

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

IMMIGRATION (CITIZENS' RIGHTS APPEALS)
(EU EXIT) REGULATIONS 2020

Tuesday 3 March 2020

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The Committee consisted of the following Members:

Chair: CAROLINE NOKES

† Cruddas, Jon (*Dagenham and Rainham*) (Lab)
 † Eagle, Maria (*Garston and Halewood*) (Lab)
 † Elmore, Chris (*Ogmore*) (Lab)
 † Foster, Kevin (*Parliamentary Under-Secretary of State for the Home Department*)
 † Haigh, Louise (*Sheffield, Heeley*) (Lab)
 † Huq, Dr Rupa (*Ealing Central and Acton*) (Lab)
 † Lewer, Andrew (*Northampton South*) (Con)
 † McDonald, Stuart C. (*Cumbernauld, Kilsyth and Kirkintilloch East*) (SNP)
 † Mangnall, Anthony (*Totnes*) (Con)

† Moore, Robbie (*Keighley*) (Con)
 † Mullan, Dr Kieran (*Crewe and Nantwich*) (Con)
 † Osborne, Kate (*Jarrow*) (Lab)
 † Pursglove, Tom (*Corby*) (Con)
 † Roberts, Rob (*Delyn*) (Con)
 † Smith, Royston (*Southampton, Itchen*) (Con)
 † Stevenson, Jane (*Wolverhampton North East*) (Con)
 † Vickers, Matt (*Stockton South*) (Con)

Yohanna Sallberg, Ellen Watson, *Committee Clerks*

† **attended the Committee**

Sixth Delegated Legislation Committee

Tuesday 3 March 2020

[CAROLINE NOKES *in the Chair*]

Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

8.55 am

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

That the Committee has considered the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020, No. 61).

It is a pleasure to serve under your chairmanship, Ms Nokes. The regulations were laid before the House on 30 January and were introduced under section 11 of the European Union (Withdrawal Agreement) Act 2020. They provide the important right of appeal against immigration decisions on citizens' rights under the European settlement scheme.

The regulations are required to meet our obligations under the withdrawal agreement, the European economic area European Free Trade Association separation agreement, and the Swiss citizens' rights agreement. The Government have been clear about our commitment to protecting the rights of EU citizens, European economic area citizens and Swiss citizens who have made this country their home. They are our friends, family and neighbours, and we want them to stay. The appeal rights provide further reassurance that those citizens remain welcome and can continue to live and work in the United Kingdom.

The regulations do two things. First, they establish appeal rights against a wide range of decisions that affect a person's right to enter and live in the UK under the European settlement scheme. That includes those who are refused leave under the scheme, or who are granted pre-settled status rather than settled status, as well as those who are refused entry clearance in the form of an EU settlement scheme family permit or travel permit. The regulations also provide an appeal route for those whose rights are restricted under the scheme, for example if their status is revoked or curtailed.

Secondly, the regulations ensure that existing rules and procedures are applied to the operation of appeal rights. They go further than the withdrawal agreement requires, by providing appeal rights in line with the UK's more generous domestic implementation. That means that anyone who can make an application under the scheme, including non-EU family members, will have a right of appeal if they are refused status or granted pre-settled status.

Under the regulations, appeals will follow the same process as current immigration appeals. They will be heard by the asylum and immigration chamber of the first-tier tribunal and, with permission, there will then be a further onward right of appeal to the upper tribunal on points of law. The exception is where the decision is certified on national security grounds or where sensitive information cannot be made public. As with current

immigration appeals, those cases will be referred to the Special Immigration Appeals Commission. As I am sure the Committee is aware, that is similar to provisions in other areas of immigration law.

The regulations are undeniably complex because of the number of situations requiring a right of appeal under the agreements and the need to apply existing and complex rules on appeal rights. We are committed to making the appeals process as simple as possible for applicants, however. The decision letter will tell them whether they can appeal and will direct them to the relevant information on gov.uk. Support is also available by phone, in person or in writing for those without access to online facilities or who need additional assistance.

The regulations ensure that we comply with the requirements of the agreements and are an essential part of our commitment to protecting the rights of EU citizens. I commend them to the Committee.

8.58 am

Louise Haigh (Sheffield, Heeley) (Lab): It is a pleasure to serve under your chairmanship, Ms Nokes. The Labour party welcomes the regulations, as we have been calling for some time for the right of appeal to be put in primary legislation. It was good to hear the Minister laying out the Government's case, on which we are pleased to support them.

The instrument provides for a right of appeal when settled or pre-settled status has been denied, but we have some specific questions about the regulations. The explanatory note is clear that the appeals process will apply only to those who applied for settled status "on or after" 31 January 2020. Frankly, that is absurd. It raises concerns for those who began the application process prior to 31 January. The Government have made it clear that they have received more than 3 million applications under the EU settlement scheme as of January 2020. Is the Minister really saying that the majority of people who have applied to the scheme will not have a right of appeal, and is that consistent with the withdrawal agreement? This issue will affect those who applied before the qualifying date and whose applications have not yet been decided on, and who want to make sure that they have a right of appeal if they are refused. Those people will wait months for a decision and will be understandably concerned about the fact that if they are refused close to the deadline, they will have little time left in which to apply again and ensure that they receive a right of appeal.

That will obviously create some practical difficulties. The individual may try to withdraw their first application to make a fresh one, or they may simply make a duplicate application to the scheme without withdrawing their first, which could seriously overburden the system. I would welcome clarification from the Minister about what people should do in that situation.

It is vital that applicants have a right to legal representation and are not put off by a time limit. Will the Minister confirm what rights to legal representation applicants will have, and can he guarantee that there will be no refusals where applicants' entitlements have not been exercised?

A challenge of the settled status programme is the requirement on people who did not need documentation prior to January 2020 to demonstrate a long paper trail.

People who began their time in the UK in houses of multiple occupation, or to whom employers did not provide payslips, face additional barriers through no fault of their own. The requirements and demands of the settled status scheme need to be reviewed. At the time of the referendum, everyone was clear that should the UK vote to leave, EU citizens who were already here should be welcome to stay. That promise needs to be honoured and must not be undone by bureaucratic burdens that have an impact on the most vulnerable.

The Government's own watchdog raised significant concerns about the Home Office's ability to reach the most vulnerable individuals who are seeking settled status. Appeals obviously cannot be seen in isolation from the difficulties engulfing the EU settled status scheme. An estimated 200,000 EU citizens are yet to apply for settled status. Obstacles to applying include age and a lack of access to digital technology, while some may not even know they are not already British citizens. The over-65s, of whom just over 50,000 have applied for settled status, will clearly have the most difficulty in applying.

If the Government are serious about reaching those groups, why have they still not committed to funding beyond March the network of 57 charities that were granted Home Office funding to do just that? Charities have said that they are being forced to cut back on that service because the Department has refused to guarantee any funding beyond this month. Previously, they were granted £9 million by the Department to provide practical support to the group of 200,000 vulnerable or at-risk people applying to the scheme. A failure by Ministers to provide further funding will undoubtedly leave a gap in provision.

Praxis, a charity that was granted funding to help homeless people apply to the scheme, has three caseworkers dedicated to providing such support, but is being forced to consider ending their contracts because there is no guarantee that the work can continue beyond March. That is not right. We know the dangers of erecting administrative hurdles and failing to explain the UK's complex immigration status to those who have a right to be here. The Government must avoid enhancing those obstacles.

The regulations do not provide for appeals when the Home Office rejects an application as invalid, rather than refusing it because it does not meet the requirements of the rules. That mirrors the Home Office's fairly long-standing approach to invalid applications under free-movement law. An invalid application could be, for example, one from an applicant whose identity or nationality is disputed by the Home Office. The Home Office has already rejected 3,000 applications as invalid, but has yet to provide a breakdown of why those applications were invalid. I would be grateful if the Minister responded to that.

Will the Minister confirm that people who are eligible for the settlement scheme but who are not covered by the withdrawal agreement—particularly those who came under the Zambrano or Surinder Singh routes—will have a right to appeal under the regulations? During the passage of the 2020 Act, a Home Office Minister gave an assurance on the Floor of the House that they would.

Will there be a time limit on the right of appeal? The deadline for settled status will be 31 June 2021, but the Government have been clear that they will continue to

accept applications beyond that date if someone has a good reason for not having applied. Will the Minister confirm that people who apply to the scheme after 31 June 2021 will have the right of appeal?

Finally, will the Minister confirm that EU citizens' rights will be protected while their appeals are pending, to ensure that those with outstanding appeals after 31 June 2021 will not be subjected to the hostile environment? EU passports will no longer be proof of right to rent or work in the UK, for example, so someone with an outstanding appeal will not be allowed to do those things. If those questions are answered, we will be happy to support the regulations.

9.4 am

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Ms Nokes. You will take a particular interest in this legislation, given your previous role. You will know better than anybody that I have been banging on about appeal rights for a considerable period, so I welcome the Minister's introduction of regulations to enact them.

That said, I echo a fair number of the questions and concerns that the shadow Minister raised, particularly on funding for advice, and I will return to a couple of the technical issues that she raised. On whether someone should have the right to appeal against the decision that their application is invalid, although I understand that it is long-standing Home Office practice for there to be no right of appeal in those circumstances, the reason behind that escapes me.

Disputes about nationality may depend on quite technical nationality laws, so it is slightly disturbing that someone may not be able to challenge a decision that they are not French or Polish, for example. Issues of identity may depend on problems with the way that someone's name is spelled, which can vary in official Government documents, so it is slightly worrying that 3,280 applications have been found invalid and that those individuals will not have a right of appeal. Will the Minister provide more information on the different types of "invalid" refusals? Are those 3,280 refusals to do with applicants' identities or nationalities?

I also share the shadow Minister's concerns about the 31 January 2020 deadline and the reasons why it has been picked as a cut-off point. Even from a selfish Home Office point of view, it seems strange to say to folk, "We are refusing your application, but rather than give you a right of appeal, we ask you to apply again," only for the applicant to appeal if the same decision is made again. Why not just give those with outstanding applications the right to go straight to appeal?

I will finish my remarks on a broader point. Ideally, I would like the provisions to be in primary rather than secondary legislation. I understand that an immigration Bill is due in the not-too-distant future; perhaps the Minister can indicate when that will be. The appeal rights are a fundamental safeguard for lots of people; the shadow Minister mentioned Zambrano carers, but there are all sorts of others, too.

The Government very generously made a unilateral commitment to Zambrano carers and others, so the scope of the EU settlement scheme is broader than required under the withdrawal agreement, which is absolutely welcome, but those rights are enshrined only

[Stuart C. McDonald]

in immigration rules, and the appeal rights are enshrined only in secondary legislation. Rather than enshrining people's right to be in this country in bits of legislation that can be changed virtually at the stroke of an Immigration Minister's pen, I want them to be enshrined in statute, so that people have that protection.

As the Minister knows, I have all sorts of other fundamental concerns about the nature of the settlement scheme—whether it should be a declaratory system, digital only and so on—but I will leave those matters for when the immigration Bill is introduced. I absolutely welcome the establishment of the right of appeal.

The Minister has one or two questions to answer on the technical issues that the shadow Minister flagged up, and I look forward to further debate on the progress of the EU settlement scheme.

9.8 am

Maria Eagle (Garston and Halewood) (Lab): It is a pleasure to serve under your chairmanship for the first time, Ms Nokes. I compliment the Front-Bench speakers, particularly my hon. Friend the Member for Sheffield, Heeley, and I agree with the important points and share the important questions that have been raised, which I do not intend to reiterate.

Paragraph 12 of the explanatory memorandum, which covers the impact of the regulations, states that there is “no, or no significant” impact on business, charities, voluntary bodies or the public sector, and that

“An Impact Assessment has not been prepared...because no significant impact on business is foreseen.”

How many appeals does the Minister expect to be heard under the regulations? I ask because if he has decided that there will be no significant impact, he must have a view on how few people are likely to appeal. Could he share that with the Committee?

It seems to me that, as a consequence of the rights, a number of people will appeal. Before the Committee votes on the regulations, it will need some word from the Minister on the likely impact of the regulations, in view of how many people might actually appeal. Saying “We haven't done an impact assessment because we don't think there is going to be an impact” is giving the Committee too little information to satisfy it. Perhaps the Minister can satisfy me on that point.

9.10 am

Dr Rupa Huq (Ealing Central and Acton) (Lab): It is a pleasure to serve under your chairmanship, Ms Nokes. I am sure the Minister will tell us that all is rosy, but I asked the Library about the number of British citizens applying for passports from the EU 27, and I got some quite alarming figures. In 2017, which is when the Library's latest figures are from, there were more than 15,000 applications, whereas a decade ago there were about 1,000. If everything is okay with the British passport, how does he explain that? The number of applications for a Swedish passport used to be only in the double digits, but last year there were nearly 5,000 applications. The Irish figure is well known; it is 112,138. What conclusion does he draw from that?

We are always told that people voted out and want to lose freedom of movement, but those figures suggest that people want to live, work and play—I think that is

from the Mars adverts—love, study and all those things in the EU 27. Those of us with Commonwealth origins have no recourse to another European passport. That calls to mind the hostile environment, which was mentioned so powerfully by my hon. Friend the Member for Sheffield, Heeley. I echo the praise for her, and ask the Minister what we can attribute those figures to. I also ask, because you are chair of the Women and Equalities Committee, Ms Nokes, where the equality impact assessment is.

9.11 am

Kevin Foster: It has been an interesting debate, and I appreciate the support of Opposition Members. My remit does not quite extend to the Swedish passport system, so I will have to keep my remarks rather limited on that.

I start by responding to the hon. Member for Garston and Halewood. There have been more than 3 million applications and now just over 3 million determinations, and so far we have had 900 requests for an administrative review. While there is no appeal right, people who disagree with a decision can still request that review. With 900 reviews after 3 million determinations and well over 3.2 million applications—I accept that people would not apply for a review until they had got their decision—we felt the number of appeals was likely to be low. Where people have additional evidence, the logical process for them is to make another free-of-charge application to the settlement scheme. As the deadline is June next year, they have plenty of time to do that and get the status they believe they are entitled to. To be clear, if someone reapplies because they think they should have settled status rather than pre-settled status, that does not prejudice the pre-settled status they have been given. I am conscious that Members might ask whether if someone reapplied, it might prejudice the status they had been granted. The answer is no.

For those who applied before 31 January, the way to gain an appeal right is to make a reapplication to the settlement scheme. That is free of charge for anyone; there is no supplementary charge for making another application. We felt that struck the appropriate balance, because an appeal would have a charge to it, and in most cases, if there is a need to present additional evidence, it is easiest to do that through another application. To be clear, anyone who has a right to apply to the EU settlement scheme, including as a Zambrano carer and in the other examples given, may avail themselves of those appeal rights. On legal representation, the position is similar to that for use of appeal mechanisms in other immigration law.

On the system being engulfed, any member of the Committee or of this House who is interested in how the process is going is welcome to pay a visit to Liverpool. We are happy to arrange for people to visit and see what the teams are doing. Hon. Members would see that, far from being engulfed, the teams are working quickly through the largest documentation of immigration status in UK history, providing many people with certainty and assurance.

Dr Huq: The Minister pooh-poohed my point about other nationalities. Will he not accept that it is people who are trying to bypass this cumbersome process who are applying for another nationality? Does he not see a causal link there?

Kevin Foster: I would say it is probably slightly more cumbersome and somewhat more costly to apply for another nationality than to apply for free to the EU settlement scheme—to provide basic proof of identity and of having lived in the United Kingdom, which a person could literally do with a letter they have received. When I visited the team in Liverpool, someone was using as evidence a letter they had received about their tax payment from Her Majesty's Revenue and Customs. That was combined with an identity card and checks on criminality. I should be clear that a very, very small number of people so far have been refused on criminality grounds. EEA citizens have been a valuable part of our community, and we should not define them by a small number of offenders. That letter was being used for pre-settled status, as that person had only just moved to the United Kingdom, but it is a lot easier to apply for settled status than to get citizenship of another country.

Fair points were made about Home Office funding for the 57 organisations not going beyond March. We expect to make an announcement on that very soon, which will provide some certainty for those operations.

Louise Haigh: I would be grateful if the Minister could be a little more definite on the timing. Those organisations are laying off people as we speak, which is hindering their ability to reach the most vulnerable groups.

Kevin Foster: Certainly within a week or two, we expect we will be able to confirm the position. The furthest I can go this morning is that it is our intention to continue providing support beyond the end of this month.

A valid question was asked about whether people can exercise their freedom of movement while there is an appeal outstanding. Rights continue when someone has an appeal outstanding. There is no detriment, for example, if a person leaves the United Kingdom to travel; that would not be held against them on appeal.

I have been through the points raised. I am very grateful for the support offered by Opposition Members. I hope the Committee will approve the regulations to ensure that we have an effective system of appeal, based on the principles that we use across our immigration system. We want all EU, EEA and Swiss citizens who live in our country to know that they are valued members of our community, and we want them to stay.

Question put and agreed to.

9.17 am

Committee rose.

