



House of Commons

Committee on the Future
Relationship with the European
Union

**Implementing the
Withdrawal Agreement:
citizens' rights:
Government Response
to the Committee's
Second Report of
Session 2019–21**

**First Special Report of
Session 2019–21**

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Committee on the Future Relationship with the European Union

The Committee on the Future Relationship with the European Union is appointed by the House of Commons to examine matters relating to the negotiations on the future relationship with the European Union.

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First Special Report

The Committee published its Second Report of Session 2019–21, [*Implementing the Withdrawal Agreement: citizens' rights*](#) (HC 849), on 20 October 2020. The Government response was received on 22 December 2020 and is appended to this report.

Appendix: Government Response

Introduction

The Government welcomes the Committee on the Future Relationship with the European Union report, published on 20 October 2020, on implementation of the Citizens' Rights Provisions of the Withdrawal Agreement. We are grateful to the Committee and to those who provided evidence for the report.

The Government reiterates that EU, other EEA and Swiss citizens resident in the UK before the end of the transition period are our friends, family and neighbours and we want them to stay. We have already made more than 4.1 million grants of status under the EU Settlement Scheme, securing people's rights in UK law. A new wave of Government advertising is encouraging all eligible European citizens to apply to the scheme, reaching out to people up and down the UK and building on the incredibly successful communications campaign that we have already delivered.

We are committed to upholding our obligations on Citizens' Rights agreed under the Withdrawal Agreement and the equivalent provisions contained in the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement, and we have considered the evidence, findings and recommendations of the report carefully. We agree that scrutiny of Withdrawal Agreement implementation, domestically and in the EU, is important, to ensure that those who fall in scope understand and are able to access their rights.

From the beginning of negotiations, Citizens' Rights have been the Government's priority. The Withdrawal Agreement provides citizens with the certainty they need about their rights going forwards. It means over four million EU citizens in the UK and nearly one million UK nationals in the EU can continue to live, work, study and access benefits and services broadly as they do now. We also have similar Citizens' Rights agreements with the EEA EFTA States and Switzerland.

The Withdrawal Agreement is without prejudice to Common Travel Area arrangements between the UK and Ireland and the rights of British and Irish citizens in each other's state. Irish citizens in the UK will not need to apply for status under the EU Settlement Scheme to protect these entitlements. A Memorandum of Understanding was signed by the UK and Ireland in May 2019, reaffirming our ongoing commitment to the protection of the Common Travel Area and associated reciprocal rights and privileges. We place huge value on maintaining the UK's unique arrangements with Ireland and our friendly, cooperative relationship. We, along with Ireland, have been clear on the shared desire to preserve the freedoms our nationals currently enjoy in each other's country.

UK nationals in the EU

‘In those countries where UK nationals will be asked to make a new application for a residence status under Article 18(1) of the Withdrawal Agreement, the deadline for applications is 30 June 2021 at the earliest. Each Member State can decide if it wishes to extend this deadline, and we understand that so far seven out of the thirteen countries, where this applies, have done so. We urge other EU Member States to consider extending deadlines if it appears that a large number of UK nationals in their country have not taken the necessary steps, and there is a possibility they would lose their status.’
(Paragraph 16)

The Government agrees that UK nationals in the EU should be given sufficient time to apply for a new residence status in Member States opting for constitutive systems. As the report notes, according to Article 18(1)(b) of the Withdrawal Agreement, ‘the deadline for submitting applications shall not be less than six months from the end of the transition period’, which will fall on 30 June 2021. We have worked proactively—both bilaterally and through the governance structures established by the Withdrawal Agreement—to encourage Member States with constitutive systems to ensure that UK nationals have enough time to secure their rights under the Withdrawal Agreement.

This has been a success; all thirteen Member States who have opted for a constitutive system have agreed to put in place extended application windows, ranging from eight and a half months to one year and five months. The Government will continue to work with our European partners to ensure that no UK nationals or their family members are left behind during this process, including the most vulnerable and at-risk.¹

In the UK, EU citizens will have had over two years to apply to the EU Settlement Scheme, since its full launch on 30 March 2019.²

‘We welcome the increased information on how each Member State will choose to implement Part Two of the Withdrawal Agreement to protect citizens’ rights provisions for UK nationals in the EU. The introduction of a constitutive system in EU member countries for UK nationals has caused some concern that it may involve burdensome administrative procedures as part of the application. We welcome the remarks of the Minister that nobody should be asked for information beyond what is necessary to demonstrate that they were lawfully resident before 31 December 2020. We call on the Government to monitor the proposals in each Member State and, working with the European Commission and Member States, ensure that any such process is smooth, transparent and simple, and that any unnecessary administrative burdens are avoided.’
(Paragraph 20)

The Government agrees with the assertion in the report that constitutive residency systems should be accessible for UK nationals. This is laid out by Article 18(1)(e) of the Withdrawal Agreement, which requires Member States ‘shall ensure that administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided’. It is further supported by Article 18(1)(f) which states ‘application forms should be short, simple, [and] user friendly’.³

1 https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/overview_ms_residence_rights.pdf

2 https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/overview_ms_residence_rights.pdf

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

The Government is monitoring Member State implementation closely and engaging with Member States bilaterally to ensure that these conditions are met. The Foreign, Commonwealth and Development Office has a dedicated network of consular staff that conduct this work across our network of Embassies, High Commissions and Consulates in Europe.

The Government also agrees with the Committee that increased information about Member State residency systems, published on the European Commission's website, is welcome. The Government is engaging with the European Commission through the Specialised Committee on Citizens' Rights. This Committee provides a robust oversight function, particularly on the administrative procedures in Member State residency systems. On 23 October 2020, the Secretariat of the Specialised Committee on Citizens' Rights published a Joint Report on Residency, which outlines the procedures to obtain residency under the Withdrawal Agreement in Member States who have opted for a constitutive system.⁴ The Specialised Committee on Citizens' Rights will continue to produce and publish updates to the Joint Report on Residency, every three months, throughout the remainder of the transition period and in 2021.

'It is vitally important that UK nationals resident in the EU are aware of how their situation might change and what steps they need to take to protect their rights. It is the responsibility of both the UK Government and the relevant host country to make sure that information is available and communicated to those who may be affected. This has to happen now so people can prepare, and it needs to continue into 2021 reflecting any deadline. The aim has to be to make sure as many people as possible understand what steps they have to take to ensure they do not lose their rights under the Withdrawal Agreement, and that as few people as possible lose rights inadvertently because they did not act in time or did not know they needed to act.' (Paragraph 30)

The Government agrees with the recommendation of the report that UK nationals in the EU should be aware of the steps they need to take to protect their rights, including when this changes. Since the beginning of the EU Exit process, the Government has been committed to providing UK nationals in the EU with clear and appropriate information.

The Government launched a tailored public information campaign on 13 July 2020 to inform UK nationals living in Europe of their rights and the actions they may need to take in the following key areas: residency, healthcare, driving and passport validity. This campaign will run until at least 30 June 2021 across 30 countries.

The campaign will primarily direct UK nationals to our 'Living in Guides' on gov.uk.⁵ The Living in Guides are one of the Foreign, Commonwealth and Development Office's principal ways of communicating with UK nationals living in Europe. The guides provide detail on how to access services in the country they live in, as well as any actions they may need to take to secure their rights under the Withdrawal Agreement. The guides are updated on a constant basis and users can sign up for an email alert for their relevant guide so that they are notified when new content is added. The Government will continue to update these pages as more information becomes available from Member State governments about what actions UK nationals need to take to secure their rights under the Withdrawal Agreement. As the report rightly notes, Member States are also responsible for ensuring adequate

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929246/specialised-committee-on-citizens-rights-joint-report-on-article-18.pdf

5 <https://www.gov.uk/uk-nationals-living-eu>

communications are provided to UK nationals, outlining their rights and obligations under the Withdrawal Agreement. This is laid out in Article 37 of the Agreement.⁶

The Government is continuing an active dialogue on communications with Member States and the European Commission to ensure communications are clear and up to date. The UK frequently raises the need for clear communication in the Specialised Committee on Citizens' Rights, and our discussions have led to positive outcomes. These include encouraging the European Commission to publish and update its summary table on residency (containing details on Member State residency systems), as well as action being taken to remove out of date materials from the Commission and Member State websites.

'We welcome the fact that the direct efforts of the Foreign, Commonwealth and Development Office will be complemented by those of the organisations in receipt of the National Support Fund. We know from the experience of the EU Settlement Scheme in the UK that there are going to be hard-to-reach parts of the British population in Europe and it is important that the NSF organisations emphasise supporting those who may find the procedures required challenging. Particular focus needs to be given to the British population in countries such as Spain and France, given their numbers and their geographical spread across the country, and the proportion who are unregistered.'
(Paragraph 31)

The Government welcomes the report's acknowledgement of the importance of the UK Nationals Support Fund and agrees with the Committee's assertions around priority countries and geographic factors. The fund is designed to provide practical help to UK nationals and their family members in order to assist them in securing their rights under the Withdrawal Agreement. It is specifically designed to target at-risk and hard-to-reach individuals. However, we acknowledge that the range of factors which may lead to an individual requiring support are broad and therefore our grant funding has been designed to support a range of situations, and is flexible to national and regional contexts.

Support from the fund is available to those who may have difficulty completing administrative procedures for residency, in both constitutive and declaratory Member States, for example, the elderly, disabled or those living in remote areas. The fund has allocated up to £3 million to fund eight grant funded organisations in 12 European countries. As of the end of October 2020, 164,907 UK nationals have accessed this support, which includes 2,923 who have been personally supported by a caseworker from a grant funded organisation.

We are working with grant funded organisations to ensure that we increase our coverage to all regions of France and Spain, including those where there are fewer UK nationals, but where support could still make a significant difference. We expect to have this extended coverage in place by the end of November 2020.

'Monitoring of the effectiveness of the National Support Fund will be important. We are pleased that the Minister also thinks this is important and we support the principle set out by the Minister that those in receipt of funding must evidence their work in a series of regular reports. We commend the commitment shown by the Minister in her letter to update Parliament. We recommend that the monthly and quarterly reports

6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

are published. Furthermore, given the various procedures and deadlines in each EU Member State, and the potential need for the support to be refocussed to meet demand as it is identified, we recommend that the Government set out a strategy for how the NSF will be used to support citizens in countries or regions where demand increases and there is currently no coverage. (Paragraph 32)

As highlighted in the report, and as noted by the Minister for the European Neighbourhood and the Americas, Wendy Morton MP, in her letter to the Committee on 21 July 2020, the Government expects recipients of grant funding to produce regular reports.⁷ This includes monthly reports on the number of UK nationals who have been supported, and qualitative feedback from UK nationals, and quarterly reports reviewing progress and setting out a forward look of planning and risks. The Government is currently reviewing through which means, and which data would be useful to make publicly available to inform those who are interested in the progress of the Fund. The Foreign, Commonwealth and Development Office will of course respond to any requests to update Parliament on the progress of the fund.

In deciding where to allocate funding, we aim to balance our objectives of achieving broad geographic coverage against the need to achieve value for money. Grant funded organisations are chosen through open and fair competition, and operate in most of the European countries where large numbers of UK nationals live. We regularly monitor the activity and performance of our grant funded organisations to ensure the most effective use of taxpayers' money. We continue to work with our network of Embassies, High Commissions and Consulates across Europe to identify where additional support may be needed. Any future spending decisions will continue to take value for money, and the ability of grant funded organisations to deliver the most effective support, into account. It is worth noting that the UK Nationals Support Fund is intended to supplement, rather than replace, Member States' efforts to support UK nationals to secure their rights of residency.

'It is in the interests of UK nationals to make sure that they are registered in their host state before the end of transition on 31 December 2020. The UK Government needs to focus particular attention on those countries where there is potentially a large number of UK nationals unregistered, and where registering is the first step to gain protection under the Withdrawal Agreement.' (Paragraph 40)

The Government agrees it is vitally important UK nationals in the EU are aware of the steps they need to take in advance of the relevant deadlines across the EU. They should ensure they are correctly registered under existing free movement residence systems in line with the relevant administrative procedures in each Member State. Information on these requirements is available on our 'Living in Guides' on gov.uk.⁸

In addition to our communications campaign for UK nationals, the Government has been conducting targeted engagement. Our network of Embassies, High Commissions and Consulates have held over 785 outreach events, reaching over 495,000 UK nationals, since November 2017. Since the emergence of covid-19, these events have continued virtually, often in collaboration with key stakeholders, such as British in Europe. Officials have also worked closely with Member State counterparts to produce tailored communications. In

⁷ <https://committees.parliament.uk/writtenevidence/9311/default/>

⁸ <https://www.gov.uk/uk-nationals-living-eu>

Spain, for example, Her Majesty's Ambassador recorded a video alongside the Spanish Secretary of Migration, outlining the steps UK nationals should take.⁹ The Foreign, Commonwealth and Development Office's network are continuing to work to reach as many UK nationals as possible, through ongoing outreach activities.

Officials are working closely with Member State governments on identifying and resolving any issues as they arise and we are using the Withdrawal Agreement Joint Committee and Specialised Committee on Citizens' Rights to ensure the correct and timely implementation and application of the Citizens' Rights part of the Withdrawal Agreement. The Foreign, Commonwealth and Development Office is also actively monitoring Member State progress on implementation and reporting to Ministers on a fortnightly basis.

'Understanding the size of the population affected also helps the FCDO and host countries reach their target audience. This is crucial given that they may not be aware of what they need to do in order to secure their status, and when they need to do it by.' (Paragraph 41)

The Government agrees understanding how many UK nationals are in the EU is important to allow us to reach as many people as possible. Unfortunately, it is not possible to arrive at a definite figure for the number of UK nationals who may or may not be in scope of the Withdrawal Agreement, as there is no way to accurately count those who move to the EU.

The Government therefore continues to rely on the Office for National Statistics estimates as a guide. According to their reporting, an estimated 784,900 UK nationals were living in the EU on 1 January 2017, not including those resident in the UK and Ireland. Of those, 66% (518,000) were of working age (15 to 64 years), 26% (207,300) were aged 65 and over and the remaining 59,600 were aged under 15 years.¹⁰

The Joint Report on Residency, published by the Secretariat of the Specialised Committee on Citizens' Rights, also outlined Member States' official statistics on resident UK nationals, compared with the amount of applications or registrations received and concluded.¹¹ As mentioned, the Specialised Committee on Citizens' Rights will continue to produce and publish updates to the Joint Report on Residency, every three months, throughout the remainder of the transition period and in 2021.

'There is evidence of delays happening in some EU Member States earlier in the year when covid-19 caused offices to close down, reduce their staffing or levels of access. The risk remains that the pandemic could lead to restrictions being reintroduced and delays to the administration of any scheme. We call on Member States to be pragmatic in how they enforce a deadline where someone seeking to comply with the procedure is delayed through no fault of their own, and we call on the UK Government to urge all EU Member State governments to be flexible and pragmatic when administrative delays have been caused by the pandemic.' (Paragraph 43)

The Government is also aware of delays to administrative procedures in some Member States as a result of covid-19 restrictions. The Government agrees with the Committee's view that Member States with constitutive systems should take a pragmatic approach and

9 <https://www.youtube.com/watch?v=KNxMto6g8ko>

10 <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/livingabroad/april2018>

11 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929246/specialised-committee-on-citizens-rights-joint-report-on-article-18.pdf

ensure there is plenty of time for UK nationals and their family members to submit their applications. This is an obligation set out in Article 18(1)(d) of the Withdrawal Agreement, which notes that ‘the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline’.¹²

The Government has been clear that those with reasonable grounds for missing the deadline of the EU Settlement Scheme will be given a further opportunity to apply. The pragmatic and flexible approach of the UK’s EU Settlement Scheme will ensure that individuals who miss the deadline through no fault of their own can still get a lawful status in the UK. We expect Member States to show a similar level of understanding for UK nationals who miss residency deadlines for legitimate reasons. The Government will continue to press this point throughout 2021, both bilaterally with Member States and with the Commission through the Specialised Committee on Citizens’ Rights.

‘We welcome the proposal for a common format residence card for UK nationals so that they can show that their rights are covered under the Withdrawal Agreement, and that the card will state if the holder has acquired permanent residence. It is important that all relevant authorities recognise this card and the entitlements that it brings to the bearer.’ (Paragraph 48)

The Government also welcomes the European Commission’s decision to take a uniform approach towards residence and frontier worker permits, as this will ensure that UK nationals and their family members will be able to provide clear evidence of their rights under the Withdrawal Agreement.

The European Commission’s Implementing Decision, of 21 February 2020, sets a legal obligation to issue the standard format residence permit—which is binding on all Member States—with effect from the end of the transition period.¹³ Furthermore, we welcome that Member States have volunteered to specify, on the permit, whether a holder has gained the right of permanent residence. The Government agrees ensuring Member State authorities, at all levels, recognise this card and are aware of the entitlements it provides, is important. Given this biometric format is standard across the EU for all resident third-country nationals, we expect that it will be operationally simple to recognise. A statement that it has been issued under the Withdrawal Agreement will also be affixed to the card.

‘Furthermore, we welcome the Minister informing this Committee in advance of a meeting of the Specialised Committee of the UK position on the common format residence card for UK nationals in the EU. We look forward to similar examples of such transparency in future, and we call on the Minister to keep our Committee updated on progress with regard to Member State governments recognising the common format residence card for UK nationals.’ (Paragraph 49)

The Government looks forward to continuing to update the Committee on important developments relating to Citizens’ Rights, where appropriate.

12 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

13 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/document-security/docs/c2020_1114_commission-implementing-decision.pdf

'We welcome discussions in the Specialised Committee regarding the possibility of combining the rights under the Withdrawal Agreement with the mobility rights of a third country national in EU law and urge the Government and the EU to support measures that would ensure that UK nationals with five years residence would not be treated less favourably, in terms of mobility rights, than third country nationals with five years residence.' (Paragraph 52)

The Government welcomed clarification from the European Commission around the combination of rights under the Withdrawal Agreement, and the Long-Term Residence Directive for third-country nationals, for UK nationals in the EU. We agree it is right UK nationals in scope of the Withdrawal Agreement should be able to benefit from other initiatives open to third-country nationals resident in the EU. This includes the EU Blue Card, a permit for highly-qualified non-EU workers, living in an EU Member State.

'The position of the UK and the EU on non-visa visits are consistent with their respective established policies. It is less clear whether the UK, in the negotiations on the UK-EU future relationship, proposed any form of change to the EU's 90 day in 180 day rule in order to allow UK nationals, such as those who own second homes or have family in different European countries, to visit for more than 90 days in a 180 day period. In the absence of it being part of the negotiations with the EU, the UK Government should state whether it intends to try and negotiate bilateral arrangements with any EU Member State.' (Paragraph 57)

The Government has discussed future mobility arrangements in a number of areas with the EU during the negotiations. These have included future arrangements for UK nationals who are not protected by the Withdrawal Agreement, when travelling to the Schengen area from 1 January 2021.

The EU has consistently maintained UK nationals will be treated as third-country nationals under the Schengen Borders Code after the end of the transition period. As the report correctly notes, this means, from 1 January 2021, UK nationals will only be able to travel to the EU visa-free, for short stays, such as for tourism, for up to 90 days in a rolling 180-day period. This is the standard length of stay that the EU offers to nationals of eligible third countries which offer visa-free travel for EU citizens, in line with existing EU legislation.

As things stand, from 1 January 2021, UK nationals who are planning to stay longer than 90 days in a rolling 180-day period will need permission from the relevant Member State. This may require applying for a visa and/or permit. UK nationals should discuss the specifics of their situation with relevant Member State authorities ahead of travel and should be prepared to provide any extra documentation which may be needed to meet the necessary entry requirements.

The Government does not typically enter into bilateral agreements on visa-free travel. From 1 January 2021, free movement of people between the UK and the EU will come to an end and the provisions on visa-free short-term visits that will apply reflect the UK's and the EU's respective border and immigration rules. As the report notes, they are existing provisions that are already applied to nationals of eligible third countries. The UK keeps its visa system under regular review to ensure visit visas remain an effective tool in reducing immigration, tackling organised crime, and protecting national security.

EU citizens in the UK

‘The EU Settlement Scheme has been a success for the majority of applicants. The system for applying has clearly worked for a large proportion of those who have applied. For the scheme to have received over 4 million applications is a considerable achievement.’ (Paragraph 73)

The Government agrees with the Committee’s conclusion on the success of the EU Settlement Scheme. EU citizens are an integral part of our society, culture and community—we want them to stay—and the Government is pleased applications to this successful scheme have surpassed four million.

The latest published statistics, to 30 November 2020, show 4.48 million applications received and 4.28 million applications concluded with more than 4.1 million grants of status.¹⁴ There remains plenty of time for people to apply to the scheme before the 30 June 2021 deadline for those EU citizens and their family members resident in the UK by the end of the transition period.

‘We welcome the fact that such a large proportion of those who have applied received a grant of status successfully. Many EU citizens are of working age, can provide evidence of residence, and have the digital skills to navigate the process. At the same time, we do not know how many people are eligible to apply and are yet to apply, because the estimates of how many EU citizens, and other people eligible to apply for the scheme, are not reliable.’ (Paragraph 74)

The Government welcomes the Committee’s endorsement of the progress of the scheme. The March 2019 Impact Assessment, carried out by the Home Office, estimated that the total number of EU citizens, EEA EFTA and Swiss nationals and their family members eligible to apply to the scheme by 31 December 2020 was likely to be between 3.5 million and 4.1 million.¹⁵

The Government cannot make a definite estimate of the numbers eligible to apply, not least as free movement to the UK continues until the end of the transition period. The Government’s focus remains on ensuring all those eligible to apply to the scheme do so in good time.

‘There is potential in using the data to show which categories of applicant are applying and receiving the correct status. We also know more about those categories who might not be applying in the numbers expected, or are applying and receiving the incorrect status, or getting refused on eligibility grounds. This is as important now as it was at the beginning of the scheme. We urge the Home Office and ONS to continue to gather data on the administration of the Settlement Scheme and publish statistics on its operation up to and beyond the deadline of 30 June 2021. The intelligence gained needs to feed back into how the Home Office targets its communications and the support it provides, including but not only, to the current grant funded bodies.’ (Paragraph 75)

Nobody is granted pre-settled status under the scheme where they claim to be eligible for settled status, without first being given the opportunity to submit evidence they are eligible for settled status. Where someone has not provided the evidence required, we will

14 <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

15 http://www.legislation.gov.uk/ukia/2019/74/pdfs/ukia_20190074_en.pdf (this estimate excludes Irish citizens)

seek to contact them to help them provide what is needed and will exercise discretion in their favour where appropriate, to minimise administrative burden. We will only refuse an application, where there is missing information or evidence, after giving the applicant a reasonable opportunity to provide what we need to confirm their eligibility.

We agree the published statistics provide a valuable insight into applications to the scheme. This helps to inform policy and to ensure the scheme has been effectively communicated to eligible EU citizens and their family members, including through the network of grant-funded organisations.

The scheme will remain open beyond 30 June 2021, not just for those with reasonable grounds for applying late, but also to accommodate those granted pre-settled status who will be able in due course to apply for settled status. Furthermore it will be open to close family members living overseas at the end of the transition period (and children born or adopted after that date) who later join a resident EU citizen here with status under the scheme. Therefore, we will continue to gather data and publish statistics on the administration of the scheme. We are also continuing to work to improve these statistics to ensure they meet the needs of users.

'We support the call for EU citizens in the UK to be able to have the option of applying for a physical document to evidence their residency status under the Withdrawal Agreement, in addition to their digital status.' (Paragraph 83)

The Government does not agree with the Committee's view on physical documents. The Home Office is developing a border and immigration system which is digital by default for all applicants, not just those applying for status under the EUSS, which over time means we will increasingly replace physical and paper-based products for all routes with accessible, easy to use online and digital services. We acknowledge the move away from physical documents to access to immigration status online represents a change which individuals and service providers may take time to get used to. This is why it is being rolled out incrementally and with plenty of support available to help holders access and use their new status.

All successful applicants to the scheme are provided with a written notification setting out their immigration status. They can retain this written notification for their own records. Access to their status information online means information cannot be lost, stolen or tampered with and those with digital status can allow third parties, such as an employer or a landlord, to have secure, time-limited access to information about their status to confirm relevant information about their entitlements. As a transition measure, EU citizens can continue to use their passport or national identity card for this purpose until 30 June 2021.

'From 1 July 2021, there will be a transition from the familiar passport or identity card check to an online process. This will apply in a range of situations where an immigration status check is made, be it employers, landlords, public service providers such as the DWP and the NHS. But it will only be for EU citizens. For non-EU citizens, the same checks will be carried out in a way that is already known and familiar. We urge the Government to publish guidance as soon as possible, aimed at all those who currently carry out immigration status checks and who may be faced with having to carry out parallel procedures—digital for EU citizens and physical checks for non-EU citizens—'

from 1 July 2021.' (Paragraph 84) The Government is committed to delivering an approach which enables people to demonstrate their status and access the services for which they are eligible in the simplest and most secure way possible. The online checking process is already in place, both for EU citizens and non-EU citizens, on an optional basis, with plans to also issue digital only statuses under the new Hong Kong British National (Overseas) Visa route which will launch early next year.

Since January 2019, employers have been able to use the online service to check the right to work of those who hold status under the scheme or who hold a biometric residence permit (which is usually those non-EU citizens granted more than six months' permission to stay in the UK). Between January 2019 and June 2020 (the last published reporting period) there have been over 120,000 views of right to work information by employers.¹⁶ A similar online service for right to rent checks launched at the end of November 2020, and can be used to check the right to rent of those granted status under the scheme or who hold a biometric residence permit. Guidance to employers and others has been updated to cover online checks, as well as the existing document checks. The development of these online services is part of the wider move to a digital end to end system, with checks on all nationalities increasingly conducted via digital means.

The Home Office is also working closely with other government departments, notably the Department for Health and Social Care and the NHS, to ensure they are able to carry out checks for those who do not have physical documents. The online 'check someone's immigration status' service is already being used by other departments to check the immigration status of those granted status under the scheme. In the last reporting period (April to June 2020), there have been over 100,000 views of status under the scheme by organisations checking immigration status.¹⁷

In addition, we are developing services to make the relevant immigration status information available automatically through system to system checks, with other government departments and the NHS. This will mean at the point at which the person seeks to access public services such as healthcare and benefits, the service provider will check status directly with the Home Office, thereby reducing the number of occasions where individuals need to prove their status.

For those, including employers, landlords and other third-party checkers, who have not already made use of the online services, we are developing a package of communications to ensure everyone is fully aware of the move to digital and how online immigration status can be accessed and used. Many people already use digital services to access banking, claim benefits or pay their taxes. Moving in this direction, as we are across the border, immigration and citizenship system, is the right approach.

'We recommend that the Government set out how it intends to monitor the introduction of the digital checks and that a review of its implementation should be published within six months of 30 June 2021.' (Paragraph 85)

The Government agrees that monitoring the implementation of digital checks is important. We already monitor the use of the services which provide for online checks of immigration status by a variety of means. This includes through user feedback provided via the online services, through ongoing user research and testing and through other channels, and

16 <https://www.gov.uk/government/publications/immigration-protection-data-august-2020>

17 <https://www.gov.uk/government/publications/visas-and-citizenship-data-august-2020>

these are used to inform improvements to the services. We also monitor usage volumes and user satisfaction scores for our online services, both of which are already published on a quarterly basis as part of Home Office transparency data. Therefore, the Government does not believe it is necessary to publish separately a formal review of the implementation of the online services.

'EU citizens coming to the UK did not expect to have immigration controls imposed on them afterwards, so alongside explaining to them that they need to apply, there needs to be better communication of the difference between Pre-Settled Status and Settled Status, and what options are available if awarded Pre-Settled Status. In addition, the Government should ensure that those granted Pre-Settled Status are clearly informed that they need to reapply at a date in the future. Again, any interaction with the system requires the applicant to have the documents they used for their original application. There will need to be support in place for people whose Pre-Settled Status matures over the next five years.' (Paragraph 93)

The Government agrees that it is important to outline the differences between pre-settled and settled status under the EU Settlement Scheme. This is why we have published guidance on gov.uk that explains those differences.¹⁸ Both pre-settled status and settled status under the scheme mean people can work, study and access benefits and services, such as healthcare, as they do now. As soon as a person granted pre-settled status has completed five years' continuous residence in the UK (or where certain other criteria are met), they can apply for settled status, which gives them leave to remain in the UK on an indefinite basis.

In addition, the written notification applicants receive where they are granted status under the scheme sets out the rights which come with that status and, where it is pre-settled status (five years' limited leave to enter or remain), the date on which it will expire. It also explains in those cases that if they wish to remain in the UK after that date, they must apply for settled status before the expiry of their pre-settled status and they can do so as soon as they meet the eligibility requirements for settled status. Support for applicants to the scheme will continue to be in place after 30 June 2021.

'The Government should explain how it will remind EU citizens with Pre-Settled Status when they have acquired five years residence and can make a new application to upgrade to Settled Status, and how much notice they will give. Reminding people to upgrade is preferable to thousands of EU citizens inadvertently becoming unlawfully resident in the UK because their Pre-Settled Status expired, and they were unaware that they needed to take further action. The Government should also be flexible and pragmatic in cases where it has not managed to make confirmed contact with a person who has Pre-Settled Status, to remind them to apply for Settled Status. In such cases such individuals should be given reasonable additional time to apply.' (Paragraph 94)

The Government will issue reminders to people granted pre-settled status to apply for settled status before their pre-settled status expires, if they have not already done so. As the first grants of pre-settled status (under the first test phase of the scheme) will not expire until late 2023, the earliest we will need to do so is in early 2023

The Home Office is considering how the process for such reminders will work and therefore it is too early to give any further details. In the meantime, the written notification

18 <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

applicants receive where they are granted pre-settled status clearly sets out the expiry date of their leave, before which they need to apply for settled status if they wish to remain in the UK after that date.

‘The Government should produce a more detailed analysis of the significant proportion of applicants for Settled Status who are instead only being granted Pre- Settled Status. An equality impact assessment should be carried out to clarify how many long term residents, with gaps in employment in the last five years, for example due to caring duties, are affected and ensure that the current system is not resulting in women being disproportionately granted only Pre-Settled Status. In addition, we recommend that the Government update and publish its Policy Equality Statement for the EU Settlement Scheme.’ (Paragraph 95)

The Government’s Policy Equality Statement for the scheme was published on 18 November 2020.¹⁹ This provides a comprehensive analysis of the equalities impacts of the EU Settlement Scheme and its compliance with the public sector equality duty under section 149 of the Equality Act 2010.

The Government wants everybody applying to the scheme to be granted the status they are eligible for. Caseworkers are looking for reasons to grant applications rather than refuse them. Nobody is granted pre-settled status under the scheme where they claim to be eligible for settled status, without first being given the opportunity to submit evidence they are eligible for settled status. Where someone has not provided the evidence required, a caseworker will seek to contact them to help them provide what is needed.

Applicants who are refused on eligibility grounds, or who are granted pre-settled status, can apply for an administrative review and the decision will be reviewed by a different team within the Home Office. They can submit new evidence if they wish. Alternatively, they can submit a new EU Settlement Scheme application for free.

Eligibility for status under the scheme is based mainly on continuous residence in the UK and does not generally require evidence of employment or the exercise of other Treaty rights under EU law. Gaps in employment will not affect the status an applicant is granted and, where the automated checks of tax and benefits records conducted where the applicant chooses to provide their National Insurance number do not suffice,²⁰ a very wide range of evidence of UK residence can be relied upon.²¹

‘Some applicants are likely to face difficulties applying for the scheme, be it through language barriers, lack of support to complete the application, or because they are unable to source the documentary evidence to support their application. There are, by definition, people who are going to be hard-to-reach, possibly through remoteness and social isolation. These factors may combine, such as for elderly people living in rural areas where sources of advice are limited. Communications and support to such groups need to be enhanced as the deadline approaches. This can be through intermediaries, and the Government needs to learn from the experience of NGOs who are already working to try and support those marginalised and vulnerable groups.’ (Paragraph 102)

Whilst the vast majority of adults aged 16–74 in the UK in 2019 were recent internet users,²²

19 <https://www.gov.uk/government/publications/eu-settlement-scheme-policy-equality-statement>

20 <https://www.gov.uk/guidance/eu-settlement-scheme-uk-tax-and-benefits-records-automated-check>

21 <https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

22 <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

the Government recognises the need to deliver a service which reflects the diverse needs of all users and that vulnerable people may need additional support. We have designed our digital services and products to be easy to use, along with support for those who need help both in making an online application and in using their digital status. The Government has published guidance for applicants and information about the support available.²³

The Settlement Resolution Centre is open seven days a week to assist any person with their application to the scheme by telephone or email. Assisted digital support is available over the phone for those who need help in applying online.

Last year, the Home Office made up to £9 million available to 57 voluntary and community sector organisations across the UK to help vulnerable or at-risk EU citizens to apply to the scheme. A further £8 million of funding for the 2020–2021 financial year was announced earlier this year. The new grant-funded network of 72 organisations provides support to the more vulnerable in society in applying to the scheme, including disabled people, children, victims of human trafficking or domestic abuse, those with severe mental health conditions, those without a permanent address, those who are homeless and those who are elderly or isolated.²⁴ We have also translated communications materials into 26 languages and alternative formats can be requested.

The Home Office has run a £4 million marketing campaign to encourage EU citizens to apply to the scheme. Further marketing activity is planned for late 2020 and 2021, ahead of the 30 June 2021 deadline. These communications will target those across the UK who have yet to apply and address their barriers and motivations to doing so, to encourage them to act. Advertising for the scheme has been extensively tested with EU citizens, and complements extensive engagement undertaken by the Home Office, including online toolkits for employers, community organisations and local authorities to help them support EU citizens in making their application.

'It is vitally important the Government publish the guidance for case workers on late applications. The Home Secretary said she would do so in April 2020. We hope that the default approach would remain to look for reasons to grant status rather than not grant status.' (Paragraph 109)

'The risk of refusing a large number of applications after the deadline, where the applicant would pass all the criteria and be granted status if they had applied one month earlier, would simply create a group of people living in the UK unlawfully. This would be unacceptable for UK nationals living in the EU and we urge Ministers not to apply an unduly restrictive approach in the UK.' (Paragraph 110)

The Government agrees with the Committee's conclusions on the importance of taking a flexible approach toward those who miss the deadline and publishing clear guidance to support this. We have made clear that, in line with the Withdrawal Agreement, where a person eligible for status under the scheme has reasonable grounds for missing the 30 June 2021 deadline, they will be given a further opportunity to apply.

Examples will include where a parent, guardian or local authority does not apply on behalf of a child; or where someone is in an abusive or controlling relationship and is

23 www.gov.uk/government/collections/eu-settlement-scheme-applicant-information

24 <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>

prevented from applying or lacks the physical or mental capacity to apply. In line with the Withdrawal Agreement, the Home Office will continue to work with applicants with reasonable grounds for making a late application to the scheme in order to help them to prove their eligibility.

We have committed to publishing non-exhaustive guidance, early in 2021, to underpin a pragmatic and flexible approach to dealing with late applications, which will ensure individuals who miss the deadline through no fault of their own can still obtain lawful status in the UK. In the meantime, our focus remains on encouraging people to apply before the deadline.

‘The Home Office must prepare for the possible increase in applications leading up to the deadline and prepare accordingly. This includes ensuring that certificates of application are sent out promptly, so that people are not put in a no man’s land where they are unsure of their position and unable to explain their status until they receive a decision.’
(Paragraph 111)

The Government agrees with the Committee’s conclusion on preparing for increased applications to the scheme leading up to the deadline. The Home Office is continuing to regularly receive and process in the region of 8,000 to 10,000 applications to the scheme each day and is committed to ensuring its operational teams have the resources they need to continue to run the scheme efficiently and effectively.

In accordance with the Withdrawal Agreement, a certificate of application is issued immediately via email when a valid application is made to the scheme.

‘The Home Office’s grant funding to organisations providing support and advice to EU citizens has been crucial in reaching out to a wide range of communities and individuals in particular circumstances. If there is an increase in applications leading up to the 30 June 2021, particularly among those with complex cases, then such organisations are going to need continued support beyond the end of this financial year. The Government should consider how it could target support to organisations, including but not solely the Grant Funded Organisations, that are able to provide the necessary legal advice. The Government should provide grant funding up to and beyond the deadline of 30 June 2021 and make clear that it will do so in good time before the end of the current financial year.’ (Paragraph 114)

The Government welcomes the Committee’s recognition of the importance of the grant funding we have provided, to help vulnerable groups in applying to the EU Settlement Scheme. The Home Office has already announced a further £8 million of funding for the 2020–21 financial year to help vulnerable EU citizens apply to the scheme.

Organisations such as charities, local authorities and local government associations were able to apply for the new funding which will initially cover the period from 1 October 2020 to 31 March 2021. The number of organisations funded across the UK has increased from 57 to 72, and includes a mix of partnerships, specialist advocates and law centres working at *Office of the Immigration Services Commissioner* accredited levels for providing immigration advice.²⁵

25 <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>

The impact of the new round of grant funding is being closely monitored, and will inform the Government's decisions about the need for further funding, together with consideration of the specific needs of remaining potential applicants.

'The UK will leave the transition period at the end of 2020 and forge its future outside the EU with its own independent immigration policy. There will be changes on 1 January 2021, some quite fundamental, for citizens across Europe. For EU citizens in the UK they will still have six months left to apply for Settled Status. This could potentially coincide with an increase in complex cases and the consequences of a digital system for demonstrating their status. For the UK nationals in the EU, thousands could be contemplating a new application process to acquire a status that protects their rights in the country which they thought was their home. The need for examining the implications of these changes has not diminished, in fact, it is likely to increase.' (Paragraph 116)

The Government agrees the end of the transition period does not mark the end of our efforts on Withdrawal Agreement implementation in the UK. The latest published statistics for the EU Settlement Scheme, to 30 November 2020, show 4.48 million applications received and 4.28 million applications concluded with more than 4.1 million grants of status.²⁶ There remains plenty of time for people to apply to the scheme before the 30 June 2021 deadline, for those EU citizens and their family members resident in the UK by the end of the transition period.

We will be launching an extensive package of communications to ensure individuals and employers, landlords and other third parties are fully aware of the move to digital status checking. However, until 30 June 2021, EU citizens can continue to evidence their rights and entitlements in the UK as they do now, using their passport or national identity card.

Governance, monitoring & parliamentary scrutiny

'We ask the Government to provide an update on progress for the Independent Monitoring Authority to be fully operational on 1 January 2021, and how it intends to communicate to EU citizens the Independent Monitoring Authority's existence, its role and how it can support them. We expect the Independent Monitoring Authority to make its reports public and on its own terms.' (Paragraph 121)

The Government is confident the Independent Monitoring Authority for Citizens' Rights will be operational at the end of the transition period, as required by the Withdrawal Agreement. Preparations are now at an advanced stage in all areas. The Independent Monitoring Authority has formally taken up residence at its headquarters in Swansea. The fit out of the building is completed, including the procurement and installation of IT equipment and furniture.

The chair and the majority of non-executive members of the independent board are now in post. The Lord Chancellor, the Rt Hon Robert Buckland QC, confirmed on 12 November 2020 that his preferred candidate to be the first chair is Sir Ashley Fox. Sir Ashley has been selected following a rigorous assessment process conducted in accordance with the principles of the Governance Code on Public Appointments. The role is subject to a pre-appointment hearing by the Justice Select Committee.

The senior management team is also in place and is led by the Interim Chief Executive, Dr Kate Chamberlain. Dr Chamberlain has been in post since March 2020 and continues to take decisions on behalf of the Independent Monitoring Authority. Staff recruitment has concluded, with all staff due to be on-boarded before the end of the transition period. Training materials have also been created to ensure staff have the requisite skills and knowledge to carry out their work.

In preparation for the Independent Monitoring Authority becoming operational, a comprehensive programme of operational readiness testing has been undertaken, to ensure its systems and processes work well. The Government is confident this work will enable the Independent Monitoring Authority to effectively discharge its functions from the end of the transition period.

The Government has engaged extensively with stakeholders, including groups representing EU citizens and EEA EFTA nationals, as part of the work to establish the new organisation. We have made information available on the Independent Monitoring Authority and what it will do on gov.uk.²⁷ However, as an independent organisation, it is right the Independent Monitoring Authority, rather than the Government, is responsible for determining how it communicates with EU citizens and other groups. The Independent Monitoring Authority launched its own website in November 2020 that provides information on its role and remit, and sets out how EU citizens and other groups can contact the organisation.²⁸ The Independent Monitoring Authority is also developing its own communications and engagement strategies to raise awareness and further develop independent relationships with stakeholders.

In relation to the Committee's statement that the Independent Monitoring Authority must make its reports public and on its own terms, paragraph 27 of Schedule 2 to the European Union (Withdrawal Agreement) Act 2020 requires the publication of reports following an inquiry. The Government will have no say in the day to day running of the Independent Monitoring Authority or the decisions that it makes.

'Many of the matters we have discussed in this report relate to what needs to be done now, but others may either only arise or intensify after the transition period ends. There needs to be continued monitoring of EU citizens' rights in the UK and effective oversight beyond 31 December 2020. That includes the Independent Monitoring Authority being accountable to Parliament.' (Paragraph 122)

The Government recognises the importance of this observation and is confident the Independent Monitoring Authority will provide independent, robust and effective oversight of the UK's obligations on Citizens' Rights. As with other independent authorities, the Independent Monitoring Authority will be accountable to Parliament through its sponsoring department, the Ministry of Justice.

The Independent Monitoring Authority is also required to report annually on the implementation and application of Citizens' Rights in the UK to the Specialised Committee on Citizens' Rights, established under the Withdrawal Agreement, and the EEA EFTA Separation Agreement Joint Committee. These reports must include the number and nature of complaints received and must also be made available to Parliament and the

27 <https://www.gov.uk/government/organisations/independent-monitoring-authority-for-the-citizens-rights-agreements/about>

28 <https://ima-citizensrights.org.uk/>

devolved legislatures of Scotland, Wales and Northern Ireland.

'As we have seen this year, the Joint Committee—with representatives from the UK Government and the European Commission—is a powerful and influential body. It, along with its specialised committees, will have an important role in how the citizens' rights elements of the Withdrawal Agreement are implemented. Unfortunately, its internal working is not transparent. This makes it difficult to understand what it is being asked to decide on or the outcome of those decisions. We consider this to be wholly inadequate. There needs to be a better formal structure for Parliamentary scrutiny of the Joint Committee, and we intend to return to the question of its transparency in the future.' (Paragraph 123)

The Government does not agree with the Committee's conclusion on the transparency of the Withdrawal Agreement Joint Committee. The key decisions to be made by the Joint Committee, as required by the Withdrawal Agreement, are set out in the Withdrawal Agreement already.

The Government already has a system of scrutiny in place for these decisions, via Explanatory Memorandums, which was agreed with the parliamentary scrutiny Committees prior to the UK leaving the EU and the beginning of the transition period. The Government also lays a Written Ministerial Statement in both Houses after each meeting of the Withdrawal Agreement Joint Committee and Ministers have provided written and oral evidence to parliamentary scrutiny Committees.

We are open to further examining these arrangements with Parliament as part of our wider discussions on scrutiny after the end of the transition period.