PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT CITIZENS' RIGHTS (RESTRICTIONS OF RIGHTS OF ENTRY AND RESIDENCE) (EU EXIT) REGULATIONS 2020

DRAFT CITIZENS' RIGHTS (APPLICATION DEADLINE AND TEMPORARY PROTECTION) (EU EXIT) REGULATIONS 2020

DRAFT CITIZENS' RIGHTS (FRONTIER WORKERS) (EU EXIT) REGULATIONS 2020

Wednesday 14 October 2020

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not later than

Sunday 18 October 2020

The Committee consisted of the following Members:

Chair: Yvonne Fovargue

† Bailey, Shaun *(West Bromwich West)* (Con)
† Cates, Miriam *(Penistone and Stocksbridge)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Cruddas, Jon *(Dagenham and Rainham)* (Lab)
† Fell, Simon *(Barrow and Furness)* (Con)
† Foster, Kevin *(Parliamentary Under-Secretary of State for the Home Department)*
† Furniss, Gill *(Sheffield, Brightside and Hillsborough)* (Lab)
† Grady, Patrick *(Glasgow North)* (SNP)
† Henry, Darren *(Broxtowe)* (Con)
† Lewer, Andrew *(Northampton South)* (Con)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Corby)* (Con)
† Randall, Tom *(Gedling)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Timms, Stephen *(East Ham)* (Lab)
Trevelyan, Anne-Marie *(Berwick-upon-Tweed)* (Con)

Dominic Stockbridge, Robi Quigley, *Committee Clerks*

† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Costa, Alberto *(South Leicestershire)* (Con)

Eighth Delegated Legislation Committee

Wednesday 14 October 2020

[Yvonne Fovargue *in the Chair*]

Draft Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020

2.30 pm

The Chair: Before we begin, I remind Members about the social distancing regulations. The spaces should be marked. *Hansard* colleagues would be very grateful if you could send any speaking notes to hansardnotes@parliament.uk.

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

That the Committee has considered the draft Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 and the draft Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

Kevin Foster: It is a pleasure to serve under your chairmanship, Ms Fovargue.

Since the referendum in 2016, the Government have prioritised the protection of European Union, other European economic area and Swiss citizens who have made the UK their home. As we have repeatedly said, they are our friends and neighbours; we want them to stay. Parliament passed the European Union (Withdrawal Agreement) Act 2020 to protect their rights. The Government established the EU settlement scheme to provide a simple means by which they and their family members can obtain the status they deserve and remain living and working in the United Kingdom. I am pleased to say that more than 4 million applications have already been made to the scheme, and almost 3.8 million grants of status have already been made. That is a remarkable achievement. It is the biggest immigration scheme in UK history.

The Government have now brought forward three statutory instruments that further deliver their commitment to protect citizens' rights. They give effect to the UK's obligations to EU, other EEA and Swiss citizens—for simplicity, I will simply refer to them all as EEA citizens—under the EU withdrawal agreement, the EEA European Free Trade Association separation agreement and the Swiss citizens' rights agreement. The instruments are made under powers in the 2020 Act, and I will briefly explain the purpose of each.

For simplicity, I will refer to the draft Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 as the grace period SI. The Government were pleased to share an illustrative text of this statutory instrument with both Houses in early September. Its purpose is twofold. First, it establishes the deadline of 30 June 2021 for applications to the EU settlement scheme by EEA citizens and their family members who are resident in the United Kingdom by 31 December 2020—the end of the transition period.

Secondly, the instrument saves relevant free movement rights for EEA citizens and their family members who are lawfully resident in the UK at the end of the transition period but have yet to obtain status under the EU settlement scheme. That is because, at the end of this year, the Immigration (European Economic Area) Regulations 2016 will be revoked, subject to Parliament's agreement to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. The grace period refers to the time between the ending of free movement and the deadline for applications to the scheme.

The SI also saves existing relevant rights for those who make the EU settlement scheme application before the end of the grace period until the application is finally determined, if it is still being considered as the grace period ends on 30 June 2021. It makes some modifications to the EEA regulations to reflect the end of free movement, as well as recent case law that remains binding on the UK. It does not alter the current eligibility criteria for the EU settlement scheme, which is fundamentally based in UK law, as that is a status under UK immigration law. The instrument has the effect of broadly maintaining the status quo during the grace period, with the result that there is no change to the way in which EEA citizens live and work in our United Kingdom.

Alberto Costa (South Leicestershire) (Con): The Minister will know that for more than two years I have been championing the rights of EU nationals living in the UK and UK citizens in the EU. We now know that more than 5 million innocent people are affected by the UK's decision to leave the EU. We all want to encourage EU nationals to register before the grace period deadline so that their rights are secured. Can the Minister reassure the Committee that the Home Office is making plans for those EU nationals with residence rights until the end of the implementation period who, for whatever reasonable reason, will not be able to register by the grace period deadline? Will the Home Office secure their rights?

Kevin Foster: The simple answer is yes. As my hon. Friend says, our main focus is on ensuring that people register before the deadline. We recently confirmed grant funding for 72 organisations, which will receive support to assist vulnerable people who need extra help to apply. We will, as I have said before, take a generous approach to what reasonable grounds are, and we will publish illustrative, not exhaustive, guidance. We are keen to take into consideration whether the individual circumstances in which a late application is made are reasonable.

I regularly cite the relevant example of a child in the care of a local authority that has the duty to make the application on their behalf. If the local authority fails to do that, and the person becomes an adult and realises that the application was not made for them, that would be seen as an eminently reasonable ground, because they were entitled to believe that the local authority would have done its duty and made the application on their behalf.

Moreover, there is no set time period for reasonable grounds. For example, in the case of a looked-after child, the Home Office accepts that it could be some time before they run into the problem. For the sake of argument, an eight-year-old child will become an adult in 10 years' time and might discover when they go for their first job that the local council had not made the application 10 years ago. That would still be seen as a reasonable ground for a late application, because the child would not have known about it.

Neil Coyle (Bermondsey and Old Southwark) (Lab): I commend the campaign by the hon. Member for South Leicestershire. The Government have provided some £17 million to grant-based organisations to identify those who are more vulnerable and to reach those affected. How many people have been reached so far? And how many others who need this safeguard and protection do the Government think have not been reached?

Kevin Foster: It is impossible to give an exact number because we will have free movement until 31 December. People can arrive in the United Kingdom tomorrow and gain free movement rights and eligibility to apply to the European settlement scheme. We have been monitoring performance with the grant-funding organisations. Performance has been strong. I visited one in Southwark recently. I was pleased to see the work it was doing with the Spanish-speaking community in Southwark.

Overall, the scheme has had just over 4 million applications. In the early part of next month we will publish the next set of numbers up to the end of September, which will break it down in more detail. The grant-funding organisations have been doing quality work. We are loth to go purely on numbers because some of them work with people with incredibly chaotic lifestyles. For example, one in Scotland works with the homeless. Doing it purely by numbers would not necessarily reflect the quality of the work they have done in supporting the vulnerable and ensuring that they have an EU settlement scheme application.

As has been touched on, we will have an illustrative list of reasonable grounds as to why an application might be made late. We will judge each individual case. In some cases, there will not be a time limit. We are keen that each circumstance will be looked at to see whether there is a reasonable ground. My example of the child in care will probably be among those cases with the longest periods, because it would be reasonable for them not to have realised that the council had not made the application on their behalf. If they are eight years old today, it could be 10 years before they engage in the issue as an adult and they may need to present certain things under the compliance environment.

Finally, I have sent around a letter—I apologise to Opposition Members for it coming not long before the Committee—following a constructive conversation yesterday with a number of Members of both Houses of Parliament about the impact of some provisions on those who are here but not exercising a free movement right. We have extended to them the ability to apply to the EUSS by making the criteria under our domestic law residence and not exercising a free movement right regulation. We think it is right to be generous because some of these people have been in the UK for many decades, so that is the right thing to do rather than asking people to prove exactly which free movement right they are exercising. We had queries and have issued a letter setting out the Government's position on the grace period, pending them applying to the European settlement scheme.

I turn to the draft Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, which protect the rights of EEA citizens who have begun frontier working in the United Kingdom by 31 December 2020 and wish to continue to do so. A frontier worker is a person resident outside the UK who comes to the UK for work. They continue to have the right to come here to work once freedom of movement has ended, for as long as they continue to be a frontier worker.

The regulations establish a frontier worker permit scheme to allow protected frontier workers to apply for a permit confirming their rights. Applications for frontier worker permits will be made online and will be simple, streamlined and, like other routes, free of charge. From 1 July 2021—the end of the grace period—frontier workers will be required to hold a valid frontier worker permit as evidence of their right to enter the UK on that basis.

The regulations set out the circumstances in which a protected frontier worker's rights can be restricted and a permit can be refused or revoked, in accordance with the withdrawal agreement. They also provide protected frontier workers with statutory rights of appeal against decisions that restrict their rights, as well as a right of administrative review against certain decisions concerning eligibility. For the benefit of those Committee members who are wondering, I can confirm that Irish nationals who are in effect frontier working across the Irish border do not need to go through the process, given the status of Irish nationals under UK immigration law and their ability to live and work in the UK. The vast majority of frontier workers across the border in Ireland are Irish citizens, and that is the status they need to have. They would not be required to apply to that process.

I turn to the draft Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020. The regulations give effect to the UK's obligations under the withdrawal agreements that require the UK to consider conduct committed before the end of the transition period in accordance with the current EU thresholds when restricting the rights to enter and reside of a person protected by those agreements. These protections extend to people protected by the UK's domestic implementation of those agreements.

Now that we have left the EU, it is right and important that parity is created for all foreign nationals in the United Kingdom. Currently, the test for whether a third-country national is liable to deportation is stricter and more specific than that for EEA citizens, which means it is easier to deport third-country nationals who have committed criminal offences. Similar distinctions exist for other types of restriction decisions—for example, a person's exclusion from the United Kingdom.

We are required by the agreements to apply the EU thresholds of public policy, public security and public health, as set out in the EEA regulations, when assessing conduct committed before the end of the transition period, for the purpose of restricting a person's right to

[Kevin Foster]

enter or reside in the UK. The thresholds will apply to those protected by the agreements or the UK's domestic implementation of those agreements, including those with status under the EU settlement scheme; those with an EU settlement scheme family permit; those who have a right to enter the UK for the purposes of a continuing course of healthcare; those who have entered the UK as a Swiss service provider; and those who are frontier workers. Conduct committed after the end of the transition period will be assessed according to the same criminality thresholds that apply to non-EEA nationals today, consistent with the agreements and creating a fair immigration system for all.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill contains provisions to revoke the EEA regulations at the end of the transition period, after which these regulations will come into force. To comply with our obligations under the withdrawal agreement, we need to save and modify relevant provisions in the EEA regulations in so far as they apply to deportation decisions. That will allow us to apply the current EU law thresholds to conduct committed before the end of the transition period. The regulations also provide that deportation decisions made in accordance with these protections continue to be appealable in accordance with the UK's obligations. I can confirm that that will be when the conduct was committed, not when the conviction is received. To clarify, when the matter that is the subject of the conviction occurred will determine whether this applies.

To conclude, these three draft instruments implement the Government's citizens' rights commitments under the withdrawal agreement. I commend the regulations to the Committee.

2.45 pm

Bambos Charalambous (Enfield, Southgate) (Lab): It is a pleasure to serve under your chairmanship, Ms Fovargue, and to see you in the Chair for the first time. Each of these statutory instruments is a little legislative beast in itself. I will begin with the draft Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

We welcome the Government's commitment to fulfilling the UK's obligations under the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement, to allow those who are employed or self-employed in the UK but living elsewhere to continue to do so as long as they remain a frontier worker.

Under part 3 of this statutory instrument, this group will be required to obtain a permit to evidence their right to enter the UK after 1 July 2020. I ask the Minister to confirm that it will be a physical document, because regulation 8(5) is somewhat ambiguous, suggesting that the permit

"may be in electronic form",

but it is not definitive on this point. If so, as the explanatory memorandum suggests, why is there a requirement for this cohort of people to have physical proof, yet the request for physical proof for pre-settled and settled status was rejected? The Minister knows that that issue will return to the Chamber when we debate the Lords' amendments to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill on Monday.

I now turn to the Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020. Again, we will return in more detail to the issue of immigration detention on Monday, when the Bill returns from the Lords. These changes honour our obligations under article 20 of the withdrawal agreement to consider the conduct of a person committed before the end of the transition period, when relating to deportation decisions, in line with public policy, public security or public health. We welcome the fact that these decisions will continue to be appealable and do not plan to oppose this legislative change.

The more substantial of these three instruments is the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, or, as the Minister termed it, the grace period SI. This SI is slightly complicated. I know it was a source of much discussion in the Lords on Report of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

As the Minister knows, we have been approached by the3million, which represents EU nationals in the UK, and the Immigration Law Practitioners Association, both of which have made direct representations on this matter to the Home Office. They are concerned that the way in which this instrument is drafted could technically mean that a large number of people would have a question mark over their rights during the grace period while their application under the settlement scheme was pending.

I know that the Minister has had discussions with my hon. Friend the Member for Halifax (Holly Lynch) and others on this issue, as we have tried to resolve and improve the wording. It is with regret that we have not been able ahead of today's debates to change the text of this SI to remove any ambiguity about those rights. The Immigration Law Practitioners Association has suggested that changing the text from "lawfully resident" to "resident or present" would align much closer to the spirit of the EU settlement scheme and our obligations under the withdrawal agreement.

There is, therefore, currently no provision in relation to the resident's status during the grace period for EEA and Swiss citizens or their family members who are not granted leave under the scheme by the implementation period completion date, which is 11 pm on 31 December 2020, and are not lawfully resident as defined by the SI. Such persons could, therefore, face difficulty in accessing services such as healthcare or employment during the grace period, or during the time that an in-time application is decided or an appeal is pending. Were no further provision made for these people, it would seem to diminish the meaning of the grace period and contradict the mechanisms made in other related regulations, which do provide for protection for persons who are eligible under the EU settlement scheme but not lawfully resident under the EEA regulations.

As we understand it, the protected cohort outlined in section 7 of the European Union (Withdrawal Agreement) Act 2020 should include all those who are eligible for status via the settlement scheme, not just those exercising their rights within the EEA regulations. The ongoing fear of a hostile environment makes nervousness persist when people do not have absolute clarity.

During the passage of the immigration Bill, Labour sought assurances from the Government that they would protect the rights of all people eligible to get status to remain legally in the UK via the settlement scheme during the grace period, and that those who had settlement scheme applications with the Home Office would benefit from the rights under the withdrawal agreement until a decision was made. The Government gave an unequivocal reassurance on this matter in Committee, when the Minister said during the sixth sitting that

"section 7 of the European Union (Withdrawal Agreement) Act provides powers to make regulations to provide temporary protection for this cohort during the grace period. That means that if someone has not applied under the EU settlement scheme by the end of the transition period, they will be able to continue to work and live their lives in the UK as they do now, provided that they apply by 30 June 2021 and are then granted status."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 16 June 2020; c. 195.]

We want to believe the Minister when he makes that commitment, but I am afraid that without these small changes to the drafting of this instrument, which would ensure it delivered exactly that, we cannot lend our support to it. I acknowledge the Minister's letter, which we received just before the Committee began, but unfortunately it does not go far enough. We need that commitment in black and white, because this could be subject to legal challenge.

The implications of the Government's actions are potentially severe for individuals who do not have a legal basis to live in the UK, but are eligible for status via the EU settlement scheme, and who will be left in a legal limbo entirely of the Government's own making if this is not resolved. As well as that, anyone who has submitted an application to the EU settlement scheme before the end of the transition period and is pending a decision after the transition period ends will have to demonstrate that they fall within the scope of the draft regulations to have the benefit of their protection. Again, in the letter, the Minister says that some of these protections will be subject to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill receiving Royal Assent, but we want that clarity now, because we are making this secondary legislation now.

I need not remind Members that just over a month ago the Public Accounts Committee released a damning report on the operational running of the Home Office, stating that it

"relies upon a disturbingly weak evidence base to assess the impact of its immigration enforcement activity"

and that it

"relies upon the judgements of senior staff rather than direct evidence".

The Home Office itself has acknowledged how close it came to being declared institutionally racist in the Windrush lessons learned report, yet during a time of immense uncertainty and upheaval, these draft regulations seek to exacerbate the weaknesses of the Home Office and threaten the wellbeing and dignity of EEA and Swiss citizens who have chosen to live and work in the UK.

To reiterate, Labour cannot support this statutory instrument as drafted—the grace period SI, as we have called it—as it undermines and contradicts the promises made by the Government in the immigration Bill, as well as in paragraph 1 (b) and (c) of article 18 of the UK-EU withdrawal agreement. Accordingly, we intend to divide the Committee on this SI.

2.53 pm

Patrick Grady (Glasgow North) (SNP): It is a pleasure to serve under your chairmanship, Ms Fovargue. I remember our days on the Select Committee on Procedure together; look how far we have both come. I think this is the first time I have served on a Committee since the lockdown restrictions and social distancing came in, so I want to pay tribute to the Clerks and everyone else who is responsible for making Committees operate so safely. In other circumstances, my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East (Stuart C. McDonald) would be here, but virtual provision is not yet a reality for these Committees, so I am stepping in. Again, thanks to the Clerks for allowing us to shuffle things around.

I will mostly focus on the grace period regulation, as well as the rights of entry that the hon. Member for Enfield, Southgate, the spokesperson for Labour, has mentioned. We also have this issue with physical documentation: I have constituents who get the email saying, "Thank you for applying for your settled status, which you have now achieved. This email is not proof of your settled status." This is no use. They need to know for certain that they have the right to be here, under the regulations that are put in place.

The question of the grace period in the second SI is particularly important. We have consistently argued against cut-off dates, full stop. The risk throughout all this is that we create a new Windrush generation. The reasonable excuses that the Minister is having to put in are exactly the kind of difficulties that people of the Windrush generation are encountering right now—look at the hassle that that has caused. That could be avoided if the Government were more open and more generous with what they are proposing.

The six months' grace period is the shortest and tightest allowed by the withdrawal agreement. The Government should be reaching out more. Even the expression a "grace period" is difficult—"Oh yes, thank you. Thank for this grace period." We are being so gracious! These people are the vital workers who are helping us get through the pandemic. As we all know, if EU citizens were no longer resident in the United Kingdom, the health service would collapse, even without the damage that the pandemic is doing to it. The Government have to do a better job, on top of what the Minister is announcing, on targeting hard-to-reach EEA citizens and giving them as much time as they need to respond and get their paperwork sorted.

The technical points that Labour touched on are quite important. We accept that the Government are in fact allowing the grace period for everyone who is resident in accordance with the free movement regulations —sorry, it is wider than that; it is simply residents, not just those resident in accordance with the free movement regulations. The risk is of people falling through the gaps, because perhaps they do not have the comprehensive sickness insurance and so on. There is no good reason that the Government could not just tweak the scope of the regulations to include everyone within the scope of the settled status scheme. That would cost the Government nothing and it would avoid exactly the kind of unintended consequences that everybody seems to recognise are a possibility as a result of the regulation, not least in accessing different kinds of service and different kinds of housing.

[Patrick Grady]

Rather than a list of reasonable excuses, why not just tweak the regulations and make them as wide and encompassing as they can be? That would hopefully avoid exactly the kind of difficulties the Minister is suggesting five, 10 or 15 years down the line, as people unwittingly start to realise the problems that have been caused.

We seek reassurances from the Government, but we also join the official Opposition in opposing that regulation.

2.57 pm

Kevin Foster: I thank the two shadow spokespersons for the generally constructive nature of the points and the remarks they made.

I will start with the specific query about frontier workers. The main driver is that people will use an ID chip similar to the one we use for the EUSS system, and will be issued with a digital permit. There are some—for example, those who have used EEA identity cards, which do not have the ability to use the chip—who might be initially issued with a physical permit, if they cannot use the online ID checks. There is a slight difference there. The point we make is that this system is for those who are not resident. They have a particular reason for coming to the UK, and that is as a frontier worker. They can continue to do that for as long as they continue doing that job.

I stress that the vast majority of frontier workers coming to the United Kingdom live in the Republic of Ireland, drive into Northern Ireland and are Irish citizens, for whom this provision is irrelevant. Their rights are long-standing and are also guaranteed by clause 2 of the immigration Bill that is going through Parliament. We aim to remove the slight nuance in there around coming through the common travel area versus coming in from the European Union. We are removing that and making very clear in primary legislation the status of Irish citizens. That is part of the ambiguity. Some would have a physical permit, whereby they could not use the immigration ID checker. That relates to some of the documentation that they may be using lawfully to travel across the border each day.

Coming to some of the wider issues, I would again make the point that EUSS is a status under UK immigration law and it goes wider, as has been touched on, than EEA free movement regulations. Some people are not complying with EEA free movement regulations, although it is fair to say that they would not realise it. Until a year or two ago, probably even members of the Committee—other than, for example, the right hon. Member for East Ham, who is exceptional in his familiarity with the immigration system, going by our regular correspondence—would not instantly have known someone was here and working fully in accordance.

The point about people who are working therefore does not apply. They definitely comply with the EEA free movement regulations, because then there is not the requirement—under the free movement regulations, not the UK law EUSS—to have comprehensive sickness insurance, because our NHS treats people at the point of need and has a different basis from social insurance schemes on the continent, where people living or working there pay into them. This is an anomaly. It is not something that people will be particularly familiar with, so we have rightly adopted a far more generous position on the EUSS for those who are friends and neighbours, many of whom have lived here for some years.

In the grace period, an EEA or EU citizen who, for example, needs to do any of the compliant environment checks, such as on the right to rent a property in England or the right to work, will be able to present their EEA passport or their identity card and will not have to specify whether they have retained free movement rights or EUSS status, or are eligible for and applying for EUSS status. Again, during the grace period, until 30 June next year, people can still use the arrangements as they would today. No one will have lesser rights on 1 January 2021 than they have today, as far as what they can do goes. It is based on whether they effectively comply—but then there is the wider protection of the EUSS.

Of course, if anyone is concerned, I would make the obvious point that they should make an EUSS application immediately and get on with that, but there is no requirement, and there will not be an impact on life, until 1 July next year, when, for example, showing an EEA passport in a right to work check would not be enough. Someone would have to show that they had status either under the future borders and immigration system or under the European settlement scheme. That is when it is necessary to show more than just the documentation that must currently be shown, as an EU citizen. We could get on to some interesting nuances about particular entitlements, but what I have set out are rules that apply today and that do not change on 1 January next year.

That brings us to why the grace period is worded as it is, which is because, effectively, it is about retaining rights. We cannot really retain a right that free movement does not grant. Under UK immigration law—under the EUSS—we can grant something that is more generous or fair, or that gives status. By the way, there is absolutely no penalty and no difference in the type of status that will be granted to someone who falls into the category we are discussing, in relation to whether they applied on 31 December or on 30 January. There will not be a difference, or a period when they were not here, or anything like that, apart from working unlawfully, that we would hold against them. I want to make it clear—we shall respond to the groups as well—that regardless of where someone's route to EUSS eligibility comes from, there will not be a penalty for not applying to the scheme before 31 December.

An example given to me was that someone who was just resident here on 31 December, and then applied for a job, would not create new free movement rights, because they would be beyond the end of free movement, but what would their employer's position be? First, the employer would not have employed someone unlawfully. The reasonable grounds would be accepting an EEA passport or an identity card, as can be done today, as evidence of reasonable excuse, for evidence of a working entitlement in the United Kingdom. Then the employee could make an EUSS application by 1 July—and we will not be expecting employers to undertake retrospective checks of employment eligibility. That was one of the issues in the Windrush situation.

Coming on to Windrush, one of the main issues was of course that people were granted status under an Act of Parliament in 1973, but no formal record was taken—no

category. To be fair, people were not asked for that; they were not required to do it. However, that meant that, as time passed and people became less familiar with legislation that had been passed, in some cases decades earlier, we ended up in the situation in question.

That is why, with the EU settlement scheme, we have been so keen that the system should be easy to access. People will register, and understand when they will need to have done it by, but there will be protections for those with reasonable grounds not to have applied in time. I think we would all agree about that. Again, we are not setting a particular timeframe in each instance. We will have an illustrative list; we will not have an exhaustive list. We will look to decision makers to consider whether something was reasonable in the circumstances, and of course applicants will have the ability to challenge those decisions as well.

So, although I take on board some of the points made by Opposition Members, I will be clear that people are not going to be left in any form of limbo in January next year. Of course, we encourage everyone to get their application to the EU settlement scheme in today. Nearly 3.8 million of our friends and neighbours already have status under United Kingdom immigration or via the EUSS, which guarantees their position in the United Kingdom beyond 1 July next year.

Many are already using that status. Particularly in recent times, it has been quite convenient to be able to share a digital status with an employer or a bank, because although people are not required to show it until 1 July next year, it can already be used, if, for example, someone needs to evidence entitlements or their identity for some of the checks that people, including British citizens, have to perform when they get a job or rent a flat.

With those comments, I conclude that, although I recognise the points that have been made, this measure represents a retention of rights. No one should feel that their ability to apply to the EUSS or their ability to live their life normally as they do today is affected; no one will have lesser rights in the UK in January than they do today. However, I urge the Committee to agree this measure.

Also, to be clear, the protections outlined in terms of citizens do not depend on the immigration Bill. The impact of that Bill was raised, and where it will impact is in repealing the provisions relating to free movement in UK law. Therefore, free movement does not exist beyond 1 January 2021, because it would be rather odd still to continue free movement in UK law when it was no longer reciprocated and had ended for UK citizens in the European Union.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020.

DRAFT CITIZENS' RIGHTS (APPLICATION DEADLINE AND TEMPORARY PROTECTION) (EU EXIT) REGULATIONS 2020

Motion made, and Question put,

That the Committee has considered the draft Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020.—*(Kevin Foster.)*

The Committee divided: Ayes 9, Noes 6.

Division No. 1]

AYES

Bailey, Shaun	Lewer, Andrew
Cates, Miriam	Pursglove, Tom
Fell, Simon	Randall, Tom
Foster, Kevin	Smith, Greg
Henry, Darren	

NOES

Charalambous, Bambos	Furniss, Gill
Coyle, Neil	Grady, Patrick
Cruddas, Jon	Timms, rh Stephen

Question accordingly agreed to.

DRAFT CITIZENS' RIGHTS (FRONTIER WORKERS) (EU EXIT) REGULATIONS 2020

Resolved,

That the Committee has considered the draft Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.—*(Kevin Foster.)*

3.9 pm

Committee rose.