



HOUSE OF LORDS

European Union Committee

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The Rt Hon Caroline Nokes MP
Minister of State for Immigration
Home Office
2 Marsham Street
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27 February 2018

Dear Caroline,

Citizens' Rights

Thank you for your letter dated 19 February, which was considered by the Committee at its meeting of 27 February.

Given that it has taken the Government two months to respond to our original letter of 19 December, we regret that you are not in a position to provide more detail on these important matters.

In our original letter, we posed a series of questions. Some of these did not receive a complete and comprehensive answer. Some were not answered at all.

Your predecessor as Minister of State, Rt Hon Brendon Lewis MP, indicated that many of these issues would be resolved early in 2018. We are disappointed to receive such an underwhelming response: we will soon be negotiating a legal text with the EU 27 on this matter and we had expected that this would have been an absolute priority for Government.

We are particularly concerned by your comment that “you expect the vast majority of cases to be granted”. This falls some way short of promising that there will be a legal presumption in favour of granting settled status to all those EU nationals in the UK prior to the ‘specified date’.

In addition, those EU nationals who read your statement on deportation during the appeals process will not be entirely reassured. Please could you spell out with precision and clarity the circumstances in which an appeal against a decision not to grant settled status will not be suspensive of removal.

We are also surprised that there are still outstanding decisions to be made in respect of the new digital application system. We had understood that this would be operational in the second half of 2018.

We include a list of the outstanding issues at the end of this letter and would ask that you respond to them directly within 10 working days.

List of outstanding issues

1. We understood that there would be a legal presumption in favour of granting settled status to EU citizens who are in the UK prior to the 'specified date'. Please can you confirm that the only circumstances that in which this status would be refused is in respect of applicants with serious criminal convictions, or applicants who have made fraudulent applications? If any other criteria would apply, please provide a comprehensive list.
2. Please provide a full list of documents that would be acceptable to prove residence in the UK in order to obtain settled status.
3. Please provide a list of the "6-8 questions" which your predecessor indicated would be posed to applicants, or an indication as to when this information would be available.
4. In what circumstances would an appeal against a refusal to grant settled status not be suspensive? In particular, in what circumstances would a deportation decision be justified?
5. Is it still the Government's intention to commence registering individuals in the second half of 2018?
6. What progress has been made on commissioning the new digital application system and when would it be available for testing?
7. The Joint Report made clear, at paragraph 35, that the rules relating to citizens' rights should have direct effect and that any inconsistent or incompatible rules and provisions would be dis-applied. Once we have repealed the European Union Act 1972 (and we cease to be bound by the EU Treaties), how would this be possible under the UK constitutional arrangements, and what court procedure would you expect to be put in place to allow for this to occur?
8. The Joint Report says that once the new rules have been translated into domestic law the provisions of the citizens' rights part would prevail over any inconsistent or incompatible legislation, unless Parliament expressly repeals the Act in future. Does this reference to the Act require the UK to abandon the entire Withdrawal Agreement if it wishes to resile from the agreed rules relating to citizens' rights contained in that agreement?

I am copying this letter to Sir William Cash MP, Chair of the European Scrutiny Committee; Lynn Gardner, Clerk to the European Scrutiny Committee; Arnold Ridout, Legal Adviser to the European Scrutiny Committee; Les Saunders, Department for Exiting the European Union; and Alejandra Bernal, Scrutiny Coordinator, Home Office.

Yours sincerely,

Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Committee