

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT IMMIGRATION (LEAVE TO ENTER AND
REMAIN) (AMENDMENT) (EU EXIT) ORDER 2020

Tuesday 24 November 2020

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The Committee consisted of the following Members:

Chair: †CHRISTINA REES

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)

Dines, Miss Sarah (*Derbyshire Dales*) (Con)

† Elmore, Chris (*Ogmore*) (Lab)

† Foster, Kevin (*Parliamentary Under-Secretary of State for the Home Department*)

† Hart, Sally-Ann (*Hastings and Rye*) (Con)

Howarth, Sir George (*Knowsley*) (Lab)

† Jupp, Simon (*East Devon*) (Con)

Keeley, Barbara (*Worsley and Eccles South*) (Lab)

† Lewer, Andrew (*Northampton South*) (Con)

† Lynch, Holly (*Halifax*) (Lab)

Owatemi, Taiwo (*Coventry North West*) (Lab)

† Pursglove, Tom (*Corby*) (Con)

Sambrook, Gary (*Birmingham, Northfield*) (Con)

Thompson, Owen (*Midlothian*) (SNP)

† Wakeford, Christian (*Bury South*) (Con)

† Whittaker, Craig (*Calder Valley*) (Con)

Bradley Albrow, *Committee Clerk*

† **attended the Committee**

Fourth Delegated Legislation Committee

Tuesday 24 November 2020

[CHRISTINA REES *in the Chair*]

Draft Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020

2.30 pm

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

That the Committee has considered the draft Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020. Diolch, Ms Rees. It is a pleasure to serve under your chairmanship for the first time.

The order was laid before Parliament in October, and is required to enable a number of changes arising from the end of free movement. First, it allows nationals of the European Union, the European economic area and Switzerland—for the sake of simplicity, I will refer to them from here on in collectively as ‘EEA’ citizens—who are aged 12 or above; using a biometric national passport rather than an EEA identity card; and seeking to enter the United Kingdom as a visitor under the immigration rules to be granted such leave by passing through an e-Gate, without routinely having to be interviewed by a Border Force officer about their intentions.

The order also allows EEA citizens, as well as other nationalities already eligible to use e-Gates, who are arriving in the UK under the new S2 healthcare visitor route to obtain six months leave to enter as an S2 healthcare visitor, either granted orally by a Border Force officer, or automatically by passing through an e-Gate in a similar way to standard visitors. The order allows those holding a service provider from Switzerland entry clearance to enter the UK on an unlimited number of occasions during its validity, receiving 90 days leave to enter upon each entry. It also defines the type of leave obtained by a person passing through an e-Gate, thus enabling Border Force officers to examine such persons and to cancel their leave where appropriate, for example if customs offending was identified at a later point in the airport.

Given the relatively simple and, I hope, the uncontroversial nature of the statutory instrument, I commend it to the Committee.

2.32 pm

Holly Lynch (Halifax) (Lab): I say with all sincerity that it is an absolute pleasure to see you in the Chair, Ms Rees, as we consider this important delegated legislation.

I am grateful to the Minister for outlining with such clarity the purpose of the SI. As we have heard, in essence the order allows those who would lose free movement rights to be able to continue to use e-Gates at the UK border. I followed last week’s debate on this matter in the Lords closely. The Opposition see the merits in the order—it would assist in managing queues

and limit the disruption at the border when free movement ends—but we want to explore some of the detail further with the Minister.

We must have faith that the systems in place at the border are welcoming where appropriate but robust enough to identify if a person requires further investigation. The Minister will be aware of the letter sent by the chair of the National Police Chiefs’ Council, Martin Hewitt, to the Home Affairs Select Committee, dated 11 November. He referred to UK law enforcement co-operation with EU partners from 1 January 2021, and the possibility of any impact arising from the loss of the EU law enforcement and national security measures, known as LENS tools, as part of the Brexit process and the end of the transition period. Martin Hewitt was very clear that in the event of a non-negotiated outcome

‘the UK will lose access to all LENS tools and capabilities and will rely on contingencies. As an overarching principle, the loss of some or all of the tools will mean that, even with contingencies in place, the fallback systems will be slower, provide less visibility of information/intelligence and make joined up working with European partners more cumbersome’.

That is a pretty desperate warning.

I hope that the Minister can tell me that there will be a negotiated outcome, but in the absence of clarity about to which security databases we will have access post transition, it is highly likely that we will not have access to the data that we once had feeding into our systems and checks at the borders. With that in mind, can the Minister reassure me that e-Gates will be sufficient in identifying any potential threats at the border?

If I am not mistaken, based on the Minister’s recent appearance before the Home Affairs Select Committee, and having followed last week’s delegated legislation debate on law enforcement and security, we do not know whether we will have access to a range of LENS tools come 1 January.

The Opposition will not divide the Committee on today’s order, but we would welcome any updates from the Minister on the negotiations and, ultimately, we reserve judgment on the role of e-Gates until we have clarity about the overall package of measures to which the Border Force will have access. My hon. Friend the Member for St. Helens North (Conor McGinn), the shadow Security Minister, has written to his counterpart to seek urgent clarification on the issue, and I would be grateful if the Minister worked with his colleagues to ensure that we receive a response to my hon. Friend’s letter as soon as possible.

I note from the explanatory memorandum that the order forms part of the Government’s long-term plans to develop a new global border and immigration system that is digital by default. Such a move towards more digital checks will only work if we have access to the data to deliver that, and access to European databases will be crucial to achieving that.

EU citizens who are lawfully resident in the UK before 31 December 2020 will be protected by the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. The 3 million wrote to the Minister on 28 October to express its concerns that persons entering the UK after 31 December 2020, who are protected by grace period regulations but who have yet to make their application to the EU settlement scheme, will be inadvertently granted leave via the e-Gates for six months with the relevant restrictions attached, such as no right to work and no access to public funds. I

would be grateful if the Minister clarified how that will work, and what measures will be in place to protect those covered by the grace period regulations? Should those protected by those regulations still be encouraged to pass through e-Gates? Would a person who has every right to work but has not yet had their application concluded under the settlement scheme encounter problems because it is recorded on their passports that they used the e-Gate and have six months leave as a visitor, and so prevented from working should they seek to do so?

I hope that the Minister understands the point that I am trying to make, and that he can offer clarity to me and the 3 million by explaining how those arrangements will work in practice.

2.36 pm

Kevin Foster: I thank my shadow for her overall constructive approach and response.

EEA nationals who are eligible to apply to the EUSS will still be able to use their passport and their ID card at the border to enter, as they do today. Let me clear that going through an e-Gate would not invalidate their position in terms of making an EUSS application, if they are entitled to do so, before the end of the grace period. We have discussed in other forums the provisions for late applications.

Given the grace period and the deadline for EUSS application not being until 30 June, for the purposes of a right to work check, an employer can accept an EEA passport or identity card as proof of entitlement to work up to 30 June 2021. We do not intend to require retrospective status checks, but beyond 1 July 2021 we will expect employers not only to take that passport as a form of identity but to check EUSS status is in place, or other status under the points-based system for those who arrive after 1 January. After that date, EEA nationals will enter who are not entitled to the protections under the withdrawal agreement.

Where an employer carries out a compliance check for the right to work between 1 January 2021 and 30 June 2021, it would be a reasonable excuse for that employer to say that they saw an EEA passport, even if it later transpired that that person was not covered by the withdrawal agreement, and was not entitled to be here. Obviously, that would have consequences for them, having effectively made a dishonest declaration to their employer that they were covered. The employer, however, would have the reasonable excuse that they had done what they were required to do to comply with the necessary checks and requirements. There are also provisions in place for those who, for the sake of argument, are temporarily away from the United Kingdom on the night of 31 December to 1 January. I am conscious that that issue has been raised, but being away from home at 11.01 on the evening of 31 December will not see someone lose their entitlements if they have yet to apply to the EUSS. However, and as the shadow Minister has heard me say before, if any one has any concerns about their position next year, or beyond 30 June, we have a simple message for them: get your application into the EUSS today. It is free, simple to do and all that people are required to do is prove their identity, show evidence that they live in the United Kingdom, and declare any criminal records. Those who have been here for more than five years' residence are granted settled status. I hope that answers the hon. Lady's queries about EEA

nationals and makes it clear that the system will not prejudice them. I think we would all agree that it would be rather odd to send people to the primary control point to have such discussions about entry.

The hon. Lady made a fair point about concerns relating to border security. She will be aware that a range of non-EEA nationals from our most trusted partners can already use the e-Gates. Those nationals include those from border five countries, such as Canada, Australia, and the United States, plus those from Japan, Singapore and South Korea. We have strong information-sharing arrangements with those countries. In fact, e-Gates have the advantage in identifying a slightly higher rate of incorrect documents than those spotted by physical examination. She will appreciate that I do not want to go into all the details about how our systems at the border identify dodgy documents, but e-Gates offer some good security advantages.

We check against a range of databases, and I know that attention has been paid to the Schengen Information System – SIS II. We made an offer to the EU to continue to be a part of that, subject to appropriate negotiation, but my advice is that the European Commission has stated its view that it is not legally possible for a non-Schengen third country to co-operate through SIS II. Switzerland has been cited as one such third country, but, unlike the UK, it is a Schengen country. We have maintained that offer, and regret the view expressed by the Commission. Some of the figures quoted in relation to SIS II also include UK law enforcement officer checks on the police national computer—something not inherently linked to information on border checks through SIS II. Some of the records also relate to documents rather than to people.

We are working on fall backs very similar to Interpol and information sharing. Clearly we will talk to colleagues because we have a mutual interest as neighbouring friendly democracies, and as we talk to New Zealand, Canada and other partners. That dialogue ensures that those who may present a threat, those whom we should not look to welcome to the United Kingdom, or those who fellow law enforcement agencies may wish to catch up with are automatically checked.

The type of information that is available when someone is at a primary control point and they swipe their passport is similar to the information derived from checks at e-Gates. I hope that reassures people. If there is a reason for someone to be interviewed, they will be flagged to a Border Force official, who will intervene. The system has the necessary resource and people should be reassured that the information garnered is the same at both a primary control point and at an e-Gate. If there is a query or warning, a Border Force official will intervene or make the necessary decision. We continue to work on capacity via existing bilateral agreements and Interpol. We understand that a number of counterparts in EU states look to circulate SIS II information via Interpol channels, although as the shadow Minister and her colleague, the shadow Security Minister are aware, there are issues about some elements of Interpol's operation.

I should make it clear that we use SIS II for law enforcement and not, I understand, for immigration purposes, but we will obviously check security information at the border. That partly reflects the fact that we are not in Schengen.

[Kevin Foster]

We are continuing to negotiate with the EU. We hope to reach a mutually beneficial deal, but just as the EU has not taken no deal off the table, nor has the UK if the red lines set by the UK Government are crossed. We are having constructive discussions, however, and I am sure that the Prime Minister looks forward to updating the House on their progress when he is able to do so.

This has been a useful opportunity to consider some of the issues related to the SI, and I commend it to the Committee.

Question put and agreed to.

2.44 pm

Committee rose.

