

Shindler

Note: this does not form part of my judgment

The issue in this case is whether section 2 of the EU Referendum Act 2015, which excludes from the franchise UK citizens who have been resident outside the UK for more than 15 years is contrary to EU law or our common law. The claimants say that their exclusion from the franchise is an unjustified restriction on their EU law right of free movement and contrary to their common law constitutional right to vote.

For the reasons set out in the judgments handed down, the appeals against the dismissal of their claims is dismissed.

The court holds first that the 2015 Act does not fall within the scope of EU law at all, so that the claim fails at the first hurdle. That is because Article 50(1) of the Treaty of the European Union provides that “any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements”. The EU has recognised that the decision of a Member State to withdraw is an exercise of national sovereignty which is governed by its own constitutional arrangements. By passing the 2015 Act, Parliament has decided that one of the constitutional requirements that has to be satisfied as a condition of a withdrawal from the EU is a referendum.

But secondly, even if the Act does fall within the scope of EU law, the court holds that section 2 is not a restriction on the EU right of free movement. Contrary to the claimants’ case, it is unrealistic to believe that British nationals who have been living outside the UK for more than 15 years might feel compelled to return in order to establish their right to vote. The effect of section 2 on persons who have been living abroad for more than 15 years, when considered as a group, is too uncertain, indirect and/or insignificant to amount to a restriction on their rights of free movement.

Thirdly, Parliament has determined the scope of the referendum franchise in section 2 of the 2015 Act. The common law right to vote does not take precedence over an Act of Parliament.

The order of this court is: appeal is dismissed. Appellants to pay costs capped at £15,000. Permission to appeal to Supreme Court refused.

