



Foreign &
Commonwealth
Office



Department
for International
Development

 July 2020

Rt Hon Hilary Benn MP
Chair, Committee on the Future Relationship with the European Union
House of Commons
London
SW1A 0AA

Dear Hilary

Thank you for your letter of 8 July regarding the implementation of the Citizens' Rights part of the Withdrawal Agreement now that the UK has left the EU.

Citizens' rights has been our priority since the very beginning.

As you know, the Withdrawal Agreement, which entered into force on 31 January this year, provides citizens with the certainty they need about their rights. It means over three million EU citizens in the UK and nearly one million UK nationals in the EU can continue living their lives broadly as they do now. The Withdrawal Agreement protects the rights of EU citizens in the UK and UK nationals in the EU who are lawfully resident by the end of the transition period on 31 December 2020. It ensures they can continue to live, work, study and access benefits and services, such as healthcare.

In the UK, EU citizens and their family members with both settled and pre-settled status under the EU Settlement Scheme have secured their rights in UK law and are able to continue to live, work, study and access benefits and services in the UK on the same basis as they did before we left the EU. The scheme is a success and as of 30 June 2020, we have received over 3.7 million applications and over 3.4 million applications have been concluded. Of these, 57 per cent were grants of settled status and 41 per cent were grants of pre-settled status.¹ Throughout the process, the Home Office have been looking for reasons to grant rather than refuse status. EU citizens and their family members who are yet to apply have until the end of the grace period on 30 June 2021 to do so. There is plenty of time to apply and we have been clear that we will take a pragmatic and proportionate approach to those with reasonable grounds for missing the deadline.

¹ EU Settlement Scheme statistics, up to 30 June 2020, 9 July 2020: <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

IMPLEMENTATION OF THE CITIZENS' RIGHTS PART OF THE WITHDRAWAL AGREEMENT IN THE EU

The Foreign and Commonwealth Office is closely monitoring the progress being made across Member States during the transition period and we continue to push the European Commission, via the Specialised Committee on Citizens' Rights, to ensure there are clear communications, sufficient applications windows, streamlined administrative procedures and support for vulnerable UK nationals. My officials and I are also continuing to work bilaterally with Member States on their implementation. To that end, I have held a series of calls with my European counterparts to discuss citizens' rights. We also reach out directly to UK nationals in the EU through our Embassies, High Commissions and Consulates at meetings, events and online.

This work during the transition period is critical to ensure implementation plans are ready to enter into force when free movement ends after the transition period. The Withdrawal Agreement creates two options for Member States when implementing the residency provisions of the Withdrawal Agreement. They can take a similar approach to the UK and require UK nationals and their family members to submit a new application for a residence status; this is known as a 'constitutive' system. Any new 'constitutive' residency systems must start to receive applications from the end of the transition period and be open for applications until at least the 30 June 2021; this is known as the 'grace period'. During this time the rights of UK nationals in the EU are preserved. Appeal rights are also maintained ensuring UK nationals who may have an application ongoing at the end of the grace period have appropriate routes of redress, if required.

Member States can choose to open their residence systems early, as the UK has done, and we have been encouraging Member States to do so to give greater reassurance to UK nationals. It should also be noted that any new applications made during the transition period are voluntary, so cannot interfere with UK national's ongoing free movement rights this year. Administrative procedures for applications should be short, simple and user-friendly and the fees should be no more than the cost of an equivalent document, such as a passport or national identity card, for nationals of the host State.

Alternatively, Member States can carry on with their existing 'declaratory' system of documenting residence rights, via registration procedures. In these systems, UK nationals need to ensure they are correctly registered for stays over three months, which is already a requirement under EU law. UK nationals may be asked to exchange their residence documents, but their status under the Withdrawal Agreement is conferred automatically by operation of the law and complying with the conditions in the Withdrawal Agreement.

Summary implementation preparations across EU Member States

The European Commission confirmed, in their letter to the Chancellor of the Duchy of Lancaster of 28 May 2020, that thirteen Member States are opting for 'constitutive' systems, requiring UK nationals to apply for a new residence status in order to confer rights under the Withdrawal Agreement. Fourteen Member States will opt for

'declaratory' systems that do not require UK nationals to apply for a new residence status.²

We understand that the following Member States are establishing 'constitutive' systems, which according to internal estimates account for around 32 per cent of UK nationals in the EU:

- Austria;
- Belgium;
- Denmark;
- France;
- Finland;
- Hungary;
- Latvia;
- Luxembourg;
- Malta;
- The Netherlands;
- Romania;
- Slovenia; and
- Sweden.

Of these, The Netherlands, Luxembourg and Malta have already opened their systems and are inviting UK nationals to submit their applications. The remaining Member States are required to have their systems open from the end of the transition period on 1 January 2021, although we expect the majority of them to open earlier, before the end of the year. I am calling on Member States to take a generous approach to ensure UK nationals have plenty of time to secure their rights.

The following Member States are understood to be establishing 'declaratory' systems, which according to internal estimates account for around 68 per cent of UK nationals in the EU:

- Bulgaria;
- Czech Republic;
- Croatia;
- Cyprus;
- Estonia;
- Germany;
- Greece;
- Italy;
- Lithuania;
- Poland;
- Portugal;
- Slovakia;
- Spain; and
- Ireland.³

Spain, Bulgaria and Slovakia have already started to allow UK nationals to exchange their current residency card for the standard format residence permit that will be made available to all UK nationals and their family members in scope of the Withdrawal Agreement. Some Member States will issue the new format residence permit once existing residence documents expire.

² European Commission, Letter to the Chancellor of the Duchy of Lancaster, 28 May 2020: https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/2020_05_28_letter_vp_sefcovic_to_the_rt_hon_michael_gove_mp_redacted.pdf

³ Ireland's 'declaratory' system under 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 settled status 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. On this basis, UK nationals living Ireland are not included in statistical estimates.

Application of the free movement criteria

The Withdrawal Agreement sets out the substantive conditions that underpin the right of residence for UK nationals and their family members in their Member State of residence at the end of the transition period. The conditions to obtain residence rights replicate the existing free movement rules with respect to residence rights. As such, UK nationals who have not acquired the right of permanent residence before the end of the transition period, will need to demonstrate that they are exercising free movement rights at the end of the transition period in order to be considered lawfully resident. This is already the case under EU law and generally means individuals should be a worker, a self-employed person, a student with comprehensive sickness insurance and sufficient resources, a self-sufficient person with comprehensive sickness insurance and sufficient resources or a family member of one of the above.⁴ UK nationals and their family members who have already acquired the right of permanent residence are no longer subject to these requirements.

The European Commission has been clear that there is no discretion in the application of the relevant rules – unless these are in favour of applicants, in which case certain requirements can be waived.⁵ On this basis, UK nationals are not being asked to provide any additional information than they would under free movement rules except to demonstrate that they were lawfully resident before the end of the transition period. Throughout the transition period and ensuing grace period we are encouraging Member States to take a generous and pragmatic approach as we have done for EU citizens in the UK under the EU Settlement Scheme.

Standard format residence permits

The European Commission's Implementing Decision of 21 February 2020 sets out a standard format for residence permits that will be issued to UK nationals in scope of the Withdrawal Agreement across the EU. As per the Withdrawal Agreement, the residence documents specify that they were issued in line with the Withdrawal Agreement. This Implementing Decision will be binding on all Member States from the end of the transition period, ensuring UK nationals, resident and frontier working, have a uniform way of evidencing their rights in both 'declaratory' and 'constitutive' systems. These residence permits must have a minimum validity of five years and a maximum of ten years.⁶

I welcome this decision and the uniformity it creates for UK nationals when evidencing their rights under the Withdrawal Agreement. However, I am aware that groups representing UK nationals in the EU are concerned that a differentiation between permanent and temporary residence is not made on the card itself. As you know, the UK's EU Settlement Scheme makes this clear by providing successful applicants with either pre-settled or settled status. Whilst Member States are not legally obliged to add this information to the document, I think it is sensible to do and

⁴ The existing requirements, as replicated in the Withdrawal Agreement, are set out in Article 7 of Directive 2004/38/EC.

⁵ General provision is made for more generous treatment in Article 38 of the Withdrawal Agreement.

⁶ European Commission, Implementing Decision, 21 February 2020: 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

ensures UK nationals have full certainty about their status and don't have to rely on providing further evidence to national authorities in the future.

I will therefore call on all Member States to make the differentiation on the card as some have already chosen to do. I understand the European Commission are making a similar recommendation and my officials will raise this point on my behalf at the next Specialised Committee on Citizens' Rights.

IMPACT OF COVID-19

I am keenly aware of the impact that Covid-19 has had on European governments and indeed those across the world. However, given the short amount of time until all thirteen new residency systems need to be open, it is imperative that Member States prioritise appropriate resources to implementing their obligations under the Withdrawal Agreement. We are seeing some progress: in Malta, face-to-face appointments between UK nationals and the local authorities were temporarily postponed, during the height of the pandemic, however, these appointments have now resumed. On this basis, and wider reporting, I do not assess that preparations for the end of the transition period have been significantly affected. However, we will continue to monitor the situation closely, given the short amount of time until the remaining constitutive systems need to be open. In the UK, our digital application system for the EU Settlement Scheme was able to continue operating, given the majority of applicants complete the process online.

Implementation timeline and deadlines

Member States can choose to extend their application window beyond 30 June 2021. For example, Denmark will accept applications until the end of 2021 and we understand that most other 'constitutive' Member States are also planning to announce extensions to the deadline or will begin to receive applications early. These application windows will be clearly communicated to UK nationals in-country and via our 'Living in Guides' on gov.uk.

Further to this, specific provision is made in the Withdrawal Agreement for Member States to extend the deadline by one year, where sufficiently serious technical difficulties arise, which make the receipt of applications impossible. This provision cannot be enacted unless a notification is made.⁷ If such, the technical problems occur in a Member State, the EU is required to notify the UK in accordance with the applicable rules. In such a scenario, the Member State in question must publish the notification and provide timely information to UK nationals and their family members. I can confirm that no notifications of this kind have been received to date.

Outreach and support provided to UK nationals in the EU

Engagement with Member States has continued at all levels, despite the travel restrictions imposed across the EU. In summary, we have adapted our approach. I have spoken with several of my counterparts in Europe to discuss citizens' rights. My

⁷ Technical problems and notifications thereof are contained within Article 18(1)(c) of the Withdrawal Agreement.

officials have been delivering intensive virtual engagement with Member State governments to ensure comprehensive plans are in place for implementing the Citizens' Rights part of the Withdrawal Agreement.

Whilst Covid-19 has meant there have not been any in-person outreach events delivered since the beginning of March, our network of Embassies, High Commissions and Consulates across Europe continue to run virtual outreach events, online and via social media, which have provided a forum for UK nationals to raise issues relating to EU Exit and the Withdrawal Agreement. Extensive digital engagement on Covid-19 has also helped capture a new audience of UK nationals in the EU that was not previously engaging with us on citizens' rights and wider EU Exit issues.

COMMUNICATIONS AND GUIDANCE

The Foreign and Commonwealth Office maintains 31 'Living in Guides' on gov.uk, which cover the EU and EFTA countries.⁸ They are the principal source of guidance for UK nationals in the EU, including their rights under the Withdrawal Agreement. They provide the latest information and actions that UK nationals may need to take. This includes signposting to other gov.uk guidance and Member State government content where relevant. My officials in London and across our network of posts shape the content of their relevant guide responding to the needs of UK nationals in-country. This is based on questions and feedback from outreach events, social media and written and phone enquiries to consular staff.

On 13 July, we also launched a tailored public information campaign to inform UK nationals of the changes taking place at the end of the transition period and the actions they may need to take to secure their rights in their Member State of residence.⁹ Overall, the campaign will operate across 30 countries and is planned to continue until 30 June 2021.

Statistics and eligibility

It is important to note that the number of UK nationals who may be eligible for protections under the Withdrawal Agreement will continue to fluctuate as individuals make life choices throughout the transition period. The number of UK nationals in scope will also continue to change in the future. For example, as family members join UK nationals in the EU and children are born to them. The protections under the Withdrawal Agreement also extend to those who may no longer be resident in the EU, but previously interacted with the social security system of a Member State. For example, if a UK national has paid past contributions whilst working in Germany, Romania and Finland, they will have all these contributions recognised despite no longer being resident in the EU at the end of the transition period.

On this basis, it is not possible, to make a definitive estimate to the number of UK nationals who may or may not be in scope of the Withdrawal Agreement. However, we continue to rely on the Office for National Statistics, who estimated there were

⁸ <https://www.gov.uk/guidance/living-in-europe>

⁹ <https://www.gov.uk/transition>.

784,900 British citizens 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 Our network of posts continue to work closely with Member States to ensure we are reaching all UK nationals in the EU who need to take action and specific provision is made in the Withdrawal Agreement, to ensure UK nationals are informed of their rights.¹¹

UK NATIONALS SUPPORT FUND

As you know, the Foreign and Commonwealth Office is providing up to £3 million in grant funding for charities and other voluntary organisations who will inform UK nationals about the need to register or apply for residency and support them as they complete their applications. This includes those who may find it harder to complete all the paperwork – focusing on the most vulnerable, those living in remote areas and those needing assistance with translation or interpretation.

Following an open competition, several successful implementing partners are now beginning to provide practical support. In doing so, they should design the most efficient and effective way to support the objectives of the fund. This may include awareness raising, providing translation support and making phones, laptops or computers available or end-to-end support services that help UK nationals to submit their applications. The design of the fund puts direct support and a positive experience for UK nationals at its heart. It should complement and support services put in place by Member States.

Monitoring and evaluation

In line with government guidelines, we have asked our implementing partners for evidence and reporting that proves that these outcomes have been met. This will help to ensure UK nationals in the EU receiving a quality service and taxpayers' money is being well spent. We have therefore asked for three separate reporting requirements from organisations in receipt of funding:

- monthly reports covering the number of UK nationals that have been supported, and qualitative feedback from UK nationals;
- quarterly reports reviewing progress and setting out a forward look of planning and risks; and
- a project completion report providing an overall review of the project's effectiveness and lessons learned.

Evaluation visits may also be made to monitor the effectiveness of the service provided. As is always the case, the Foreign and Commonwealth Office will respond to any requests to update Parliament on the progress of the fund

¹⁰ [Living abroad: British residents living in the EU: April 2018](#), Office for National Statistics, April 2018.

¹¹ Modelled on Article 34 of Directive 2004/38/EC; Article 37 of the Withdrawal Agreement covers publicity and imposes obligations on all Member States.

FUTURE RELATIONSHIP

The Government has set out its intended approach in the policy statement on the points-based immigration system, published on 19 February 2020, in regard to EU citizens visiting the UK in the future.¹² From 1 January 2021, EU and non-EU citizens will be treated equally under our domestic immigration system.

EU citizens will be treated as non-visa nationals for the purposes of tourism and holidays after the end of the transition period, meaning they can come to the UK as visitors for six months without the need to obtain a visa. This length of stay for visitors from the EU is the same as our offer to the nationals of all other countries. If EU citizens want to come to the UK to work, they will need permission.

Regarding UK nationals travelling to the EU after the transition period, the EU has already legislated such that it will apply its existing rules on visa-free short-term visits to UK nationals travelling to and within the Schengen area after the end of the transition period.¹³ From 1 January 2021, UK nationals will not need a visa when travelling to and within the Schengen area for short stays of up to 90 days in a rolling 180-day period, when travelling for a wide range of purposes. These include tourism, visits to friends and family, attendance at cultural or sporting events and exchanges, business meetings, journalistic or media travel, medical treatment, short-term studies or training and any similar activities.

The 90 days in a rolling 180-day period is the standard length of stay that the EU provides to the nationals of eligible third countries that offer visa-free travel access for EU citizens, in line with existing EU legislation.¹⁴ If the EU do not change their approach, after the transition period, UK nationals may be able to stay in Member States for longer than the EU's 90 in 180-day visa-free allocation, but this will be a decision for the government of the relevant Member State to make and implement, in the same way they already do for third-country nationals.

The document on the UK's Approach to the UK-EU negotiations, published on 27 February 2020, did not set out any specific provisions on mobility.¹⁵ The Government does not typically enter into agreements on visa-free travel. Mobility is part of the Mobility and Social Security Coordination strand of the negotiations. As you will be aware, negotiations with the EU are ongoing and updates will be provided to Parliament regularly.

¹² Policy Statement on the points-based immigration system, 19 February 2020:

<https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement#annex-a-migrant-journey-from-january-2021>

¹³ Regulation (EU) 2019/592 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586949370290&uri=CELEX:32019R0592>

¹⁴ Regulation (EC) 801/2009 establishing a community code on visas (Visa Code): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009R0810-20200202> and Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R0399-20190611>

¹⁵ Policy Paper 'Our Approach to the Future Relationship with the EU', 27 February 2020:

<https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

I trust this response will provide clarity on the queries you have raised. Throughout, negotiations and the transition period we have sought to understand the unique circumstances of UK nationals already living in the EU and continue to use the feedback received from UK nationals to help inform our approach. The Government is committed to providing UK nationals in the EU with clear and appropriate information on what actions they may need to take to secure their rights under the Withdrawal Agreement.

The Government will continue to work closely with Member States to ensure that the introduction of, or changes to, administrative procedures are communicated to resident UK nationals. Citizens' rights and the regime for UK nationals travelling to the EU in the future is of vital importance. I would therefore be happy to answer any further questions you may have on these issues.

Your sincerely


Wendy Morton MP
Minister for the European Neighbourhood and the Americas



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

8 July 2020

Wendy Morton MP
Parliamentary Under Secretary of State
Minister for European Neighbourhood and the Americas
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

Dear Wendy

I am writing following the evidence session that the Committee held on Tuesday 30 June with representatives from the British in Europe with regard to implementing the citizens' rights parts of the Withdrawal Agreement. A transcript has been published and is available on the Committee's website. The evidence they gave was highly informative on preparations in the different Member States and I wanted to give the Foreign Office the opportunity to provide written evidence to the Committee on the matters raised. In particular, I would welcome your response to the matters below.

- Can you provide the Committee with a summary of preparations to implement the Citizens' Rights part of the Withdrawal Agreement in each EU Member State?
- Which EU Member States have altered their preparations to implement the Citizens' Rights part of the Withdrawal Agreement, and have any moved a deadline back to allow UK nationals more time to learn about and complete the relevant procedures, in light of Covid19?
- How has Covid19 affected the FCO's work in each Member State and its ability to provide support to UK nationals in the host country? How has the knowledge of FCO staff in each capital fed into the guidance on gov.uk for UK nationals in the EU?
- What work has the FCO commissioned or undertaken to establish the number of UK nationals currently resident in each Member State and who might be eligible to secure protection under the Withdrawal Agreement?
- Does the FCO have a list of which Member States plan to operate a constitutive system requiring UK nationals to make an application to secure their rights under the Withdrawal Agreement, and will you make such a list public?
- Which Member States have indicated that they are going to continue to apply the conditions for residence as in the EU free movement Directive, and which have indicated that they might apply additional criteria?
- What representations has the UK Government made to the Commission and individual Member States regarding the inclusion of language on the EU wide biometric card to specify the holder has Permanent or Ordinary residence?
- What has the FCO asked those organisations in receipt of UK National Support Fund (UK NSF) funding to do to support UK nationals who want to secure their rights in the EU?
- How is the FCO monitoring the performance of the organisations in receipt of funding from the UK NSF?
- How will the Government update the House of Commons on the progress of these organisations against their core tasks?

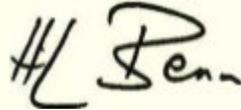
Another matter came up during the evidence session that relates to the future relationship, and this is the asymmetric nature of how long people from the UK will be able to visit the EU without a visa

in the future, compared to how long people from an EU Member State will be able to visit the UK. This has particular resonance for constituents of Members on the Committee with second homes in an EU Member State. Could you answer the following:

- Why has the UK taken the position to allow EU citizens to enter the UK as a visitor for six months (180-days) without a visa?
- What is your understanding of why the EU has taken the position to allow UK nationals to enter the EU as a visitor for 90-days in a 180-day period without a visa?
- Is the UK Government satisfied with the asymmetric nature of how long the UK nationals can visit the EU compared to how long an EU national can visit the UK for a temporary purpose without a visa?
- Mobility arrangements are part of the negotiations for the future relationship between the UK and the EU. Has the UK Government raised the specific matter of the 90-days in a 180-day rule in any of the negotiations with the EU for non-business aspects of the future relationship?

I would appreciate an answer to these questions by Thursday 16 July.

Yours,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

Hilary Benn
Chair of the Committee