

Lord Ricketts  
Chair  
European Affairs Committee  
House of Lords  
London  
SW1A 0PW

2 February 2024

Dear Lord Ricketts,

**The rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement**

Thank you for your letter of 24 January regarding the Independent Monitoring Authority's (IMA) press release of 1 December 2023 on the Government's implementation of the High Court judgment of 21 December 2022 concerning pre-settled status under the EU Settlement Scheme (EUSS).

Your questions are summarised and addressed below.

**We would welcome more details on the planned amendment [to the Immigration (Leave to Enter and Remain) Order 2000] and an indication of when the Government plans to introduce it.**

Under the Immigration (Leave to Enter and Remain) Order 2000 ('the 2000 Order'), a person's pre-settled status under the EUSS will lapse automatically if they are absent from the UK for more than two consecutive years (in line with the approach to limited leave in other routes) and a person's settled status under the EUSS will lapse automatically if they are absent from the UK for more than five consecutive years (in line with the absence permitted in such cases by Article 15(3) of the Withdrawal Agreement).<sup>1</sup> In both instances, there are exceptions for those posted overseas as a member of HM Forces or on Crown service and for those accompanying such a person.

However, following the High Court judgment a pre-settled status holder who has automatically acquired a right of permanent residence under the Withdrawal Agreement will also benefit from the five-year permitted absence provision. That will

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<sup>1</sup> Or more than four consecutive years in the case of a Swiss citizen or their family member (in line with the Swiss Citizens' Rights Agreement).

be so in any event, given the direct effect of the Withdrawal Agreement, but we plan to amend the 2000 Order to ensure that it does not conflict with this.

The Home Office is currently working through the detail of the changes. Once we have confirmed a laying date, I will write to the Committee to provide a further update.

**We ask for an update on how the Government plans to address the IMA's concerns [on the UK's implementation of the High Court judgment] as set out in their press statement of 1 December 2023.**

As set out in my letter of 30 November 2023, the UK's domestic legislation (namely section 7A of the European Union (Withdrawal) Act 2018, inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020), provides for the incorporation of the Withdrawal Agreement into UK law. This means that the rights under the Withdrawal Agreement, as interpreted by the High Court, are available now and directly effective in the UK.

The Government's position is that it is compatible with the Withdrawal Agreement for pre-settled status to continue to have an expiry date. The High Court judgment did not say otherwise. It expressly distinguished between pre-settled status and the underlying Withdrawal Agreement right of residence,<sup>2</sup> making clear that the underlying right cannot expire for failure to make a further EUSS application before the expiry of pre-settled status and emphasising that an expiry date for pre-settled status is: "*unlawful insofar as it ... purports ... to abrogate rights of residence arising under the Agreements*" (paragraph 193 of the judgment).

Pre-settled status is therefore to be regarded, in accordance with Article 18(1)(a) of the Withdrawal Agreement, as the document evidencing the Withdrawal Agreement residence status conferring the rights under Title II of Part Two held by that person, rather than as constituting that residence status in itself. Therefore, as the expiry date of pre-settled status no longer purports to abrogate the underlying residence right, the UK's approach is in accordance with the Withdrawal Agreement.

It is also equivalent to the approach in those EU Member States taking a constitutive approach to residence rights under the Withdrawal Agreement, where the residence document issued to UK citizens and their family members has an expiry date. On this point, I draw the Committee's attention to the fact that it is explicit under EU law that all Withdrawal Agreement residence documentation must have an expiry date, as set out within the [Commission Implementing Decision \(EU\) 2022/1945](#). It is also our understanding that, in some EU Member States, UK citizens and their family members will face difficulties accessing some of their Withdrawal Agreement rights unless they hold a valid residence document.

Where the acquisition of the right of permanent residence is concerned, we have ensured that in the small number of areas where there are further rights attached to permanent residence, a person can rely on their Withdrawal Agreement right of permanent residence without obtaining settled status under the EUSS. However,

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<sup>2</sup> For example, at paragraphs 151 and 193 of the judgment.

irrespective of how the UK ensures that a person can rely on the Withdrawal Agreement right of permanent residence once acquired, it is undoubtedly in the best interests of such a person to obtain secure evidence of their right to reside in the UK indefinitely. The quickest and easiest way of doing this – in all cases – is to obtain settled status under the EUSS as soon as they are eligible for it.

The Home Office has engaged with the IMA since the High Court judgment and continues to do so. While we do not accept that the judgment or the Withdrawal Agreement obliges us to make further changes on these issues, we continue to consider with the IMA the more practical concerns it has raised – while noting that such practical consequences will continue to exist for UK citizens and their family members in some EU Member States.

I note the Committee's request for a further report on work in progress on citizens' rights by 3 June, and understand that the Foreign, Commonwealth & Development Office has approached the Committee's clerks to arrange this.

Yours sincerely,



**Rt Hon James Cleverly MP**