



Rt Hon Suella Braverman MP
Secretary of State for the Home Department
Home Office
2 Marsham Street
London
SW1P 4DF

25 May 2023

Dear Home Secretary,

Rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement

You will recall that in July 2021 the European Affairs Committee, chaired by the Earl of Kinnoull, published a report addressing the post-Brexit rights of EU citizens in the UK and UK citizens in the EU. The report focused on the relevant provisions of the Withdrawal Agreement and the mechanisms by which the UK and EU Member States had given effect to them. The report welcomed the initial success of the EU Settlement Scheme (EUSS) and identified a “mixed picture” with regard to the progress of applications to residence schemes in EU Member States. It also highlighted several issues that were still to be resolved, in relation to both the EUSS and the various residence schemes for UK nationals operated by individual Member States.

We began follow-up work on citizens’ rights in February 2023 to ascertain the present situation. On 16 May 2023, we held an oral evidence session at which we heard from representatives of key organisations that represent EU citizens in the UK and UK citizens in the EU. We also received 10 written submissions from key stakeholders.

Although the initial deadlines for applying to the EUSS and to residence schemes in EU Member States passed in 2021, it is clear from the evidence we have heard that the rights of EU citizens in the UK and UK citizens in the EU remain live issues. A substantial number of applications continue to be received, including many that relate to complex cases. There are also various ongoing challenges relating to the implementation of aspects of these schemes.

It is therefore imperative that matters relating to citizens’ rights continue to receive the highest political attention, even as the passage of time since the UK’s exit from the EU grows longer. These issues and the success of both the UK and the EU in handling them in conformity with treaty obligations will inevitably affect the overall relationship between the UK and the EU for better or for worse.

We ask you to set out your assessment of the current overall state of affairs regarding the rights of EU citizens in the UK and UK citizens in the EU.

EU citizens’ rights in the UK

Moving from pre-settled to settled status

In our report published in 2021 we expressed concern about the more than two million EU citizens who had received pre-settled status who, on their own individual timelines, would need to apply for settled status after five years in order to secure their rights permanently. We noted that

although the Home Office planned to send individual reminders, the effectiveness of these would rely on holders of pre-settled status keeping their contact details up to date.

In December 2022, following a judicial review brought by the Independent Monitoring Authority (IMA), the High Court ruled that the design of the EUSS was unlawful, particularly with regard to the Government's approach to those granted pre-settled status. Dr Kathryn Chamberlain, the Chief Executive of the IMA, explained to us that they had been "particularly concerned by the thought that citizens might automatically lose their rights because of the failure to take an administrative step to convert from pre-settled status to settled status".

On 18 January 2023, during the period when the Government had signalled its intention to appeal the High Court's decision, we sent a letter seeking clarification on the steps being taken to implement it. We are disappointed that the response received from Lord Murray of Blidworth on 13 April 2023 indicated that the Government was working to ensure implementation of the judgment only by September 2023, when the first outstanding expiry dates for pre-settled status will be reached. We note also that Lord Murray confirmed that the Government is encouraging individuals "to apply for settled status when they are eligible, as the best way of evidencing permanent residence". This advice appears counter to the High Court's view that the EUSS, as currently implemented, "abrogates the right of permanent residence", in part, because the Withdrawal Agreement makes it "plain the constitutive scheme established by Article 18 *requires a person to make one, and only one, application for a new residence status*" (emphasis added).

Taken together, these factors mean that, more than five months on from the judgment and as the earliest deadlines for applications approach, there is still no clarity on how the residence rights of holders of pre-settled status will be guaranteed, and whether they will still be required to complete an application for settled status to secure their rights.

While we agree with Dr Chamberlain that it is important to "get this right rather than rush something that does not fully solve the problem", we believe that clarification on the Government's overall proposed approach could have been provided by now, to offer greater certainty to holders of pre-settled status. Monique Hawkins, Interim Co-CEO and Policy and Research Officer at the3million, indicated that there is "nothing to stop the Home Office building on its success in automating the EUSS and granting [settled status] automatically". She proposed that in cases where the Home Office thinks that somebody may not qualify for settled status due to conduct or excessive absence "it should invite people to submit evidence". Another option, suggested to us by Professor Madeleine Sumption and Mihnea Cuibis of Migration Observatory at the University of Oxford, would be to "leave people in pre-settled status indefinitely unless they reapply and show they are eligible for settled status".

We ask you to confirm that, in line with the High Court judgment of December 2022, changes will be made to the EU Settlement Scheme without further delay that will ensure that there can be no loss of rights for EU citizens at the point at which an individual's pre-settled status is due to expire as a result of failure to apply for settled status.

We ask you to provide us with an update on the Government's proposed approach to giving effect to the High Court judgment of December 2022.

Fiona Costello, Research Associate at the University of Cambridge, emphasised to us that those with pre-settled status have more restricted access to welfare benefits and housing support than

those with settled status. Regardless of whether there is still a risk of losing existing rights when pre-settled status expires, many holders of pre-settled status can therefore be expected to wish to apply for permanent settled status once eligible. Ms Costello noted that during the initial phase of the EUSS the Home Office had put significant support in place to support applications and asked if this will be available for those upgrading from pre-settled to settled status. Tamara Flanagan, Head of Projects at New European UK, was similarly concerned that there may be “less support available” for those needing to upgrade than during the original application window.

We ask you to reassure us that, if an upgrade from pre-settled to settled status is still required, there will be funding available to support individuals with these applications, equivalent to that made available during the initial phase of the EUSS.

Delays to applications to the EUSS

Since the 30 June 2021 deadline there has continued to be a steady flow of fresh applications to the EUSS. This includes late applicants, joining family members, pre-settled status holders applying for settled status and children born to EU parents. Approximately 50,000 applications continued to be submitted every month up to late 2022. At this point 396,000 late applications had been submitted.

We are concerned that a backlog has developed in the processing of these applications and to the issuing of certificates of application. As of December 2022, there were approximately 181,000 pending applications awaiting a decision. We heard that these delays are having serious consequences and could lead to “Windrush-type scenarios”. Ms Hawkins told us that those with pending applications have been unable to apply for a provisional driving licence or EHIC card, that it “looks like you cannot apply for a national insurance number” and that those in this situation “struggle to get universal credit”. She added that in some cases applicants are “advised not to travel out” while decisions are pending and so are “effectively imprisoned” in the UK. She also cited research published by the University of York which had shown that a pending application was a disadvantage when applying to rent a property. Dr Chamberlain emphasised that “the fundamental impact of these delays is the uncertainty and the impact it has on individuals’ ability to make the fundamental decisions they may need to make to live their lives”.

We ask you to provide us with an update on the number of applications that are currently pending a decision and the categories that these fall into, including how many are late applications, how many are pre-settled status holders applying for settled status and how many are applications for joining family members of holders of settled status.

We ask you to provide clarification about the ability of individuals with pending applications to the EUSS to access benefits and to apply for documents such as driving licences, EHIC cards and national insurance numbers.

We acknowledge that delays can be attributed, in part, to increasing complexity of cases as the passage of time since the original deadline for EUSS applications has become longer. Professor Sumption and Mr Cuibus explained to us that late applications now require evidence that the applicant lived in the UK more than two years ago (which may be difficult to source), that late applicants are more likely to have “vulnerabilities that prevented them from applying sooner” and that some applications may now be being received from people who arrived in the UK after the cut-off date and are therefore ineligible. It was also emphasised to us by Kate Smart, CEO of

Settled, that cases relating to joining family members can be especially complex. Dr Chamberlain indicated that it is in “those complex cases that we are seeing the greatest challenges in achieving some sort of resolution”. We therefore consider it essential that there is sufficient resource available to ensure that these cases can be handled efficiently and without undue delay.

We ask you to indicate what additional resources have been allocated to address the backlog of applications that had built up by the end of 2022 and what steps have been taken to ensure that there are sufficient resources in place to handle more complex cases efficiently.

Digital status

This Committee and its predecessors have repeatedly and consistently raised concerns regarding the digital-only system for proof that an EU citizen has successfully accessed their rights under the EU Settlement Scheme. In our 2021 report, we noted that the absence of a physical document created the risk that many EU citizens, including the elderly and those who are digitally challenged, may struggle to prove their rights. We recommended that the Government offer holders of settled or pre-settled status the additional option of requesting physical documents, which would complement rather than replace their existing digital status. We are disappointed that this recommendation has not been taken up.

The evidence that we have considered suggests that our concerns about this aspect of the design of the EUSS were well founded. Dr Chamberlain told us that “issues exist for people who may simply lack the digital skills, awareness or capability to interact with a system of this sort”. Meanwhile, Ms Hawkins indicated that some issues with proof of status have arisen from technical problems that have impacted even those who are “perfectly comfortable with digital systems”. These include instances where essential data is missing from a record due to faults with the system or where information is displayed incorrectly, meaning that the proof of status is “not fit for purpose”.

An additional concern raised with us by Ms Hawkins was that the digital system requires a temporary share code to be generated each time proof of status is required. In her assessment this means that status “does not belong to the status holder”. She favoured a system similar to the Covid-19 passes that were rolled out during the pandemic that “sits on your phone and belongs to you”. We were told that the Home Office had briefly engaged with the Home Office about this possibility in the past but that the proposal had been rejected and lines of communication had since “gone quiet”.

We ask you to provide us with an assessment of the operation of the digital-only system for proof of (pre)-settled status to date, and to update us on what steps have been taken to ensure that the digital proof of status system is reliable and can be accessed straightforwardly. We ask that in your response to this letter you set out the Government’s detailed justification for continuing to deny individuals the option of a physical document and your view on the possibility of making such a document available, including the estimated cost implications, assessed against the advantages to holders of (pre)-settled status.

We reiterate the view expressed in our 2021 report that holders of (pre)-settled status should have the option to request a physical proof of status document and ask you to give further consideration to this proposal.

Database error

In January 2023 it was revealed that an EUSS database error meant that an incorrect status had been displayed online for approximately 146,000 people for an extended period of time. For EUSS applicants whose applications to the scheme were refused between June 2021 and April 2022, the online database displayed their application as “pending” instead of “refused” until 18 January 2023, when the system was updated.

Dr Chamberlain noted that individuals should have received a letter notifying them that their application has been refused even though the online system was not updated, that many will therefore have moved on after receiving a refusal and that “the impact on them will be minimal”. Nevertheless, she told us that the IMA understands that a number of EU citizens may have continued to receive benefits during the period that the database was incorrect and that the Government may seek to recover these. It has also been suggested that the Government may seek retrospective payments for healthcare services received during this period. Ms Hawkins raised concerns that decision letters “quite often end up in people’s spam folders” so may not necessarily have been received. She indicated that in these cases an incorrect online status could have had “very serious” implications, for instance causing them to miss appeal deadlines.

We ask you to provide clarification on how many people were affected by the EUSS database error publicised in January 2023 and to provide us with your assessment of the consequences of this error for EU citizens in the UK.

We are deeply concerned to hear that some people may need to make repayments for benefits or pay for healthcare services that they have received retrospectively as a result of this database error. We ask you to provide us with clarification on this matter, including whether any repayments of benefits or payments for healthcare services have been requested; will be requested; or will be waived. If so, we ask that you indicate the number of people facing this situation.

Travel

Evidence that we have considered identified some problems with travel between the EU and the UK for EU citizens with (pre-)settled status. These appear to be caused by the complexity of the situation not always being understood. Ms Hawkins reported that more problems had been reported boarding aeroplanes abroad than at the UK’s border but that there had been some “moderate delays” getting to the border where a Border Force officer may have to check somebody’s status. She indicated that there have been some cases of people having a “flag on their passports” linked to a previous refusal of status, even where this has subsequently been granted, which can lead to repeated delays.

Although settled or pre-settled status holders have the right to travel to or from the UK with their national identity card, we heard that EU citizens with (pre-)settled status have sometimes experienced difficulties using their ID card to travel to the UK. This issue was raised with us by the Embassy of Latvia as well as by the 3million, which indicated that dual nationals were facing particular difficulties travelling with ID cards, as they are unable to secure proof of Withdrawal Agreement rights.

We are concerned to hear that there have been instances of holders of (pre)-settled status experiencing difficulties travelling between the EU and UK. We ask you to update us on what steps have been taken to prevent these issues from occurring; and, what assistance and recourse you have provided to those individuals who, rightly or wrongly, have experienced difficulties entering the UK caused by having a “flag on their passports”. We also urge you to ensure that guidance to border authorities is made as clear as possible.

Some witnesses also raised concerns that the proposed introduction of the Electronic Travel Authorisation (ETA) scheme will contribute to further travel difficulties. Ms Hawkins noted that EU citizens with (pre)-settled status will need to be able prove to an airline that they do not need an ETA. She told us that the interactive Advanced Passenger Info (iAPI) system to provide for this “is not due to come live until next summer and so will not even be ready” when the ETA rollout begins later this year.

We ask you to provide us with your assessment of the possible implications of the proposed introduction of the Electronic Travel Authorisation (ETA) system for EU citizens travelling between the UK and the EU, and to update us on what steps are being taken to ensure that this does not result in disruption to travel between the EU and the UK for this group.

UK citizens’ rights in the EU

Residence schemes in EU Member States

In our 2021 report we identified a “mixed picture” with regard to how the rights of UK citizens were being upheld in EU Member States. The evidence that we have considered for this follow-up work indicates that this assessment still holds true. While residence schemes appear to be operating relatively smoothly in some EU Member States, we have been made aware of serious problems in others. Jane Golding, Co-Chair of British in Europe, identified high refusal rates for late applicants to the constitutive systems for securing residence rights under the Withdrawal Agreement in Sweden and Denmark. In the case of Sweden, Ms Golding told us that the current refusal rate is around 60% with the reasons given by UK citizens as justification for missing the original deadline typically being refused.

Several cases of refused applications for residence for UK citizens in EU Member States have recently come to light that involve vulnerable people. Ms Golding referred to the case of a British woman with Alzheimer’s living in a care home who was threatened with deportation from Sweden, and to a case involving a family of four with young children. Professor Michaela Benson of Lancaster University explained to us that the consequences of refused applications can be multiple, including restrictions on access to services as well as potentially being asked to leave a territory.

We ask you to indicate what representations the Government has made to the Commission and counterparts in individual Member States where high refusal rates for applicants to constitutive systems for securing residence rights under the Withdrawal Agreement have been reported, including Sweden and Denmark.

We heard that UK citizens in some EU Member States have experienced difficulties with requirements to upgrade from ordinary to permanent residence (the equivalent of upgrading from settled to pre-settled status in the UK). Ms Golding highlighted the case of Malta, where young

people are required to renew their residence permits at the age of 18. She told us that some have been “told that their cards cannot be renewed, either because their status is unclear and they are being told they may have overstayed or because they have been asked to provide documentation from scratch to prove their status”. She drew an analogy with the situation in the UK concerning EU citizens with pre-settled status moving to settled status, which was the subject of the December 2022 High Court judgment.

In light of the UK High Court judgment regarding the expiry of pre-settled status, we ask you what assessment the Government has made of arrangements for UK citizens to upgrade to permanent residence in EU Member States where this is required, and what support is available to help UK citizens negotiate this process.

Issues with securing appropriate documentation have also been reported by UK nationals in Portugal. Ms Golding characterised the application process there as “late and not-fit-for-purpose”, with problems relating to payment for residence documents and officials incorrectly issuing documents valid for five years instead of ten years.

We urge you to raise systemic issues relating to the rights of UK citizens under the Withdrawal Agreement with the European Commission as they arise and ask you to provide us with an update on what recent discussions have taken place with the Commission on these matters, including at the most recent meeting of the Specialised Committee on Citizens’ Rights.

Travel

We heard that UK citizens had frequently experienced issues while travelling between the EU and the UK, particularly in 2022. Ms Golding told us that the “biggest issue” is “misunderstandings by Schengen border officials and associated police forces of the different types of residence documents for different member states”. She indicated that this had resulted in some “serious cases”, including an example of charges for an alleged immigration offence being brought incorrectly. She said that it had also caused “a lot of emotional stress, because not all British citizens understand the rules or are confident enough when they face challenges by border officials”.

We urge you to work with the European Commission and the authorities in EU Member States to ensure that guidance to border authorities is made as clear as possible, and ask you provide an update on any recent discussions.

As with the Government’s planned ETA system, the EU’s proposed Electoral Travel Information and Authorisation System (ETIAS) can be expected to have an impact on travel between the UK and the EU, affecting UK nationals with residence rights in EU Member States as well as tourists and business visitors. Ms Golding anticipated “teething problems” and emphasised the need for “good, clear, precise information about who needs to do what and when, and clear information to border guards on withdrawal agreement beneficiaries”.

We ask you to provide us with your assessment of the possible implications of the EU’s proposed introduction of the Electronic Travel Information and Authorisation System (ETIAS) for UK citizens travelling between the EU and the UK, and to update us on what steps are being taken to ensure that this does not result in disruption to travel between the EU and the UK for this group.

Support for UK citizens

We are very concerned to hear that resources to support UK citizens in the EU on citizens' rights issues have been scaled back substantially since we conducted our inquiry in 2021. Ms Golding told us that both UK Government support and EU Member State support was being "reduced drastically", at the same time as a "rise in serious and complex cases". She added that it is now "a bit of a lottery as to whether British citizens get any real help from their local embassy", because dedicated funding for citizens' rights officers in individual Member States ended in March 2023, leaving embassies increasingly reliant on voluntary organisations for evidence of the situation on the ground. Ms Golding called on the Government to "realise that around 1.32 million [UK citizens in the EU] are also their responsibility and that they need to step up support to afford these citizens the protections they deserve".

Several stakeholders were critical of the Government's decision to close the UK Nationals Support Fund, which provided funding to non-governmental organisations in some EU Member States to support residence applications from UK citizens. Professor Benson said that since this has closed there is now "no dedicated resource for organisations to draw on" to support vulnerable UK nationals to secure their status under the Withdrawal Agreement. Sue Wilson, Chair of Bremain in Spain, similarly told us that this decision "means that many vulnerable people may no longer be able to access the support they need".

We ask you to provide us with an update on the resources available to UK embassies in EU Member States to support UK citizens facing citizens' rights issues and for clarification on any changes to the funding allocated to support citizens' rights officers. We urge you to ensure that sufficient resources are in place to provide consular support to the substantial number of UK citizens that continue to face challenges associated with exercising their rights under the Withdrawal Agreement.

We ask you to explain the rationale for reducing substantially the Government funding available to support UK citizens resident in the EU on citizens' rights issues, including by closing the UK Nationals Support Fund, at a time when there has been a rise in the number of complex cases.

The IMA monitors UK public bodies to make sure that they uphold the rights of EU and EEA/EFTA citizens as well as their family members in the UK and Gibraltar, but there is no equivalent independent body in the EU to perform this role in respect of UK nationals in EU Member States. The formal role of monitoring the implementation of the Withdrawal Agreement for UK citizens in the EU is instead performed by the European Commission. We are sympathetic to the view expressed to us by Ms Hawkins that this leaves the Commission effectively "marking its own homework" and that it would be preferable for there to be an independent body, similar to the IMA.

We acknowledge that in the short-term it is unlikely that a new independent body will be established in the EU. It is therefore essential that non-governmental bodies that provide independent support to UK citizens in the EU on citizens' rights issues are able to access sufficient funding to operate effectively.

We ask you to provide us with an indication of what Government funding, if any, is currently available to non-governmental bodies that support UK nationals in EU Member States on citizens' rights issues, whether the Government considers this to be sufficient and whether there are any plans to offer any additional funding.

Thank you for your consideration of this letter. We ask you to reply by 26 June 2023.

I am copying this letter to Rt Hon James Cleverly MP, Foreign Secretary; Leo Docherty MP, Minister for Europe; Sir William Cash MP and Dr George Wilson, respectively Chair and Clerk of the House of Commons European Scrutiny Committee; Harry Stunell and Esra Gathercole, Scrutiny Coordinators, Home Office; and Adam Nutley, Scrutiny Coordinator in the Foreign, Commonwealth and Development Office.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lord Wood of Anfield', written in a cursive style.

Lord Wood of Anfield

Acting Chair of the European Affairs Committee