

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT IMMIGRATION (LEAVE TO ENTER
AND REMAIN) (AMENDMENT) ORDER 2024

Tuesday 30 April 2024

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

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| † Barker, Paula (<i>Liverpool, Wavertree</i>) (Lab) | † Pursglove, Tom (<i>Minister for Legal Migration and the Border</i>) |
| Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Davies-Jones, Alex (<i>Pontypridd</i>) (Lab) | † Smith, Greg (<i>Buckingham</i>) (Con) |
| † Drummond, Mrs Flick (<i>Meon Valley</i>) (Con) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Dunne, Philip (<i>Ludlow</i>) (Con) | Strathern, Alistair (<i>Mid Bedfordshire</i>) (Lab) |
| † Firth, Anna (<i>Southend West</i>) (Con) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| Kitchen, Gen (<i>Wellingborough</i>) (Lab) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Liddell-Grainger, Mr Ian (<i>Bridgwater and West Somerset</i>) (Con) | † Villiers, Theresa (<i>Chipping Barnet</i>) (Con) |
| † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) | Yohanna Sallberg, <i>Committee Clerk</i> |
| | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 30 April 2024

[LAURENCE ROBERTSON *in the Chair*]

Draft Immigration (Leave to Enter and Remain) (Amendment) Order 2024

9.25 am

The Minister for Legal Migration and the Border (Tom Pursglove): I beg to move,

That the Committee has considered the draft Immigration (Leave to Enter and Remain) (Amendment) Order 2024.

It is a pleasure to serve under your chairmanship, Mr Robertson. The draft order, which was laid before Parliament on 11 March, will amend the Immigration (Leave to Enter and Remain) Order 2000 and remove an inconsistency between the 2000 order and the findings of a High Court judgment in proceedings brought by the Independent Monitoring Authority for the Citizens' Rights Agreements relating to the EU settlement scheme.

In line with the agreements, the 2000 order provides for an EU settlement scheme status holder to automatically lose their immigration permission after more than a specified period of absence from the UK. For a pre-settled status holder, the specified period is currently two years' absence. For a settled status holder, it is five years' absence. The High Court judgment found that where a pre-settled status holder has rights under the EU withdrawal agreement, they can automatically acquire a right of permanent residence, which is another form of settlement, once the conditions for it are met, thereby benefitting from the longer period of absence.

The effect of the judgment is that the 2000 order is inconsistent with the legal position, because the order does not cater for the group of pre-settled status holders who have automatically acquired a permanent residence right. To achieve consistency, the draft order provides for all those granted leave under the EU settlement scheme to benefit from the longer absence period before their immigration permission lapses. This is irrespective of whether they hold pre-settled or settled status, and whether or not they are from the group that has acquired a right of permanent residence. We have made this change for reasons of simplicity and operational practicality.

The change to the 2000 order does not prevent the Home Office from cancelling pre-settled status where a holder who has not acquired a right of permanent residence has been absent from the UK for longer than the period permitted by the relevant citizens' rights agreement, which is generally six months in a rolling 12-month period. The scope for this action will remain available by decision under the immigration rules, rather than by the lapsing of leave under the 2000 order.

This statutory instrument gives clarity to citizens by bringing our legislation into line with the legal position determined by the findings of the High Court judgment. It achieves this in the simplest, most sensible way, while not preventing the Home Office from taking appropriate

action where a person is no longer eligible for leave under the EU settlement scheme. I commend the order to the Committee.

9.27 am

Alex Davies-Jones (Pontypridd) (Lab): I thank the Minister for bringing forward this order. Following lengthy delays and litigation, it is the latest step towards giving full effect to the December 2022 court judgment regarding the EU settlement scheme. The changes in the order would correct the discrepancy between the rights of people with pre-settled status under the EU settlement scheme, whose residency rights lapse automatically if they are absent from the UK for a continuous period of at least two years, and the rights of those with settled status, who may be absent for up to five years before their residency rights under the scheme will lapse.

Once implemented, the changes will mean that those with either pre-settled or settled status under the EU settlement scheme will now have the right to be absent from the UK for up to five years before their status automatically lapses. Notwithstanding these changes, the Government maintain their position that those who currently hold pre-settled status under the scheme but are eligible to switch to settled status are encouraged to apply for settled status as soon as they meet the criteria. According to Home Office statistics, as of December 2023, more than 745,000 people had made that switch.

Will the Minister confirm how many people have applied to switch from pre-settled to settled status but are currently waiting for a decision on their applications? We know that there is still a backlog. Will he tell us what information the Home Office has on the number of people who currently meet the eligibility criteria to switch from pre-settled to settled status, but have not yet submitted an application to do so? In July 2023, the Home Office said that its intention was

“to take steps to automatically convert as many eligible pre-settled status holders as possible to settled status once they are eligible for it, without them needing to make an application.”

Can the Minister update us on the progress of those plans? As he has acknowledged, the draft order seeks to implement a change to current legislation that is required as a result of the court's decision in December 2022. We therefore have no reason to oppose the motion.

9.29 am

Alison Thewliss (Glasgow Central) (SNP): I am very glad to hear that the Government have got round to bringing forward this order after the judgment in 2022. That is a long time for people to be waiting with a degree of uncertainty. I note that the case was brought by the Independent Monitoring Authority for the Citizens' Rights Agreements. It seems to me that this is part of the Brexit gift that keeps giving for EU citizens who formerly had the right to be here—a gift that Labour and the Conservatives are both wedded to. That is a great disappointment to the people of Scotland, who did not vote for Brexit and continue to oppose the precarity that this Government have put people in who we would previously have said had every right to be here.

There has been a fivefold rise in EU citizens refused at the border, which, again, causes great uncertainty for any EU citizen when they wish to go anywhere and then

return home to the UK. People have outlined very distressing stories about the way they have been treated at the UK border by Border Force officials. In that light, what guidance on this order has been given to border officials? Are they aware of these rules? What training have they been given? They will be the people on the front line implementing this order, which will have an impact on EU nationals coming in and out of the UK, as they are perfectly entitled to do.

Lastly, can the Minister give an update on virtual biometric residence permits and the virtual system that is coming into force? That adds a further layer of uncertainty and insecurity for people moving across the border—people who have a perfect right to be here. I have seen little to reassure those who will have the biometric status, rather than a physical card, that they will be able to move across the border in a simple way. For a thing that has been rolled out by the Government, there has been very little by way of information. I appreciate that some briefing has been given to the staff of MPs, but there is an awful lot more to do. The Government are rolling out this big programme and there is very little awareness of it. I have discussed that with constituents who, as I have mentioned in the House, have taken the expiry date on their BRP card to mean an expiry date of their status, which is not the case. The Minister needs to give a good deal of reassurance, in combination with training for Border Force officials, so that nobody ends up stuck at the border when they have as perfect a right to walk through as I have.

9.32 am

Tom Pursglove: I think it is fair to say, and the House acknowledges, that the EU settlement scheme has been a great success. We continue to work constructively at the Home Office to make sure that we deliver on that scheme in both letter and spirit. We have gone above and beyond our obligations under the citizens' rights agreements and are pleased that so many of our family, friends and neighbours have obtained the status they need to remain in the UK.

On the point about reform in relation to biometric residence permits, there is still more we can do to help to generate greater awareness of the coming change to digital status. Those who currently hold BRPs are receiving mail-outs from the Home Office at the moment to let them know about the change, what it means for them, and what they need to do. Applications for the new approach are coming through the digital channel. However, I am very willing to hear from colleagues across the House about what more we can do to support hon. and right hon. Members in that work to ensure that their constituents are aware of the change and what they need to do to make sure they have digital status in the way we envisage. There are enormous benefits of the move to digital from simplification and making sure that people have the documentation they need.

On the implementation of the order at the border, a Border Force officer may seek to establish whether an individual requires permission to enter the UK, whether any permission that has been given is still in force, and whether, if the individual has permission in force, it should be cancelled. That includes the ability to examine whether someone presenting pre-settled status has acquired

a withdrawal agreement right of permanent residence. The officer will then consider the permitted duration of absence in accordance with the relevant status.

The order will make border checks much easier by broadly aligning the duration of permitted absence before leave lapses for pre-settled status holders. This means that Border Force officers will no longer need to undertake a complex consideration of whether an individual has acquired a withdrawal agreement right of permanent residence. Hon. Members can be absolutely assured that we continue to keep Border Force training under review and to ensure that there are opportunities for Border Force officers to receive the kind of training we would all want to see. We want this change to be delivered as seamlessly as possible. As I said earlier, we have tried to ensure that it is simple to administer at the border and that people understand their position and do not encounter difficulties.

Many specific questions were raised about statistics. If I may, I will provide the Committee with an update on the situation. The hon. Member for Pontypridd recognised in her response that this order rectifies our domestic law to reflect our position, and I am grateful for the Opposition's support. Withdrawal agreement rights have been underlying rights, and we are remedying our domestic law so that people are not disadvantaged. This is an important step that has been welcomed by many. I continue to meet and engage with the Independent Monitoring Authority, and I am keen to sustain that engagement.

Alison Thewliss: I do not want to interrupt the Minister mid-flow, but I wanted to mention the claimant in the case, who was female. There has been no equality impact assessment with this measure. What is the Government's thinking on the impact of this policy on women in particular? They may have caring responsibilities that require them to return to another country for a while, perhaps to care for an elderly relative, so they might be more affected by this measure than men. Have the Government done an equality impact assessment?

Tom Pursglove: If I may, I will write to the hon. Member about the equalities approach to this instrument.

On the Border Force point, guidance is in the process of being updated, and we intend to publish it so that it will be available for people to consult. To the point about the volume of pending applications and processing times, I will be happy to provide an up-to-date set of statistics for colleagues, but what I can say now is that there were 121,830 pending EUSS applications to 31 December 2023, compared with 142,430 in the previous release of data to 30 December 2022. This indicates a 14% reduction in the number of applications awaiting a decision. Application numbers have remained high. On average, over 50,000 applications were received each month in the last quarter of 2023. These are predominantly from late applicants and repeat applications, including those moving from pre-settled to settled status.

This means that a sizeable number of pending applications are from recent applicants, with 64% waiting for 90 days or less and every applicant waiting for 180 days

[Tom Pursglove]

or less. I recognise the desire to deliver this scheme and minimise waiting times for people, so I will happily provide the House with as much information as possible on the progress we make with applications. To the point from the hon. Member for Glasgow Central, we are

always very mindful of equality. We want to ensure that all our policies and decisions reflect equalities issues, and I will be happy to provide an update on that, too.

Question put and agreed to.

9.39 am

Committee rose.