

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT REPRESENTATION OF THE PEOPLE
(ENGLAND AND WALES AND NORTHERN IRELAND)
(AMENDMENT) REGULATIONS 2024

Wednesday 8 May 2024

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Bruce, Fiona (<i>Congleton</i>) (Con) | † Hollobone, Mr Philip (<i>Kettering</i>) (Con) |
| † Champion, Sarah (<i>Rotherham</i>) (Lab) | Levy, Ian (<i>Blyth Valley</i>) (Con) |
| † Eshalomi, Florence (<i>Vauxhall</i>) (Lab/Co-op) | † McDonnell, John (<i>Hayes and Harlington</i>) (Lab) |
| † Evennett, Sir David (<i>Bexleyheath and Crayford</i>) (Con) | Mishra, Navendu (<i>Stockport</i>) (Lab) |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | † Mohindra, Mr Gagan (<i>South West Hertfordshire</i>) (Con) |
| † Grundy, James (<i>Leigh</i>) (Con) | † Randall, Tom (<i>Gedling</i>) (Con) |
| † Hamilton, Fabian (<i>Leeds North East</i>) (Lab) | † Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Hammond, Stephen (<i>Wimbledon</i>) (Con) | |
| † Henry, Darren (<i>Broxtowe</i>) (Con) | Bethan Harding, <i>Committee Clerk</i> |
| † Hoare, Simon (<i>Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities</i>) | † attended the Committee |

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

Everitt, Ben (*Milton Keynes North*) (Con)

Second Delegated Legislation Committee

Wednesday 8 May 2024

[STEWART HOSIE *in the Chair*]

Draft Representation of the People (England and Wales and Northern Ireland) (Amendment) Regulations 2024

2.30 pm

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Simon Hoare): I beg to move,

That the Committee has considered the draft Representation of the People (England and Wales and Northern Ireland) (Amendment) Regulations 2024.

It is a pleasure to serve under your chairmanship, Mr Hosie. May I start with an apology? We have had to bring the draft instrument forward as a tidying-up and housekeeping exercise. It is nothing to set the world alight, but it is an important thing to do, and I hope it will be supported across the Committee.

The Elections Act 2022 introduced measures to, among other things, amend the franchise to reflect the United Kingdom's new relationship with the European Union and to protect the rights of UK citizens living in EU countries. Last year, two statutory instruments were passed that flowed from that aspect of the Elections Act. They made changes to the voting and candidacy rights of EU citizens in England and Wales and Northern Ireland. They provided for a new registration requirement for applications from EU citizens and set out a process requiring electoral registration officers to conduct a one-time review to determine the eligibility of all registered EU citizens. One instrument applied to all local elections in England and to police and crime commissioner elections in England and Wales. A separate statutory instrument applied franchise changes to local government and Assembly elections in Northern Ireland. The majority of the changes came into effect from 7 May.

We are bringing forward this instrument to amend a drafting oversight in both of those sets of regulations. A primary intention of the two current instruments was to allow EU citizens who chose to make the UK their home prior to the end of implementation period—that is, before the UK left the EU—to continue to have the right to vote and to stand for election. That group of electors is referred to as “EU citizens with retained rights”. People applying to register to vote under the retained rights criteria, referred to as “relevant EU applicants”, must make a legal declaration that they meet the criteria of an EU citizen with those retained rights, have been legally resident in the UK since the end of the implementation period and are from a country with which the UK does not have a voting and candidacy rights treaty.

Relevant EU applicants were intended to be defined as individuals who are citizens of the 19 EU member states with which the UK does not have a reciprocal voting and candidacy rights treaty and who are not

citizens of Ireland, Cyprus or Malta—for which exemptions exist because Irish citizens' UK voting rights long predate the EU, while the voting rights of Cypriot and Maltese citizens derive from their citizenship via the Commonwealth. The five countries with which the UK has voting and candidacy treaties are Spain, Portugal, Luxembourg, Poland and Denmark. Citizens of those countries will not lose their voting rights in the UK.

However, due to an oversight, the requirement for applicants to indicate that they fulfil retained rights criteria unintentionally applies to particular applicants with dual nationalities—that is the key point here—even though their answer to those criteria requirements will have no bearing on their eligibility to register to vote. In essence, the drafting error forces people to prove twice, rather than only once, their right to vote.

The current legal definition of a relevant EU applicant means that citizens of the 19 relevant EU countries who also have another nationality that is British or Commonwealth, excluding Cyprus or Malta, or have citizenship of a treaty partner state, are legally obliged to indicate that they fulfil retained rights criteria, as part of their application to register to vote, even though that answer is irrelevant to determining their eligibility. Retained rights criteria are immaterial because the eligibility of an individual with more than one nationality to participate in elections is established based on whichever of their nationalities grants them the greatest voting rights. For example, an individual with British and French dual nationality would have the same voting eligibility as someone with single British nationality, making it unnecessary to make demands that are relevant only to French applicants.

While this issue exists in law, if an application to register to vote from a relevant dual national is received by an electoral registration officer and the applicant has not indicated that they fulfil the retained rights criteria, that application would technically be incomplete. As such, the administrator would have to get in touch with the applicant to require this information, even though the answer to the question would make no difference to the outcome of their application.

In practice, this issue creates the potential for confusion among applicants, who could reasonably object on the grounds that being asked to indicate that they fulfil retained rights criteria is unreasonable. Worse, this confusion could even result in people abandoning an application to register, disenfranchising themselves—something I am keen to avoid. It also creates the potential for an increased administrative burden on electoral registration officers.

Today's statutory instrument amends the definition of a relevant EU applicant in the England and Wales regulations, as well as the equivalent term used in the regulations pertaining to Northern Ireland. The instrument defines a relevant EU applicant as someone who is a citizen of an EU member state, is not a citizen of an EU member state that has a treaty with the UK and/or is not a British citizen, a qualifying Commonwealth citizen or a citizen of the Republic of Ireland. That will provide an enduring resolution to the issue, with the dual nationals I referred to earlier no longer being legally required to provide immaterial information as part of their application to register to vote. Until this instrument comes into force—which I hope it will with the support of the Committee this afternoon—measures

have been put in place to minimise the extent of the issue, but this instrument is needed to fully remedy the problem.

Having set out the background to this statutory instrument, I hope the Committee will appreciate the need to make swiftly this straightforward legislative amendment to remove the risk of confusion among applicants and unnecessary burden for electoral administrators.

2.38 pm

Florence Eshalomi (Vauxhall) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Hosie. I thank the Minister for his introduction, but we are back here again, debating the second statutory instrument this year that corrects errors in regulations relating to the Elections Act.

As I am sure the Minister will remember, the previous SI related to information on postal and proxy poll cards. I was not critical of the Government for making that mistake, and we do not intend to be overly critical over today's correction. But I have to be honest with the Minister that the fact that we are here yet again emphasises the enormity and complexity of the Elections Act and electoral statute.

When I was trying to get my head around this instrument, which should be relatively simple, I had to look at about five to six different Acts and regulations spanning over 40 years of legislation. Some Front-Bench colleagues may think that those are rookie numbers compared to the spaghetti that exists in some areas of law.

As the Minister outlined, it is critical that our electoral law is as legible and transparent as possible, not only for the health of democracy but—I have mentioned this to the Minister on numerous occasions—for the workload of our understaffed electoral teams, which are tasked with keeping the integrity of our elections intact. Unfortunately, rather than helping our electoral administrators, the Government have introduced an Elections Act that drastically increases the burden on them.

Not only do the electoral officers now have to deal with increased burdens from the changes to postal vote deadlines, but they have to implement the flawed photo ID system and adjust their registers to reflect the new franchise for EU nationals. The Government estimate that, starting on 7 May, up to 170,000 people will be removed from the electoral roll. While additions to the franchise are not particularly novel, and it is 55 years since a Labour Government gave 18-year-olds the right to vote, I believe that this is the first time any mass disenfranchisement of registered voters has happened in the UK in the last 100 years.

That brings with it a unique set of challenges for our electoral system and officers, particularly in a year when we are going to see so many significant elections and hopefully, fingers crossed—hint—a general election. Mistakes in legislation in this area make that challenge even harder. They could create significant confusion and concern among dual nationals who are entitled to vote, by not only collecting unnecessary information from those looking to register, but increasing the workload of electoral officers, who already have to tidy up databases and deal with queries from so many different members of the public who are confused as to why this question is being asked in the first instance.

Given the different levels of voting rights that different EU citizens will now be entitled to, what steps is the Minister taking to ensure that all those different citizens know their voting rights? For example, what is happening—the Minister mentioned dual citizenship—in relation to those who have been granted British citizenship and those who are granted local voting rights via the reciprocal schemes? I would also be grateful if the Minister could outline what support is being provided to electoral officers to carry out the amendment to the franchise for EU nationals. What steps are the Government taking to ensure there are no mistakes in the system?

The Minister says that the changes are just about tidying up. If he needs convincing of the importance of this issue, he should look at the Levelling Up, Housing and Communities Committee's report on voter registration, which highlighted a creaking system without any efficiency and with the huge challenges presented by the Elections Act.

The Minister touched on voters who would have to qualify to vote via the reciprocal arrangements with member states, as listed in schedule 6A to the Representation of the People Act 1983. The Minister knows that there is cross-party consensus on trying to reach those arrangements with other EU countries, and it is good to see that an agreement with Denmark was reached earlier this year, following similar agreements with Spain, Portugal, Luxembourg and Poland, as the Minister said.

However, although the practical implications for citizens of other countries will be minor, what will happen if arrangements are reached in the near future for the removal of non-qualifying EU nationals from the register? Will the citizens of those nations need to re-register as new voters? Again, there is complexity here in terms of explaining what people's voting rights are. For example, will the regulations mean that the checking process could be longer? Will it happen between now and 31 January? Will citizens of a nation with a newly created arrangement be removed from the register, even though, as the Minister outlined, they may be entitled to vote? I hope the Minister can outline that we will avoid a postcode lottery of registration in different circumstances.

I understand the communication requirements as part of these alterations, which could create confusing circumstances for citizens and campaigners seeking to get people registered to vote, which is what we all want to see—more people registered to vote. Also, to go back to the issue of the workload of our electoral officers, they would need to re-register people they may have just removed.

To conclude, we support this draft statutory instrument, but I would welcome reassurance from the Minister on some of those points. I am happy to follow up later if he did not catch them all.

2.44 pm

Simon Hoare: I thank the hon. Lady for the tone and tenor she adopted in her remarks. I would say to her that to err is human; to forgive, divine. I did start my remarks by issuing an apology to the Committee: no Minister of the Crown likes to have to come back to this place to tidy up a legislative oversight. It is embarrassing and a nuisance; it wastes colleagues' time and the time of the House. If there had been another way we could have done this, we would have, but it required the draft

[Simon Hoare]

regulations. We thought there were two options: one was just to pretend it had not happened and to keep the burden there, with a double qualification; the other was to fess up, to put our hand up and to tidy everything up to make things easier for the administrators—the hon. Lady is absolutely right that we do not want to overburden our administrators.

To pause there for a moment, Mr Hosie, I want to put on record—I think this would be echoed in all quarters of the House—our thanks to all the staff who delivered what were peaceful and calm elections last week. They do a huge amount of work, not just on election day, as we all know, but in the weeks and months spent preparing the registers, the paperwork and everything else.

I agree fundamentally with the hon. Lady that we want to maximise the number of people who qualify not just to be on the register but to participate in our electoral processes. The requirement of the beating heart of democracy is that that beating heart be exercised, and it is exercised through the ballot. We want to maximise that.

We have seen a collision of two things. One is the Elections Act and the determination to tidy up our electoral system and to make it as resilient and robust as possible looking forward. That is tied up with the obvious knock-on implications of leaving the European Union, which meant that certain rights had to change and so on. I will not describe that as a perfect storm, but those two things—which would have been big and chunky pieces of work in themselves—have, when added together, been a test for our administrators, although I have to say that they have risen to the challenge magnificently.

The whole purpose of this exercise is to ensure that the system is as transparent and as easy to use as possible. We will of course continue to seek other treaties such as those we have with Spain, Portugal, Luxembourg, Poland and Denmark—that is an organic and iterative process, and something to be welcomed. No one qualified to be on the register under the double qualification-proving requirements we are seeking to tidy up today will have to reapply; there is no additional burden for them or, indeed, for the administrators.

I am not convinced that that requires a huge information campaign. When we have talked to the people affected, they have not realised that they have been having to answer the same question, but through two different routes. However, we will of course keep this under review, to address the point the hon. Lady made, perfectly validly, about the need to maximise the numbers of people on the register who duly qualify and to secure their participation in the ballot.

The hon. Lady referenced—I hope I quote her correctly—the “flawed photo ID system” but, truth be told, I do not think that that bears scrutiny. Yesterday, I had one read-out from officials on the electoral events of last week; this morning, I was with the Electoral Commission, and I will see it again next week. We, and the commission, have said that we will review each event in these relatively new times since the Elections Act has come into play, to ensure that things are working as we envisaged they would. If they are not, we will tidy up where appropriate. I was very struck, as I am sure everyone else here was travelled to their polling stations last Thursday, that people were there with their voter ID. Again, I pay tribute to the work of all the political parties, civic society, local authorities, the commission and the Government on promoting and raising awareness of that requirement, which does ensure that our electoral system is as robust and reliable as we can make it.

If I missed anything that the hon. Lady raised with me, my apologies, but she can drop me a line and we will reply in writing. I hope I covered the main thrust of her argument. This is a tidying-up point, which will make things easier for those who apply, while those who have applied and qualified will not have to do anything else. The changes will ease the burden on electoral administrators involved, because they do not require any going back to check on details. I do not say this in any way to be flippant, but this is a housekeeping, tidying-up point.

I am grateful for what I think I heard the hon. Lady say was her support. She and I share an annoyance that we have to be here in order to do these things, but I thought it better to get them done than to leave them hanging. With that, I close my remarks.

Question put and agreed to.

2.51 pm

Committee rose.