

RESPONSE TO THE REPORT ON CITIZENS' RIGHTS OF 23 JULY BY THE EUROPEAN AFFAIRS COMMITTEE

INTRODUCTION

The Government welcomes the report on citizens' rights of 23 July, conducted by the European Affairs Committee. We are grateful to the Committee and to those who provided evidence for the report and have considered the evidence, findings and recommendations carefully

We remain committed to upholding our obligations under Part Two (Citizens' Rights) of the Withdrawal Agreement. This includes implementing the Withdrawal Agreement domestically, including through the UK's EU Settlement Scheme, and continuing to ensure that the EU and its Member States are implementing and applying the Withdrawal Agreement correctly.

We are pleased that the report recognises the success of the UK's EU Settlement Scheme in protecting the rights of EU citizens, as well as EEA EFTA and Swiss nationals, and their family members. The Scheme has been open since 30 March 2019, with a deadline of 30 June 2021, for applications by those who were resident in the UK by the end of the transition period (31 December 2020). Up to 30 September 2021, there had been over 6.2 million applications to the scheme, 172,200 of which were received after the deadline on 30 June 2021. Of these applications, 5.8 million have been concluded, 378,800 of which were concluded after 30 June 2021. Though the deadline for the EU Settlement Scheme has passed for those resident in the UK by the end of the transition period, the Home Office will continue to process applications from those who apply late and have reasonable grounds for doing so. The number of applications received and concluded after the deadline, demonstrates that the Government is delivering on its commitment to a flexible and pragmatic approach to late applicants.

We are also pleased that the report acknowledges the positive engagement with the EU, through the Specialised Committee on Citizens' Rights, and the progress of implementation across the EU. Nevertheless, citizens' rights continues to be a priority for the Government and we remain committed to ensuring that UK nationals in the EU are able to evidence and exercise their rights under the Withdrawal Agreement. Moreover, we are continuing to encourage the EU and Member States to match our pragmatic approach to reasonable grounds, and treat those who miss deadlines fairly, in the spirit of the Withdrawal Agreement.

It should be noted, that the information on pages 48 and 49 of the report has now been superseded, as Austria, Luxembourg, Romania, Slovenia and Sweden have all extended their deadline to apply for a new residence status until 31 December 2021. We welcome these extensions, which provide additional time for UK nationals to

apply. The Specialised Committee on Citizens' Rights produces a Joint Report on Residence on a quarterly basis, which contains the latest information on residence, including statistics, deadlines, reasonable grounds policies and support. The fifth Joint Report on Residence was published on 22 September 2021, on GOV.UK.¹

THE WITHDRAWAL AGREEMENT AND CITIZENS' RIGHTS

It remains a matter of regret to us that the Parties did not address the onward free movement rights of British citizens in the Withdrawal Agreement or the TCA. In our view, this issue is best addressed via international cooperation. Looking to the future therefore, we call on the Government to raise this issue with the EU through the institutional arrangements introduced by the Withdrawal Agreement or the TCA, as appropriate. (Paragraph 24)

The Government recognises that onward movement rights are an important issue for British citizens; however, these were not included in our agreements with the EU. The UK pushed strongly for the inclusion of onward movement rights during the first phase of negotiations on citizens' rights in the Withdrawal Agreement, but the EU was not ready to include them. The Government is not seeking to reopen negotiations with the EU on this matter but will always listen to proposals that benefit British citizens, and notes the existing EU routes available to third-country nationals under the Long-Term Residence Directive and EU Blue Card.

The Government should support UK regulators and professional bodies in utilising the machinery of the TCA to negotiate and conclude agreements on the mutual recognition of professional qualifications as soon as possible. We would welcome an update on the Government's priorities in this respect in their response to this report. (Paragraph 28)

The Government agrees that it is appropriate to support regulators and professional bodies seeking to agree recognition agreements, both through the Trade and Cooperation Agreement (TCA) process and independently. To this end, the Department for Business, Energy and Industrial Strategy (BEIS) has established a Recognition Arrangements team. They provide advice, expertise and other forms of support to regulatory and professional bodies across the four UK nations looking to negotiate arrangements to facilitate the mutual recognition of professional qualifications. In May, BEIS published technical guidance for regulators and professional bodies looking to negotiate such arrangements.

BEIS has also launched the Pilot Recognition Arrangements Grant Programme, which provides limited, targeted financial support to qualifying professional and

¹ Specialised Committee on Citizens' Rights, Joint Reports on Residence, <https://www.gov.uk/government/collections/specialised-committee-on-citizens-rights#joint-reports-on-residence->

business services regulators and professional bodies who are looking to negotiate and agree recognition arrangements with their international counterparts. The Government is providing funding for eligible regulators and professional bodies to use towards the cost of the technical expertise needed to agree recognition arrangements, either through the TCA framework or independently. This could include translation services or the use of external expertise to help map the qualifications issued by overseas regulators and professional bodies.

The Government is actively engaging with stakeholders, including regulators and professional bodies, to support the development of recognition arrangements in priority sectors. This includes actively engaging with the Irish Government to encourage our respective regulators to ensure routes to recognition are in place for UK and Irish citizens to meet our commitments under the Common Travel Area. We also regularly engage with regulators and professional bodies to understand where the recognition of professional qualifications represents a barrier to UK businesses and UK-qualified professionals.

The TCA contains a framework under which the UK and the EU may agree arrangements on the recognition of professional qualifications (such as Mutual Recognition Agreements) covering the UK and all 27 EU Member States. Once an arrangement is adopted under the TCA framework, UK professionals are able to use the terms outlined in the agreement to secure recognition of their professional qualifications within EU Member States.

The Independent Monitoring Authority, as required by the Withdrawal Agreement, plays an important role in monitoring the operation of the UK's EU Settlement Scheme and the protection of EU citizens' rights. It is therefore essential that it makes a strong and concerted effort to make those citizens aware of its existence and its role to support them to exercise their rights under the Scheme. (Paragraph 35)

While the Independent Monitoring Authority (IMA) is independent of Government, the Government welcomes the Committee's recognition that the IMA "plays an important role in monitoring the operation of the UK's EU Settlement Scheme and the protection of EU citizens' rights". As the Committee notes, and as explained in the IMA's written evidence to the Committee, the IMA's role is to monitor and promote the rights of EU and EEA EFTA citizens, living in the UK and Gibraltar, under Part Two of the Withdrawal Agreement and Part Two of the EEA EFTA Separation Agreement. As the IMA also explained, it receives and considers individuals' complaints, but does not seek to resolve them, because its main focus is on identifying possible systemic failings in the implementation or application of Part Two of the Agreements. This is a distinct role from the important one of providing assistance to individual EU and EEA EFTA citizens, which is carried out by advice agencies or voluntary sector agencies.

The Committee found that “One potential area of improvement for the IMA is its profile among EU citizens”, and notes that the IMA acknowledged in its evidence, “as a new body we face a significant challenge to make stakeholders aware of our existence and role”. One of the IMA’s key priorities, set out in its Annual Plan for 2021/22, is to “Raise awareness of the IMA and our role in monitoring public bodies to ensure they are upholding the rights of EU and EEA EFTA citizens”.

The Government supports the IMA’s continuing efforts, so far as necessary and proportionate, to make EU and EEA EFTA citizens aware of its existence and role.

The European Commission, as required by the Withdrawal Agreement, plays an important role in monitoring the implementation of the citizens’ rights provisions in EU Member States and in protecting UK citizens’ rights. We note that groups representing UK citizens report positive engagement with the Commission and we hope this will continue. (Paragraph 38)

Currently, the UK, the EU Commission and EU Member States have taken a constructive approach to citizens’ rights, which we welcome. But both sides need to be vigilant that the wider issues in their relationship do not spill over into citizens’ rights issues. Given the importance of these matters to millions of individuals, we recommend both sides continue this positive approach to discharging their citizens’ rights obligations under the Withdrawal Agreement, regardless of wider tensions in their relationship. (Paragraph 53)

The Government is pleased that the report recognises the UK’s positive relationship with the EU on citizens’ rights. We have an open and constructive relationship based on our shared objective of ensuring citizens’ rights are upheld in the UK and the EU. We are continuing to hold regular meetings of the Specialised Committee on Citizens’ Rights and plan to meet again for a ninth time in December 2021.

As noted in the report, the European Commission is required by the Withdrawal Agreement to fulfil the function of a monitoring authority; guiding, scrutinising and enforcing the correct implementation and application of the Withdrawal Agreement in Member States, as the newly established IMA is doing in the UK. As such, the Commission also receive and act on complaints from UK nationals in the EU. We look forward to receiving the Commission’s annual report on implementation and application, including the number of complaints received, at the Specialised Committee on Citizens’ Rights in 2022.

The Government remains unequivocally committed to playing an active and engaged role in the governance structures established by the Withdrawal Agreement, and in upholding citizens’ rights. The Committee should also be reassured that where provisions of the Withdrawal Agreement (or EU law made applicable by it) are capable of having direct effect, UK nationals in the EU and EU citizens in the UK are

able to rely directly on those provisions in the courts. We will continue to engage constructively, with citizens at the heart of our endeavours.

EU CITIZENS' RIGHTS IN THE UK

The number of concluded applications to the EU Settlement Scheme is a considerable achievement by the Home Office. There are many more EU citizens in the UK than there are UK citizens across the EU, and the UK Government faced a huge challenge in encouraging and processing over 5.4 million applications ahead of the deadline. We also welcome the Home Office's approach of looking for reasons to grant status, rather than reasons to refuse.
(Paragraph 69)

Some EU Member States have constitutive systems and others have declaratory systems. We note that the UK's EU Settlement Scheme has been open for nearly a year longer than the earliest constitutive scheme opened in the EU. (Paragraph 70)

At the same time, because there are so many EU citizens in the UK, failure by even a tiny percentage of the total eligible cohort to apply may mean thousands of individuals slipping through the cracks. The issues these individuals face will remain an ongoing challenge for the Government.
(Paragraph 71)

The Government welcomes the Committee's recognition of the work done so far to protect EU, EEA EFTA and Swiss citizens, living in the UK by the end of the transition period, and their family members.

As of 30 September 2021, there have been over 6.2 million applications, with more than 5.8 million concluded and over 5.4 million grants of status.² The EU Settlement Scheme (EUSS) has been open since 30 March 2019 and for longer than other EU constitutive systems.

The Government remains committed to ensuring those eligible for status under the EUSS are aware of the need to apply and are supported to do so. We continue to encourage eligible EU, EEA EFTA and Swiss citizens and their family members to apply to the EUSS. The Home Office has already invested nearly £8 million in marketing campaigns to encourage those EU citizens and their family members who have not yet applied to do so. The Home Office has made clear it will take a flexible and pragmatic approach to considering whether there are reasonable grounds for making a late application and has published comprehensive, non-exhaustive guidance to underpin this. We have also introduced a set of measures to ensure, where eligible individuals who have yet to apply to the EUSS are identified, enforcement action or other negative

² EU Settlement Scheme Statistics, <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

consequences do not follow immediately and they are given a further opportunity to apply.

While the numbers applying late have been small compared to pre-deadline application numbers, the Government announced on 6 August 2021 that, to further reassure late applicants, their rights will also be protected while we process their application and until any appeal is finally determined. Those who applied before the 30 June 2021 deadline already had their rights protected pending the outcome of their application and any appeal.

Vulnerable Applicants

We are concerned that the relatively low numbers of applicants to the EUSS among children in care and care leavers may also be reflected in other vulnerable groups, who, by their nature, may be difficult to reach. While the lack of comprehensive data makes it difficult to know for certain how many EU citizens failed to apply on time, the Home Office should continue to do all it can to reach those who missed the deadline, especially vulnerable persons, and encourage them to make a late application. (Paragraph 72)

Some EU citizens living in the UK are particularly vulnerable to losing their rights, such as older adults, those with now defunct EEA permanent residency, and those unfamiliar with digital technology. These vulnerabilities have, in many cases, been exacerbated by the lack of in-person support and services during the pandemic. How many of these individuals missed the deadline, and the Government's response to their circumstances, will be key indicators of the Settlement Scheme's success. (Paragraph 101)

We are concerned by the low proportion of applications from older EU citizens, who are more vulnerable to digital exclusion: just 2% of all applications to the Settlement Scheme are from over-65s. Some witnesses suggested that this may indicate low take-up. We call on the Government to explain whether it shares these concerns, and if so, what steps it intends to take to ensure that over-65s are supported in making late applications. (Paragraph 102)

We welcome the Government's support for vulnerable groups via grant-funded organisations. While this funding is currently set to expire at the end of September 2021, we anticipate that the problems facing vulnerable EU citizens will persist for longer. We welcome the Minister's indication that the Government will consult on extending this funding further. In our view it should be, and we request that the Government update Parliament on the outcome of those consultations as soon as possible. (Paragraph 103)

The Government agrees we should continue to reach out to those who are yet to apply to the EUSS, especially vulnerable persons, and encourage them to make a late application. We understand the Committee's concerns around difficult to reach and vulnerable groups. Across government, we are working to ensure all vulnerable groups, including any remaining eligible looked after children, care leavers and those aged over 65 amongst others, are supported to secure their status under the EUSS by making an application to the scheme. Vulnerable citizens can find local support to

help them apply to the EUSS on GOV.UK or by emailing or phoning the UK Visas and Immigration Resolution Centre. Support is available via the 72 grant-funded organisations and 188 delivery and partner organisations across the UK to cover a wide range of vulnerabilities, including the elderly. The list of organisations is available on GOV.UK.³

The Government recently announced a further £3 million of funding will be provided to existing grant funded organisations between 1 October 2021 and 31 March 2022 to support work to help vulnerable groups and harder to reach groups apply to the EU Settlement Scheme. The Home Office has now made available up to £25 million in funding so vulnerable applicants can get support from a network of 72 organisations across the UK which includes charities, local authorities and voluntary sector organisations.

In relation to children in care and care leavers, the Home Office is providing extensive support to local authorities, in light of their statutory responsibilities for this cohort, to ensure these children and young people, like other vulnerable groups, get UK immigration status under the EUSS, and the secure evidence of this status which the scheme provides. Support has included running webinars for local authority staff making or supporting EUSS applications, providing support seven days a week via the UK Visas and Immigration Resolution Centre and the support available from the network of 72 grant-funded organisations across the UK, which includes several local authorities and local government associations. There is also guidance published on GOV.UK for local authority staff supporting children in care and care leavers in applying to the EUSS.⁴

To monitor progress with children in care and care leaver applications, the Home Office carried out a further survey of local authorities earlier this year. As of 23 April 2021, applications had been submitted by, or for, 2,440 (67%) of the 3,660 looked after children and care leavers identified by the survey as eligible to apply. Using the data from the survey, further workshops have been delivered and targeted engagement carried out with local authorities to support further progress. The Home Office has since issued a further survey which will help monitor progress regarding local authorities' responsibilities to ensure looked after children who are eligible to apply to the EUSS have done so. The results will be published on GOV.UK.

Consistent with the published non-exhaustive guidance on reasonable grounds for making a late application, we will take a pragmatic and flexible approach to dealing with late applications, including from care leavers who were aged over 18 before the deadline.

³ EU Settlement Scheme: Community support for vulnerable citizens
<https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>

⁴ EU Settlement Scheme: Looked after children and care leavers guidance
<https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance>

The Government recognises there are some groups, including those who are aged 65 and over, who cannot access or struggle to use technology. We already have the Assisted Digital service which is available cost-free for those applying to the EUSS and a simple triage process directs the person to assistance in-person at one of approximately 300 centres across the UK (subject to COVID-19 restrictions), over the phone or via a home visit.

The latest detailed quarterly EUSS statistics up 30 June 2021 show that 152,120 applications were received from applicants aged 65 and over (3% of all applications) and the majority of concluded applications for this age group led to a grant of settled status (71%) compared to those aged under 18 or between 18 and 64 (59% and 51% respectively).

'True' vs 'Extra' Cohort

We welcome the Government's decision to take a more generous approach to eligibility for the Settlement Scheme than the Withdrawal Agreement requires, but this has potentially led to a misalignment between status under the Settlement Scheme and rights under the Withdrawal Agreement. There may be a risk of legal uncertainty for some EU citizens if they cannot use their EUSS status to evidence their rights under the Agreement. Were this to be the case, it could have adverse consequences for those affected. (Paragraph 80)

We recognise that there is a difference of opinion between the UK and the EU over this [true vs extra cohort] issue and call on the Government to seek a resolution via the Specialised Committee as a matter of urgency. (Paragraph 81)

The Government's position is clear: there is no detriment to EU citizens who are covered by the Withdrawal Agreement, as their EUSS status means they can access all their Withdrawal Agreement rights. As the Committee acknowledges, the UK has been much more generous than the Withdrawal Agreement requires by including within the EUSS all EU citizens resident in the UK by the end of the transition period, regardless of whether they were here in accordance with EU law.

The Government will continue to discuss these matters with the European Commission via the Specialised Committee on Citizens' Rights.

Family reunification

According to the terms of the Withdrawal Agreement and the Court of Justice's decision in Lounes, EU nationals who exercised their free movement rights, naturalised as British citizens, and satisfy the relevant criteria, enjoy family reunion rights. Although the Home Office guidance acknowledges the position of so-called Lounes dual nationals, we are concerned that because British citizens cannot access the EUSS, these individuals will find it hard in future to evidence these important rights. We invite the Government to set out how it intends to address this problem in its response to this report. (Paragraph 85)

The Government has already taken action to ensure British citizens who hold dual nationality of an EEA country and who exercised their EU Treaty rights in the UK before naturalising as a British citizen (known as ‘Lounes’ cases) can benefit from their Withdrawal Agreement rights. As the Committee highlights, they cannot apply to the EUSS, because they have the right of abode in the UK as British citizens and therefore cannot apply for or be granted immigration leave.

The Immigration Rules for the EUSS ensure family members of ‘Lounes’ cases can apply to the EUSS. This enables the British citizen to benefit from their family reunion rights under the Withdrawal Agreement.

Temporary protection for late applicants

Vulnerable EU citizens are classed as such because they were at risk of missing the 30 June deadline. The best way to protect the rights of the vulnerable is to ensure protections are in place for late applicants. While we welcome the inclusion in current Home Office guidance of a number of vulnerabilities as potential “reasonable grounds” for late applications, we remain concerned that these protections may not be sufficient. Greater clarity and more comprehensive legal safeguards may be needed. (Paragraph 104)

The Government chose not to extend the 30 June deadline for the EUSS. Although we heard support from witnesses for a short extension, this would not in itself have resolved the fundamental issues facing many EU citizens in the UK. Now the deadline itself has passed, putting appropriate protections in place for those who have missed it is all the more important. In line with the criteria in Article 18 of the Withdrawal Agreement, simply missing the deadline of 30 June 2021 must not result in the automatic rejection of an application. (Paragraph 108)

Most EU citizens who applied before the deadline but have not yet received a decision have their rights protected in law until a decision is made. This is welcome, given the apparent backlog in processing applications just before the deadline. We are concerned over the extent to which certificates of application can be used to prove rights in practice (given that these certificates do not confer status), and the uncertainty for those who may be out of scope of the 2016 EEA Regulations. We call on the Government to provide clarity on these points. (Paragraph 115)

Citizens’ basic rights under the Withdrawal Agreement should not be affected by virtue of simply missing the June deadline. If the Government does not meet its obligations under Article 18 of the Withdrawal Agreement, we fear that this could lead to unnecessary and stressful litigation. We will continue to monitor this issue going forward. (Paragraph 131)

The Government’s assurances that it will adopt a “generous” approach to late applications is not yet underpinned by a corresponding legal safety net for those who have missed the deadline. An individual who applies late could be

left in legal limbo while they await a Home Office decision, potentially for months. (Paragraph 143)

It is not too late for the Government to address this issue, and we have heard many specific suggestions from witnesses, including proposals to grant late applicants rights provisionally from the point when they apply, rather than from when status is granted, or to write off liabilities rising from an “interim period of unlawfulness” between the 30 June deadline and the point of application. We call on the Government to set out how it intends to resolve the legal uncertainty facing late applicants, so as to give greater certainty to vulnerable individuals. (Paragraph 144)

As the Committee recognises, the Home Office already has in place comprehensive arrangements to enable those with reasonable grounds for missing the relevant deadline to apply late to the EUSS. We have also introduced measures to ensure that, where eligible individuals who have yet to apply to the EUSS are identified, enforcement action or other negative consequences do not follow immediately, and they are given a further opportunity to apply.

On 6 August 2021, the Government announced further steps to protect the rights of late applicants to the EUSS. Temporary protection of those rights will be engaged from the point where a valid application has been submitted and a certificate of application issued until either the applicant is granted EUSS status or any appeal against a refusal is finally determined. To satisfy the requirements of a valid application, an applicant will continue to need to have proved their identity and nationality, use the required online or paper application form and provided their biometrics. On receipt of a valid application by a late applicant, a certificate of application will be issued which can then be relied upon to demonstrate their rights under the Citizens’ Rights Agreements.

The Government will amend the relevant regulations in due course to reflect that an EUSS certificate of application issued in response to a valid application made after 30 June 2021 is an accepted document demonstrating a right to work or rent, when verified by the employer and landlord checking services. In the meantime, we will rely on the direct effect of the Citizens’ Right Agreements to give effect to temporary protection.

Changes are already being made to relevant published Home Office guidance, communication and promotional products, status information and status checking services. The right to work, right to rent and enforcement guidance on GOV.UK has already been updated.^{5 6 7} Updated guidance has also been published on migrant access to public funds, including social housing, homelessness assistance and

⁵ Right to work checks employing EU, EEA, and Swiss citizens, <https://www.gov.uk/guidance/right-to-work-checks-employing-eu-eea-and-swiss-citizens>

⁶ Guidance on right to rent checks, <https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks>

⁷ Considering immigration status and deciding enforcement action: <https://www.gov.uk/government/publications/considering-immigration-status-anddeciding-enforcement-action>

social care.⁸ We are working to publish updates to other relevant Home Office guidance documents to make clear the position on temporary protection and what this means in practice for applicants and relevant third parties.

Reasonable grounds for late applications

We welcome the Government’s confirmation that it will continue to look for reasons to grant status rather than reasons to refuse when processing late applicants, and will be giving late applicants “the benefit of any doubt.” We also welcome that the online system for EUSS applications remains open; it should remain so for as long as late applications are possible. (Paragraph 132)

We are concerned, however, that current guidance suggests the “benefit of any doubt” approach may only be temporary. We call on the Government to provide greater clarity on how long this approach will last, and to consider a commitment to continuing it on a longer-term basis. The “benefit of any doubt” approach is yet to be tested, and we will keep these matters under close scrutiny. (Paragraph 133)

Although the current guidance on handling late applications is inclusive and comprehensive, the Government will need to ensure that late applications are handled consistently, not only by Home Office caseworkers, but also by other Government departments and public bodies. (Paragraph 134)

We are concerned by the general presumption in caseworker guidance that the longer an application is after the deadline, the less likely it is to meet the “reasonable grounds” criteria. We call on the Home Office to explain the rationale for this presumption. (Paragraph 135)

We also note the concerns expressed over the guidance on late applicants from pregnant and recent mothers, as well as new-born babies, and invite the Government to look again at these issues. In addition, we are deeply concerned that Government guidance appears to subject victims of modern slavery and domestic abuse to more intrusive immigration history checks than other groups. We call upon the Government to respond to these concerns. (Paragraph 136)

The Government is pleased the Committee recognises its efforts to ensure late applicants are given the benefit of the doubt where appropriate, through the published guidance on reasonable grounds for making a late EUSS application. Though the 30 June 2021 application deadline for the EUSS for those resident in the UK by the end of the transition period has now passed, there remains scope indefinitely, in line with the Citizens’ Rights Agreements, for a person eligible for status under the scheme to make a late application where there are reasonable grounds for missing the deadline. As set out above, the rights of late applicants will be protected pending the outcome of the application and any appeal.

⁸ Guidance on migrant access to public funds, <https://www.gov.uk/government/publications/public-funds>

The published guidance on reasonable grounds for making a late EUSS application is clear that the more time which has elapsed since the deadline, the harder it will be for the applicant to satisfy the Home Office that there are reasonable grounds for their failure to meet the deadline, at the date of application. However, the published guidance also makes clear there will be exceptions, such as where a person first applies to work or study in the UK and establishes an application to the scheme was not made on their behalf years earlier, when they were a child, by a parent, guardian or local authority.

Therefore, we will continue to take a flexible and pragmatic approach in considering late applications in light of the circumstances of each individual case. In all cases, the relevant test is whether there are reasonable grounds for the person's failure to meet the deadline applicable to them under the EUSS. Where a person who has applied late has not provided sufficient information as to the reasonable grounds for their failure to meet the deadline applicable to them, caseworkers will work with the applicant to give them a reasonable opportunity to submit this, and will exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.

The published guidance on reasonable grounds for making a late application sets out examples, rather than being exhaustive, and each case must be considered in light of its particular circumstances. We do not accept the Committee's view that certain applicants are subject to more intrusive immigration checks; we have made the EUSS application process as simple and streamlined as possible for applicants. For those applying late to the scheme on the basis they are a victim of modern slavery or domestic abuse, previous immigration history can be relevant to consideration of the EUSS application and the reasonable grounds the applicant may have for missing the deadline applicable to them. Our focus remains on ensuring those eligible for the EUSS, but particularly those in vulnerable groups, obtain the status for which they qualify.

The Government understands the concerns of the Committee, and stakeholders such as the 3 million, regarding recent mothers applying to the EUSS on behalf of their children. The relevant deadline for making an application to the EUSS on behalf of a child newly born or adopted in the UK is three months from the date of birth or adoption. This is in accordance with Article 18(1)(b) of the Withdrawal Agreement. An application for a child newly born or adopted in the UK which is made after that deadline will be considered where there are reasonable grounds for missing the deadline. This will include, for example, where there has been a difficult childbirth or where the child is in need of medical treatment, but we will take a flexible and pragmatic approach to all such cases.

It should also be noted a child born in the UK to a parent who holds settled status is automatically a British citizen at birth under the British Nationality Act 1981. Similarly, if a parent makes a late application for settled status under the EUSS, which is granted, then any child of theirs born in the UK on or after 1 July 2021 will automatically become a British citizen from the date the late application is granted.

The Government should also ensure funding and support for helplines and resolution centres are in place to support those making late applications over the long-term. (Paragraph 145)

The Government is pleased the Committee recognises the assistance provided by EUSS support services. Since 2019, individual support for applicants has been provided by phone and email through the UKVI Resolution Centre, and this support will continue. In addition, the Assisted Digital service will continue to provide support to applicants who do not have the appropriate access, skills or confidence to apply online.

We recommend that the Home Office also continues to provide long-term statistical updates on applications to the EU Settlement Scheme until at least June 2026, when the final awards of pre-settled status for on-time applications expire. This will ensure transparency regarding the number of late applications, and thereby facilitate continued parliamentary scrutiny of the Scheme. (Paragraph 146)

The Government will continue to publish official 'EU Settlement Scheme Statistics' for the life of the scheme. The latest statistics for the EUSS were published on 14 October 2021.⁹

Digital status

While we note the advantages the Government sees in a digital-only system, we nevertheless regret that it has persisted with this approach in respect of the EU Settlement Scheme. It has done so despite repeated concerns raised by campaigners, support organisations, and the views of parliamentary committees of both Houses. (Paragraph 157)

The lack of a physical document places an onus on EU citizens to have digital skills, and puts predominantly vulnerable individuals who are digitally excluded or required support when they submitted their original application at risk of dependency and exploitation. There is a risk that the difficulties EU citizens may face in proving their rights will undermine the Government's considerable success in ensuring millions of EU citizens secured their status in the first place. (Paragraph 158)

We strongly recommend 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. This could draw on the precedent of COVID-19 status certificates and would be of particular benefit to those currently disadvantaged by digital-only status. (Paragraph 159)

The Government is moving towards a digital immigration system and does not accept it is necessary for EU citizens with settled or pre-settled status under the

⁹ EU Settlement Scheme statistics, <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

EUSS to have a physical document evidencing this, in addition to digital status. All individuals who successfully apply to the EUSS are provided with written notice of their immigration status, which they can keep for their personal records if they wish and can use for reference purposes when contacting the Home Office. For those who struggle to use online services, there is a non-digital alternative available: they can contact the UKVI Resolution Centre, including by phone, which can share their digital status on their behalf if they are unable to do so themselves.

The Government welcomes feedback on how we can improve our services and we will consider suggestions that could make the interaction with our digital services easier for users. The use of QR codes is something we will consider, but there are numerous issues to work through to assess the feasibility of such a solution, including ensuring users' data is secure, that images can be included within the code and checking organisations, such as employers and landlords, have confidence in the data they are presented with.

We are taking steps to reduce the number of circumstances in which individuals need to provide evidence of their immigration status. This includes the development of 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 that, at the point at which a person seeks to access public services such as NHS healthcare or the benefits system, that service provider will check status directly with the Home Office, removing the need for the individual to prove their status.

Communications

In parallel, we call on the Government to launch a major communications and training campaign to ensure that all relevant public and private sector authorities—including Border Force, welfare officers, landlords and employers—are aware of how EU citizens will be proving their status. This should build on the existing guidance to employers and landlords, which we welcome. (Paragraph 160)

The Government is pleased that the Committee recognises the work that has already been done to promote the EUSS and provide guidance to employers and landlords. The Home Office has delivered an extensive, wide-reaching campaign and engagement programme targeting UK employers with information on their obligations and responsibilities concerning right to work checks, and we are also continuing to communicate with landlords and their representative groups in England about conducting right to rent checks.^{10 11}

As of mid-September 2021, we have delivered over 420 events reaching around 30,000 stakeholders, including employers, landlords, financial institutions, educational establishments, umbrella organisations, local authorities, foreign embassies and citizens, about the EUSS and the points-based immigration system.

¹⁰ Right to work checks, employer guidance, <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

¹¹ Right to rent checks, guidance for landlords, <https://www.gov.uk/government/publications/right-to-rent-checks-from-july-2021-important-information-for-landlords>

Since 2019, our communications and GOV.UK have carried clear and consistent messaging that checks must be completed in a non-discriminatory manner and have included information on digital immigration status and changes to the checking process for EU, EEA EFTA and Swiss citizens specifically.

We have published a guide for EU, EEA EFTA and Swiss citizens about viewing and proving their immigration status, which explains what people should expect when crossing the UK border and how to get help accessing their immigration status.¹²

The Government does not accept it is necessary to launch another extensive wide reaching campaign, however we continue to work closely with employers and landlords, our Advisory Groups, EU Consular Group and EUSS Safeguarding User Group to ensure information is effectively cascaded through stakeholder networks, to listen to feedback and adapt our communications to ensure maximum effectiveness. All Border Force staff received training in advance of the end of the transition period on 31 December 2020 and following the end of the grace period on 30 June 2021. This includes explanation of digital status and how it can be checked at the border.

COVID-19

We welcome the new COVID-19 exemption to the rules around permitted absences; without this, an unknown number of EU citizens could have rendered themselves ineligible for full settled status by leaving or being prevented from travelling to the UK during the pandemic. We urge the Government to publicise these changes as widely as possible. (Paragraph 164)

The Government is pleased the Committee recognises the flexible approach taken to permitted absences under the EUSS in light of the COVID-19 pandemic. The Government has been clear that the situation concerning COVID-19 is being kept under ongoing review. This includes the continuous absence policy under the EUSS, which was previously amended as a concession to provide additional flexibility to those EU, EEA EFTA and Swiss citizens and their family members who would otherwise have broken their continuous qualifying period of residence as a result of COVID-19.

The additional flexibility was designed to ensure those EU, EEA EFTA and Swiss citizens, and their family members, whose excess absence from the UK is as a result of COVID-19, can still qualify for pre-settled status or settled status under the EUSS. This is despite having exceeded the absence from the UK permitted under the Immigration Rules for the EUSS in Appendix EU, consistent with the Citizens' Rights Agreements. That provision for absence from the UK due to COVID-19 is now reflected in the Immigration Rules in Appendix EU and will also be reflected in the published guidance for the scheme.

¹² View and prove your immigration status (eVisa), <https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa>

Transfer from pre-settled to settled status

The Government successfully ensured that over 5.4 million eligible citizens applied under the EUSS ahead of the 30 June 2021 deadline. But over 2 million of these were granted time-limited rights in the form of pre-settled status, placing the onus squarely upon them to preserve their rights by successfully applying in due course for settled status. If they do not, they may lose their rights in the coming years. (Paragraph 174)

Replicating the initial success of the Settlement Scheme will be more difficult in the next phase; rather than one deadline for millions of people, there are now many individual deadlines. We welcome the Home Office's plans to send individual reminders, but this relies on EU citizens keeping their contact details up to date. The Government should therefore make full use of community networks, and maintain helplines and resolution centres, to support holders of pre-settled status in applying on time. (Paragraph 175)

Holders of pre-settled status who miss their deadline for applying for settled status can make late applications if they have reasonable grounds to do so. The Government has undertaken, for the time being, to give late applicants the "benefit of any doubt ... for the time being". But as the first of these deadlines are not until August 2023, we are concerned that pre-settled status holders are vulnerable to a reversal of the temporary and non-binding "benefit of any doubt" policy. (Paragraph 176)

There is a lack of data on how many holders of pre-settled status are still residing in the UK, and uncertainty over how many will want or need to apply for full settled status in the future. This will make it difficult to assess the Government's success in ensuring people make the switch to settled status on time. (Paragraph 177)

We note that the issue of pre-settled status and access to welfare rights is currently the subject of two separate legal challenges. We await with interest the outcome of these cases. (Paragraph 182)

The Government is focused on ensuring a smooth transition for EU, EEA EFTA and Swiss citizens and their family members moving from pre-settled status to settled status under the EUSS. As the Committee notes, the first grants of pre-settled status (five years' limited leave to enter or remain) will not expire until August 2023. We remain in discussion with the European Commission and the IMA regarding the requirement to apply for settled status before pre-settled status expires in order for the individual to retain their rights. As set out above, however, the rights of late applicants for settled status will be protected pending the outcome of the application and any appeal.

The Home Office continues to communicate with EUSS status holders with information relevant to their status, including pre-settled to settled status applications. This includes an email exercise to all EUSS status holders, being sent throughout late September to October 2021 with reminders on key information, including pre-settled to settled status conversion.

When a person is granted pre-settled status, they also receive notification of what pre-settled status means, including the scope to apply for settled status as soon as they qualify for it. This will be once they have completed five years' continuous residence in the UK or sooner where particular criteria are met. Pre-settled status holders' online UK Visas and Immigration account also provides key information on what a status holder can do in the UK, explains they can apply for settled status once they have lived continuously in the UK for five years and provides a link to GOV.UK with further information on how to do so. The Home Office intends to provide individual pre-settled status holders with a timely reminder to apply for settled status before their pre-settled status expires. Individual support for applicants will continue to be provided through the UK Visas and Immigration Resolution Centre.

The latest quarterly EUSS statistics show that, as of 30 June 2021, more than 206,000 people have successfully moved from pre-settled to settled status.¹³

UK NATIONALS IN THE EU

It is clear there are problems in identifying accurately how many UK citizens are resident in some Member States and where exactly they live. We urge the EU Commission and the UK Government to do all that they can, when engaging with Member States on citizens' rights, to ensure that host countries do not miss sections of their own UK national populations. The UK government should also engage with the EU Commission as the monitoring authority within the EU. This engagement should continue after the expiry of constitutive Member States' deadlines: missed UK citizens may only be identified at this time, with serious consequences for the individuals concerned. (Paragraph 193)

The Government agrees that accurate and up-to-date statistics on the number of UK nationals living in the EU, and their place of residence, is important in ensuring that nobody is left behind as deadlines pass and times progresses. Unfortunately, it is not possible to arrive at a definite figure for the number of UK nationals and their family members who may or may not be in scope of the Withdrawal Agreement. There is no way to accurately assess how many people who moved to the EU before the end of the transition period or determine who met, and continues to meet, the conditions for lawful residence set out in the personal scope of the Withdrawal Agreement. The only way for this to be achieved is by UK nationals in the EU applying for a new residence status or document.

The Joint Report on Residence, produced by the Specialised Committee on Citizens' Rights, captures the official statistics from Member States on their resident UK national populations and includes data tables on the number of applications or

¹³ EU Settlement Scheme, Quarterly statistics, June 2021, <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-june-2021/eu-settlement-scheme-quarterly-statistics-june-2021>.

registrations received and concluded.¹⁴ The Specialised Committee on Citizens' Rights will continue to produce and publish updates to the Joint Report on Residence, on a quarterly basis until the final deadline for applications is reached, and will consider what monitoring arrangements should be put in place for the longer-term, noting the Committees recommendation.

More broadly, we agree that it will remain important to continue engaging with the EU and Member States beyond the final deadline for applications, not least to ensure that the Withdrawal Agreement continues to be applied correctly. This includes calling on Member States operating constitutive systems to match our flexible and pragmatic approach to late applications. To achieve this, the Specialised Committee on Citizens' Rights; Specialised Committee on the Protocol on Gibraltar; UK-Swiss Joint Committee on Citizens' Rights; and UK-EEA EFTA Separation Agreement Joint Committee – which form the full suite of governance structures covering citizens' rights – will all continue to meet at least annually, and be supplemented by working closely with our European partners beyond 2021.

As of June 2021, the published data for the progress of UK citizens' applications across both declaratory and constitutive systems presents a mixed picture. In some Member States this appears to be progressing well, while in others problems exist, including where the number of applications received is significantly lower than the estimated UK population in that country. This is in contrast to the UK, where the number of applications made under the EUSS vastly exceeds the estimated population of EU citizens.
(Paragraph 211)

Clearly, there is much work still to be done. We therefore call on the EU Commission and the UK Government to work closely with EU Member States to ensure that where UK citizens are at risk of missing an application deadline, or have already done so, they are promptly identified and supported to access their rights. (Paragraph 212)

The Government is pleased that the EUSS has been a success, with over 6.2 million applications by the 30 September. While we were pleased to see that the number of applicants for a new residence status in France exceeds the estimated population of residence UK nationals, this has not been the case across the EU, more widely. According to the latest available statistics in the fifth Joint Report on Residence, there remain gaps between the estimated number of UK nationals resident and the amount who have applied for a new residence status in constitutive Member States, or a new residence document in declaratory Member States.¹⁵ This is particularly

¹⁴ Specialised Committee on Citizens' Rights: fifth Joint Report on the implementation of residence rights under Part Two of the Withdrawal Agreement, 16 September 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019675/Fifth_joint_report_on_residence_rights.pdf

¹⁵ Specialised Committee on Citizens' Rights: fifth Joint Report on the implementation of residence rights under Part Two of the Withdrawal Agreement, 16 September 2021,

worrying in constitutive Member States, where UK nationals must take action to secure their rights under the Withdrawal Agreement, as they are not automatically conferred. The Government agrees that it is important that Member States continue to identify and support those UK nationals who have not yet applied for a new residence status, or a new residence document.

It is important to highlight that the figures held by Member States are estimates, and like all population estimates, are subject to change. Relatively low application rates in some countries may be due to a number of unknown factors, such as people having left the country without informing the authorities. Statistics may also include dual nationals who have chosen not to apply for a new residence status or document under the Withdrawal Agreement, and those who have since adopted citizenship of the country where they are resident. Notwithstanding, the Government notes the Committee's concern around application rates in some Member States. We are working hard to encourage authorities to take further action, particularly in Member States where the number of resident UK nationals may have historically been underestimated.

We are continuing to call on the EU and Member States to discharge their awareness raising obligations, under Article 37 of the Withdrawal Agreement, in full and to ensure that UK nationals in the EU are aware of the actions they may need to take to secure and evidence their rights. We have also called on the EU and Member States to issue clear operational guidance to public and non-public bodies, so that frontline staff are supported in applying the Withdrawal Agreement correctly and consistently. The Government has also supplemented communications and support provided by Member States with a multi-million pound public information campaign being run across 30 European countries and, as recognised in the report, has provided over £4 million in grant funding under the UK Nationals Support Fund, which has helped to reach over 400,000 people.

In contrast to the UK authorities, many EU Member States have not yet issued guidance on the approach they will take to late applications. Given the importance of this information to UK citizens, we ask the Government to continue to work with its EU partners to ensure that guidance about late applications is available for UK nationals in every Member State with a constitutive system. (Paragraph 213)

The Government agrees that the publication of guidance on what constitutes reasonable grounds for late applications in constitutive Member States is vital. Following the publication of the Home Office's guidance on reasonable grounds for late applications by EU citizens in the UK, in April 2021, we called on the EU to

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019675/Fifth_joint_report_on_residence_rights.pdf

publish details of their late application policies, and to reciprocate our flexible and pragmatic approach.¹⁶

We welcome the EU's responsiveness and note that this information has been included, under a specific sub-heading, in the fourth and fifth Joint Reports on Residence, produced by the Specialised Committee on Citizens' Rights. We are continuing to monitor the implementation of these policies closely.

The EU-wide biometric residence card provides physical evidence for UK citizens living in the EU of their Withdrawal Agreement rights. In many circumstances, UK citizens will need the card to prove their right to residence and employment, as well as when engaging with the health and social security systems, and when travelling across the EU. The evidence we received from witnesses representing UK citizens living in the EU27 was clear: they welcomed the reassurance that this physical document provides. (Paragraph 219)

We note that the Government welcomes the EU's decision to issue a physical document to all UK citizens falling within the scope of the Withdrawal Agreement, while resisting calls from many quarters to provide EU citizens with a physical proof of their rights under the UK's system and ask it to clarify why it holds these contrary positions. (Paragraph 220)

The Government sees no contradiction in its position. The Withdrawal Agreement gives the UK and Member States a choice about how to issue the new residence document, with explicit provisions made for the document to be issued in digital form. The EU has decided – in its Implementing Decision of 21 February 2020 – that all Member States will issue a standard format residence permit with biometric features. This is in line with the EU's approach to evidencing rights and introducing standardised residence permits across its Member States. We welcome this decision because it creates consistency and regularity for UK nationals in the EU.

The UK has decided to implement a digital system in line with our approach to becoming digital-by-default, and issuing a digital status across the whole immigration system. While the UK and the EU's approaches are different they both provide consistency and regularity to citizens, and the public and non-public bodies they will interact with when evidencing their status.

Whether they have constitutive or declaratory systems, some EU Member States have failed to communicate effectively with their UK populations. There

¹⁶ EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, 20 July 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004627/main-euss-guidance-v13.0ext.pdf

have been problems with inconsistent levels of communication to UK citizens, which, when compounded by other issues such as digital exclusion and the effect of the COVID-19 pandemic, may cause some to fail to access their Withdrawal Agreement rights. We therefore urge the Government to continue to make every effort to raise such issues with the EU Commission and relevant Member States, including at meetings of the Specialised Committee, to ensure they are addressed. (Paragraph 234)

Article 37 of the Withdrawal Agreement requires Member States to disseminate information concerning the rights and obligations of persons covered by Part Two, including through awareness-raising campaigns and national and local media, to ensure that they are aware of their rights and the steps they may need to take to secure them. While the UK has fulfilled this obligation for EU citizens in the UK, having spent over £30 million on communications and support for the EU Settlement Scheme, the Government agrees that there have not been proportionate measures from all Member States.

The Government has consistently raised the need for clear communications with the EU and Member States and will continue to use the Specialised Committee on Citizens' Rights and our bilateral channels to hold the EU to account. The Joint Report on Residence now includes reporting on communications and assistance, which shows that the Specialised Committee on Citizens' Rights is working and maintaining accountability.

The Government is also continuing to supplement EU and Member State communications and support through our public information campaign and the UK Nationals Support Fund, both of which will continue until the end of 2021. Our European network of Embassies, High Commissions and Consulates have also carried out an extensive series of outreach events for UK nationals across Europe. These have included town hall events; Facebook live Q&As; and interviews with the media; as well as digital content on GOV.UK and social media channels. Since November 2017, we have held over 785 outreach events, reaching over 495,000 UK nationals across Europe.

The UK Nationals Support Fund provides important support to third party organisations to help UK citizens, particularly those who are vulnerable, to access their rights under the Withdrawal Agreement. We note that it targets those organisations that support the largest populations of UK citizens and we also note that not every Member State may have third party organisations that could receive this funding. However, we are concerned that the fund currently only covers 12 EU countries, and, given the importance of the support it provides, we call on the Government to extend its coverage, as a matter of urgency, to as many EU countries as possible, particularly to those with constitutive systems. (Paragraph 246)

The Government is pleased that the Committee recognises the importance of the UK Nationals Support Fund. The fund has allocated over £4 million of grant funding to third party organisations to support UK nationals in the EU who need additional assistance to register or apply for a new residence status in the country where they have made their home. Most UK nationals will be able to make an application without any need for this additional support, however, some elderly, disabled or UK nationals living in hard to reach areas may need additional assistance. Our implementing partners have reached over 400,000 individuals, with more than 20,000 UK nationals having been directly supported by a caseworker.

In deciding where to allocate funding, we sought to balance our objectives of achieving broad geographic coverage against the need to achieve value for money, so that the fund supported the largest number of at-risk UK nationals. We also focussed on the countries where there were viable organisations that could act as implementing partners. Unfortunately, it was not possible to find suitable organisations in every relevant European country. The result was that the UK Nationals Support Fund has operated in the countries which have some of the highest numbers of UK nationals, for example, Spain, France and Germany.

The Government extended funding into Financial Year 2021-22 in all but one country (Iceland) where it was operating in Financial Year 2020-21. Funding in Iceland ceased because the vast majority of UK nationals had obtained a new residence document. The Annual Review of the fund, published on 26 August 2021, sets out what had been achieved up to 31 March 2021.¹⁷

Beyond the UK Nationals Support Fund, the Government is supporting UK nationals and their family members in every relevant European country by running a public information campaign to inform UK nationals of what action they may need to take in order to secure their rights under the Withdrawal Agreement or equivalent separation agreements. Other support can be accessed via the relevant Living in Guide on GOV.UK; from the information and support provided by European governments; and the European Commission's assistance service.

It is important to note that the Government's communications and support supplements the assistance that should be provided by the EU and Member States. While we are seeing some positive measures, we continue to call on the EU to do more, in line with our support to EU citizens in the UK.

We note that this funding is currently provided for the financial year 2021/22. We welcome the fact that the Government is keeping it under review,

¹⁷ UK Nationals Support Fund, Annual Review 2020-21, 26 August 2021, <https://www.gov.uk/government/publications/uk-nationals-support-fund-annual-report-2020-to-2021>

particularly given its importance to vulnerable UK citizens, who may need support after the various deadlines this year have passed. (Paragraph 247)

The Government is pleased that the UK Nationals Support Fund will continue into Financial Year 2021-22. Timelines for support in each country vary, depending on demand for support and the application deadline set by host governments. As the Committee notes, the Government continues to keep this under review.

We note that some UK citizens living in the EU are not confident that the Government will support them and represent their needs, although there was praise for the support given from UK embassies and consulates. We urge the Government to do all that it can to maintain and develop trust with those communities, as it works with the EU to support their rights under the Withdrawal Agreement. (Paragraph 248)

The Government is pleased that the Committee recognises the role of our European network of Embassies, High Commissions and Consulates, in supporting UK nationals in the EU. We have consistently sought to understand the unique circumstances of UK nationals living in the EU and continue to use the feedback received from UK nationals to help inform our approach. As highlighted previously, we have been reaching out to UK nationals living in the EU at meetings, events and online. Through this comprehensive outreach, we have built positive relationships with communities of UK nationals across the EU. The Government will continue to support UK nationals in the EU and ensure their rights are upheld.