serve under your chairmanship. I congratulate you on becoming a

grandad for the first time and I hope we will not detain you for too long from visiting your new grandchild, which I know you are keen to do—but I apologise that I will detain you for a little while.

Before we consider these regulations, we should consider the comments of the 3million, the organisation representing the more than 3 million EU and EEA citizens resident in the United Kingdom. The organisation has described this measure as not being what was promised by the Government and says that it undermines promises made by the Government, which, of course, is something that the Democratic Unionist party has been only too familiar with in recent days.

What is it that we are considering today? We are considering the removal of the rights of EU, EEA, Swiss and Turkish nationals who are self-employed or business owners or operators in the United Kingdom. Who are these people and how will they be affected? They are thousands—potentially hundreds of thousands—of people who are working in professional services, entrepreneurs, people who operate start-up businesses, people who operate in IT and in professional and financial services, architects, or self-employed workers in the gig economy. There are serious potential consequences not just for them but for their staff, their customers and their suppliers—both for businesses and the self-employed—as well as for their families and the local economies in which they operate.

The Minister talked about the impact of the regulations; in fact, at one stage, he said that he was keen to move on to the impact. But there is no impact assessment, so how can we possibly know? This is a perennial discussion—it seems that we have been dealing with the issue long enough for it to be perennial and not just something of a repeated nature. Every time we have a set of these regulations, the impact assessment is lacking. Because this measure affects so many people, it is impossible for the Minister to say that it will not have a significant impact on the economy. He simply has no way of knowing that, because that investigation—that impact assessment—has not been carried out.

**Stephen Doughty:** My hon. Friend is making strong points, with which I completely concur. He will note that the Minister used very careful words: he said “no further restrictions at the point of exit”. The fact that this matter is being considered in this way, rather than through the immigration Bill, will raise significant concerns about these rights changing in due course. We on the Select Committee on Home Affairs have looked at the subject many times. This issue did not come up, and we have discovered all sorts of problems with the existing EU settlement scheme, let alone with this provision, which many people were unaware of.

**Bill Esterson:** I am grateful to my hon. Friend for those remarks, which I will address in some detail later.

**Matt Rodda** (Reading East) (Lab): Does my hon. Friend agree that there is a disturbing lack of assessment and evidence-based policy making on these important matters? The Government are ignoring the demands of many, including the official Opposition, for a full assessment of their new deal. Surely there should be some proper assessment of these important matters.

**Bill Esterson:** I absolutely agree. My hon. Friend is right to mention the lack of impact assessment or analysis of the proposed deal, which we are being asked to consider without being able to judge the line-by-line detail of what is in it. Somebody will have to remind me how many pages the new document is.

**Kevin Hollinrake** (Thirsk and Malton) (Con): Two hundred and eighty-odd.

**Bill Esterson:** I will accept the hon. Gentleman's comment from a sedentary position; does anybody want to go higher? The reality is that we do not have the information we need in order to make judgments, whether on the new deal or the consequences of no deal, and on these regulations. In the explanatory memorandum, the Government use the phrase, "It is anticipated". What they are saying is that they do not know what the impact will be, and I am afraid that is a real problem. These regulations were drawn to the attention of the Secondary Legislation Scrutiny Committee.

**Kevin Hollinrake:** The hon. Gentleman may be familiar with the document we were given access to, which was held in the Treasury since November 2018. That contained an impact assessment of all kinds of different scenarios, and said that in all of them, the economy is expected to continue to grow. Does that give the hon. Gentleman some confidence that there is life beyond the European Union?

**Bill Esterson:** That is a slightly different point to the one we are discussing. We need to look at the detail. I am not sure whether that intervention was part of the hon. Gentleman's pitch to be Chair of the Treasury Committee—others must judge—but I will touch on his point. The Secondary Legislation Scrutiny Committee speaks of the removal of treaty rights, and the fact that this is a policy change. That goes to the heart of the concern about what is being proposed, because when the withdrawal Act was passed, the Government promised that they would not use the Henry VIII powers in section 8 of that Act as a vehicle for policy change. They also said that it "almost goes without saying" that no change should be made to rights through delegated legislation, yet that is exactly what is being proposed.

The disapplication of the rights of EU, EEA, Swiss and Turkish nationals is clearly at odds with what was promised regarding section 8 of the withdrawal Act. That Act was not intended to address how, whether, and how quickly we should meet our obligations under the WTO, which is the reason the Government are giving for putting these regulations through. The purpose of section 8 of the withdrawal Act was to fix deficiencies in retained EU law—an explanation that, to be fair to Ministers, they have used to justify previous regulations in Committees in which I have responded on behalf of the Opposition. Why is that not the case on this occasion? Why is this not being addressed through primary legislation? Why is it not being done through an immigration Bill, as my hon. Friend the Member for Cardiff South and Penarth asked, and why is that Bill stuck in Committee?

If free movement of people is to end via primary legislation, as the Home Secretary said on 5 September, why is the same principle not being applied to the freedom of establishment and free movement of services, and what are the consequences for those individuals

who are self-employed, or who own or manage businesses in this country? A large cohort of the people delivering services or running businesses depend for their lawful residence qualification on being regarded as economically active. They have the right to that definition and to qualify. Their rights are derived under the 2016 immigration regulations, which the Minister mentioned, but that is because they are in accordance with article 49 of the treaty on the functioning of the European Union. These regulations disapply article 49, and therefore the 2016 immigration regulations.

It makes no sense to decide immigration rights for those who are self-employed or are running a business separately from determining the immigration rights of other people, but that is what these regulations do, despite the assurances that were given when the withdrawal Act was passed. If there is nothing to worry about, where is the legal analysis? Where were the Minister's comments about the legal opinion that the Government have obtained? Where is the analysis that these regulations will not adversely affect the immigration rights of EU or EEA nationals? Thousands of self-employed, business-owning or business-managing providers of services need the assurance that they will not be disadvantaged and that their right to stay will not be questioned or removed. Where is the legal protection? It is not referred to in the explanatory notes, and the Minister did not refer to it.

I note from previous regulations passed in these Committees that on other occasions it has suited the Government to apply a principle of reciprocity. For example, I was responding for the Opposition on the matter of intellectual property regulations when the Government chose to allow EU and EEA firms the right to continue to have full access to our intellectual property regulations, and there was no guarantee that our firms would have those rights in return. Reciprocity was not a barrier on that occasion, but it seems that it is here, when the Government want to remove the rights of self-employed or business-owning or managing EU or EEA nationals.

**Matt Rodda:** This is a particularly worrying point, and I welcome my hon. Friend's analysis of the situation. The Government seem to have one rule for big business and a very different one for small businesses, which are the lifeblood of our economy. Surely they should be equally fair to both types of business.

**Bill Esterson:** That is right. As my hon. Friend points out, these regulations relate to the self-employed or those running small firms, who do not have legal protections. That relates to the point about where the legal assurance is. He is right that large firms are able to ensure protection, give assurance and make applications to enable individuals to live and work in this country.

On the question of whether the regulations are about delivering WTO most favoured nation compliance, the Government do not have to act so quickly: as with IP rights, they could wait and see whether the EU and EEA grant reciprocal arrangements. After all, Government Members who support no deal—I cannot remember whether anybody in the Committee is in that category—have often argued that, in the event of no deal, the EU would continue with the existing arrangements and reciprocate because it would be in its interest to do so. I wonder whether the Minister goes along with those Members, who almost certainly all belong to the European

Research Group. Whether he does or not, why are not the Government waiting to see the response of the EU and the EEA on the matter of reciprocal rights?

I come back to the central point: that EU, EEA, Turkish and Swiss nationals were promised under section 8 of the European Union (Withdrawal) Act 2018 that it would not be used for policy changes—especially those affecting rights. I remind the Minister that section 8 was designed to rectify deficiencies from minor changes—what we are concerned with is not minor, but is a policy change—and where there would be a failure of retained EU law to operate effectively. Compliance or otherwise with WTO provisions is not a matter of retained EU law and should not be addressed in that way. It was never intended that it would be done in that way.

Let us remind ourselves of the impact. More than 3 million EU nationals live in the UK and so do tens of thousands of Turkish and Swiss citizens. Among their number countless thousands will be affected by the regulations. That will affect their confidence about doing business, and it could affect the confidence of those who trade with them. That may mean contractors having to stop working in the UK, which will affect customers and suppliers. There could be legal proceedings against contractors for breach of contract, or sudden retendering because of the loss of non-UK contract holders' rights. It did not seem to me from the Minister's remarks as if the Government had considered those potential economic and business consequences.

There are questions about legal remedy and compensation through bilateral investment treaties. Before a number of east European countries came into the EU, we were party to bilateral investment treaties with them. Once we leave the EU those treaties will come back into force, and once those agreements are back in force they will enable companies in those countries to take legal action against the UK Government. Have the Government considered that potential challenge to the legislation? What steps are being taken to ensure that it is not a problem or threat for the UK?

I turn back to the question of the economic benefits of having in this country the relevant businesses and their owners, and self-employed workers. In the event of no deal and the regulations being enacted, what steps will the Government take to protect the investment that those companies bring and make sure they are not undermined by the regulations? At the moment, the response to the regulations of the 3million and the businesses that my hon. Friends have referred to is concern about whether it is desirable for businesses and self-employed people from the EU or EEA to stay in this country. If that protection is not in place and that assurance is not guaranteed, those people will be hit, and there will be a knock-on effect on UK jobs and our economy—to return to the earlier comments of the candidate for the Chair of the Treasury Committee, the hon. Member for Thirsk and Malton.

The Secondary Legislation Scrutiny Committee raised concerns and the 3million says that the provisions are not what was promised, and undermine promises made by the Government:

“We were repeatedly promised that we would be treated no less favourably and nothing would change to our rights. These regulations do the opposite and remove our right to bring nationality discrimination claims. The proper place to consider the issues of immigration is in the immigration Bill. Not here.”

6.29 pm

**Alison Thewliss** (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Hanson; I, too, pass on my congratulations. The SNP agrees with Labour: we oppose the regulations and the way in which they are being brought about, which is completely inappropriate. It is inappropriate to lump satellite decoder cards in with people. This is about people's lives and people's businesses.

The Government are making it more and more difficult for people to continue their lives in the UK. Those two things should not be lumped together in the same Committee, hidden away on a first-floor corridor. The measure should be part of the immigration Bill, which would allow us to debate it, move amendments and have some degree of control over the process. The Government are taking control away from the House in this hidden Committee, and that is despicable. EU nationals, Turkish nationals and other EEA nationals are finding out about the measure through the grapevine and the work of the 3million and others, and they are, frankly, appalled that the Government would add insult to injury by doing it in this particularly heavy-handed way.

The best way to guarantee that rights are reciprocated is to take the first step, because the UK Government are making the change and going about Brexit. It would be an act of good faith to make sure that we did our best to protect rights, rather than remove them. No one is going to reciprocate if we start to remove rights in this country.

The regulations will further erode the rights of EU citizens by removing their right to be self-employed, to own and manage companies and to provide services in the UK on the same basis as UK nationals. It is odd that the Conservative party, which is supposed to be the party of small businesses and entrepreneurs, is taking action today to undermine them. It keeps claiming that it supports them, but it is not there for them at their time of greatest need, when they need their rights to be protected.

The regulations remove the rights of EU citizens to bring nationality discrimination claims in relation to those rights. It is sinister that people cannot even fight when there is discrimination against them, and it certainly does not bode well for the future Brexit—certainly not for the people I know. It also does not chime with the promises made by the right hon. Members for Uxbridge and South Ruislip (Boris Johnson), for Witham (Priti Patel) and for Surrey Heath (Michael Gove). They all promised that EU citizens would be automatically granted the right to remain and that they would be treated no less favourably than at present. The regulations do quite the opposite.

The hon. Member for Sefton Central mentioned a lot of the things in the 3million's briefing, which I will not reiterate, but the Public Law Project also provided a comprehensive briefing that mentions its four key concerns with the regulations. First, it is concerned that secondary rather than primary legislation is being used to make significant policy changes and to disapply important rights. Again, this Committee is not the proper place to do that.

Secondly, the Public Law Project is concerned that the changes may have an impact on immigration rights and should be included in the immigration Bill, which is

[Alison Thewliss]

stuck—logjammed. We do not know whether it will ever conclude, because this Parliament is so uncertain. The Government probably do not have the numbers for that either, so it is in their interest to stick it in Committee rather than make any progress. Thirdly, the Public Law Project is concerned that the regulations go beyond the powers conferred on Ministers by the Henry VIII powers in section 8 of the European Union (Withdrawal) Act 2018 and, fourthly, that no impact assessment was done before laying them, despite the obvious impact on businesses and individuals.

The Secondary Legislation Scrutiny Committee in the Lords picked up on that issue, and noted that:

“removing the treaty rights will mean that the people and businesses affected will not be able to use the rights to challenge possible new policies or regulations in the UK which place restrictions on their access to the UK Internal Market after exit.”

All the things that the Government have done on the hostile environment until now have had a deliberately chilling effect—they do not want people to come here. That is the message being sent to EU nationals by the regulations.

My hon. Friend the Member for Linlithgow and East Falkirk (Martyn Day) had an email from constituents in that vein this evening, and he asked me to pass it on. They are a couple who have businesses, who say:

“Apart of the fact that this is highly discriminating, my husband and me will be personally affected by this as we are both running businesses in West Lothian as full time occupation. Both of us have already been granted Settled Status and I was of the impression that this would keep our rights intact. Apparently now, the government is seeking ways to frustrate those rights through the backdoor, which will ruin the livelihood of so many... We love Scotland. This is our home and would like to stay here, however, if we are stripped of our rights and our livelihood, it would be impossible for us to stay.”

That is how EU nationals feel about the issue, Mr Hanson. They feel as though their rights are being undermined in a sneaky, sleekit, underhand way up in this Committee Room this evening.

Stuart Gregory, managing director of Lentune Mortgage Consultancy, emailed every member of the Committee, I think, to express his concerns. He and his wife started a business together in 2008 after the financial downturn caused him to be made redundant from his job. He said:

“This issue even being put forward by Government is appalling, and to threaten the removal of rights to run a company in the UK is making me feel quite sick—it’s literally treating EU Nationals as 2nd class citizens—which I’m sure would excite many leave voters.

If this comes to pass, I’m disgusted by how my country has fallen into the gutter.”

That brings me to the heart of the issue, because it is appalling and inappropriate that the regulations are being brought forward in this way. It is a sad state of affairs that the rights of EU nationals are being debated in this way and that the rug is being pulled out from under people in this cruel and underhand way. It is no wonder that EU nationals, EEA nationals and Turkish nationals have a lack of faith in the Government and in due process, because they see this underhand thing happening time and time again: people are promised, “Nothing will change—everything will be fine. Don’t worry. Fill out this form. Do that.” That is not how it feels to them.

Perhaps the Minister thinks I am talking nonsense; perhaps, in his heart of hearts, he knows I am right. He should withdraw the regulations and do things properly. The Government should not be sneaky about it. Yes, we need to look at the issue of satellite decoder cards—perhaps that is quite important. But it is not as important as people’s lives and livelihoods and their feeling that they want to live in a country where they feel welcome. Many of the EU nationals who I speak to on the doorsteps of Glasgow Central voted no in 2014 because they wanted to retain their EU membership. That is very much what they were told in 2014. They voted to remain in 2017. They have seen how EU nationals have been treated over this five-year period and the rhetoric that comes from the Government. The EU nationals who I spoke to on the doorsteps of Glasgow Central over the weekend are going to vote yes when they get their chance, because they see how the UK is going, and they want none of it. I completely reject the regulations and will vote against them.

6.37 pm

**Matt Rodda:** It is a pleasure to be able to speak briefly to the Committee. I should declare an interest, as I have a relative who is an EU national and who might be affected by the regulations.

The regulations sum up the Government’s lack of concern for the feelings and aspirations of EU nationals living in this country. There are simply thousands and thousands of people across the country affected by the issue. It is of huge concern to them. As the hon. Member for Glasgow Central has just pointed out, many of them have lived and been resident in the UK for a very long time. They have established businesses and are contributing significantly to the local economy.

My constituency has a large number of EU residents—so many that at one point, one of our local newspapers was published in Polish so that the Polish community could read it. We have residents from long-standing EU states through to people from new accession countries, as well as many from Switzerland and Turkey. Many of them have professional qualifications and business skills. They are involved in small businesses in every sector, from catering through to delivery businesses through to IT, which is a major local industry. Others are in other walks of life. The Government yet again show a complete lack of concern for those people’s legitimate desire to stay in the UK and continue their businesses here.

The regulations underestimate the importance of small and medium-sized enterprises and other types of businesses in the UK. The regulations also misunderstand the need for skilled, highly trained and committed entrepreneurs in Britain providing an important component of our economy. I could give many examples from my area of small and medium-sized IT employers dependent on international labour. There are also larger ones such as Microsoft, which has its second-biggest European office in Reading East. They expect and demand that countries around the world should be able to facilitate the ease of movement of skilled people, many of whom in IT, for example, are highly skilled subcontractors operating their own businesses and contributing to a wider IT economy.

I find it simply staggering that a party that once styled itself as the party of business can be so cavalier in its approach. Indeed, it is equally cavalier in its apparent

lack of concern for people's rights, and I urge the Minister, who I understand to be a decent man, to reconsider this ill-thought-through approach and to consider, as my hon. Friend the Member for Cardiff South and Penarth has said, the importance of primary legislation and a proper debate on the Floor of the House to explore these matters in much more detail and provide a much better and fairer law with which all our residents are more likely to feel comfortable.

6.40 pm

**Nadhim Zahawi:** May I start by sharing with the Committee my dismay and disappointment at the conflating of this SI with issues of immigration and the status of European citizens, as well as those from Turkey and Switzerland, who work hard and deliver services here?

The hon. Member for Glasgow Central might not have been in the room when I confirmed that the Government sought and received the consent of the devolved Administrations in Scotland and Wales because we wanted to make sure that we received consent before we moved forward, but I hope that she and the hon. Member for Reading East will refrain from scaremongering. They both spoke about the impact on EU citizens' rights, and I want to reiterate to the Committee that EU citizens' rights are being preserved separately from this instrument. The Government have already committed to protect the rights of more than 3 million EU citizens, which we have heard being conflated today with this statutory instrument. We will make sure that their rights are protected. The regulations do not affect the offer that the Government have made to EU citizens resident in the UK at the point of exit. They do not interact with the citizens' rights agreements with Switzerland and the EEA European Free Trade Association states.

**Alison Thewliss:** Will the Minister give way?

**Nadhim Zahawi:** I have a lot to cover, but I will happily take the hon. Lady's intervention later. The Government's plan on citizens' rights confirms that EEA and Swiss citizens resident in the UK by exit day would be able to apply to the EU settlement scheme until at least 31 December 2020 to secure their status in a no-deal scenario. The EU settlement scheme is live and performing well. More than 2 million applications have now been received, and the scheme will continue to run in a deal or no-deal scenario. EU citizens resident in the UK by exit day will continue to be able to access benefits and services on exactly the same basis after the UK exits the EU as they do now. I sincerely hope that colleagues will refrain from scaremongering. It is deeply irresponsible for hon. and right hon. Members to do so.

The hon. Member for Sefton Central asked important questions, which I will attempt to address. He asked about the impact assessment for the regulations. An impact assessment has not been prepared because the impact has been approved *de minimis* in line with the better regulation framework.

**Bill Esterson:** How will you know if you don't do one?

**Nadhim Zahawi:** Let me make some headway.

The only area in which the directly effective rights of establishment or free movement of services have been identified to have a direct impact on UK businesses is in the case of satellite decoders, where we expect the

impact to be minimal. The directly effective rights of establishment and free movement of services impact the immigration regime applied to Swiss and Turkish nationals. Changes to the regimes will be delivered by primary immigration legislation, so let us not conflate those two things.

The hon. Gentleman also asked how we know that the EU will not reciprocate. Why are we doing this now? These rights are no longer reciprocated once we leave the EU. They are directly effective rights that are applicable only to member states. However, this does not preclude us from agreeing an ambitious free trade agreement with the EU.

The hon. Member for Cardiff South and Penarth said that the regulations are necessary to protect the Government's freedom to regulate in a no-deal scenario and asked what regulations the Government are planning that would contravene or depart from those rights. We anticipate that the immediate practical impact of the regulations on the ability of EU, EEA, EFTA, Swiss or Turkish nationals to establish or carry on business or provide services in the UK will be limited, because UK law is currently expected to be compliant with these rights. Were there to be any legislative changes that depart from these rights—which I think is his point—after we have left the EU, they would be subject to the scrutiny of Parliament in the normal way and so would be considered at the appropriate time.

I want to return to the hon. Member for Sefton Central, who asked how the Government can be sure that there are no other direct impacts. The Government have prepared as thoroughly as possible. I hope he would agree that we have consulted as thoroughly as we can, and that the only exception is the satellite decoders.

Several hon. Members spoke about the submission from the Public Law Project. Allow me to address it. It is important that we get this on the record, because emotions are running high and the atmosphere is febrile in this place. I think I have addressed the issue of the impact assessment. The hon. Member for Sefton Central said that these go beyond the powers conferred on Ministers by the Henry VIII powers in section 8 of the withdrawal Act, a point that pretty much comes from the Public Law Project notes that were circulated today. I will share with the hon. Gentleman the correct position. The powers delegated to Ministers by Parliament via the EU withdrawal Act specifically allow changes to be made to existing Acts of Parliament by secondary legislation, through so-called Henry VIII powers. In its report on Henry VIII and delegated powers, the House of Lords Constitution Committee noted that

“the distinction between Henry VIII and other delegated powers is not in this exceptional context a reliable guide to the constitutional significance of such powers, and should not be taken by Parliament to be such.”

Section 8 powers to prevent, remedy or mitigate deficiencies in the EU law retained under the Act that arise from the UK's withdrawal from the EU are used here to address deficiencies in retained EU law relating to certain provisions on freedom of establishment and free movement of services in the event that the UK leaves the EU without a deal. Section 8 is used to address any inoperability of such rights and to ensure that UK law continues to function effectively and with legal clarity.

**Bill Esterson:** I made the point that section 8 of the withdrawal Act is designed to address deficiencies in retained EU law—that is not in question. The problem is that it is not being used for that; it is being used for changes in policy and to affect people's rights. That goes way beyond the scope, as does addressing WTO deficiencies. That is not what was ever envisaged or stated by the Government when they passed the withdrawal Act.

**Nadhim Zahawi:** The deficiencies in retained directly effective rights concerning freedom of establishment and the free movement of services, including a lack of reciprocity, which there cannot be in this case, arise as a result of the withdrawal of the UK from the EU. That is the whole point. The provisions in the regulations are being made as a direct consequence of the UK's exit from the EU.

Finally, the hon. Member for Sefton Central mentioned the 3million's campaign on our doing this here through secondary legislation, rather than primary legislation. The regulations do not represent a significant policy change, as he suggests. They simply do not. If colleagues prefer to scaremonger, that is their prerogative, but I do not agree with them. I think it is a mistake to do that. It is a time to behave responsibly. The regulations do not impose any new restrictions on EU, EEA, EFTA, Swiss or Turkish nationals or on EU, EEA, EFTA, Swiss or Turkish-based businesses at the point at which we exit the EU, and we do not expect disapplying these rights to have a direct impact on the ability of EU, EEA, EFTA, Swiss or Turkish nationals to establish or provide services. The hon. Gentleman will know better than I do that successive Governments have implemented EU obligations via both secondary and primary legislation, so I hope he will reconsider his position.

I will end, Mr Hanson, because I want to get you over the road to the hospital to see your granddaughter. I thank Members for their valuable contributions to this debate. I compel them to think twice before they scaremonger. The hon. Member for Glasgow Central should talk to her colleagues in the Scottish Parliament on this.

**Stephen Kerr (Stirling) (Con):** On that point, I agree with the Minister. It is very distressing in Scotland to hear the kind of propaganda we have heard this evening. It has been widely disseminated. In fact, an MEP in Scotland has written to all the EU citizens living in my constituency with similar scaremongering, with an opening paragraph on the Government's attitude towards EU citizens. Does he believe for one minute that the hon. Member for Glasgow Central will go back to the constituents to whom she spent the weekend scaremongering and put them right? I do not. This is typical of the tactics that the Scottish National party is using in Scotland at the minute.

**Nadhim Zahawi:** It is incumbent on us all to be sensible and to reflect on today. Let us not add fuel to the flames of division. Let us come together. Hon. Members

heard in my opening remarks that we have consulted thoroughly with our colleagues in Scotland and Wales, so I ask everyone to please act responsibly.

**Stephen Doughty:** I gently say to the Minister that it is certainly not my intention, or that of many hon. Members, to scaremonger in any way. The fact is that we are representing our constituents who are scared and who have concerns. I was not aware of this issue until my constituents raised it with me. I have to say that I do not agree with his characterisation of the EU settlement scheme. The Home Affairs Committee, on which I sit, has repeatedly found serious concerns and problems with how it operates, and indeed with the entire immigration system. That is why people have those concerns and are scared. It is genuine; it is not us scaremongering.

**Nadhim Zahawi:** I am grateful to the hon. Gentleman for that thoughtful intervention. I only ask that he shares the debate with his constituents, so that they can read, in black and white, what I have outlined as the true position of the legislation.

I again thank you, Mr Hanson, and Committee members. The regulations form an important part of our preparations to leave the EU, hopefully with the great deal that the Prime Minister has negotiated. They help to preserve our freedom to regulate after we have left the EU with respect to the establishment and carrying on of business in the UK, and the provision of services. They also facilitate our compliance with international trade law, which is important. We pride ourselves on being a country where people obey the rule of law—a subject that has been widely debated in this place and across the media. I commend the regulations to the Committee.

*Question put.*

*The Committee divided: Ayes 8, Noes 6.*

#### **Division No. 1]**

#### **AYES**

Aldous, Peter  
Chalk, Alex  
Duguid, David  
Hollinrake, Kevin

Kerr, Stephen  
Metcalf, Stephen  
Stewart, Iain  
Zahawi, Nadhim

#### **NOES**

Esterson, Bill  
Forbes, Lisa  
Huq, Dr Rupa

Smith, Nick  
Spellar, rh John  
Thewliss, Alison

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.

6.55 pm

*Committee rose.*



