



Home Office

Rt Hon Caroline Nokes MP  
Minister of State for Immigration

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The Rt Hon Lord Boswell of Aynho  
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13 MAR 2018

### **Citizens' Rights**

Thank you for your letter of 27 February, in response to my letter dated 19 February following the House of Lords European Union Committee's report '*Brexit: Acquired Rights*'.

Firstly, I would like to apologise for the lateness of my previous reply, which was due to an administrative error. Our Select Committee liaison informed the Clerk of the Committee of the reason for the delay and kept him updated as necessary, but I would like to assure you that measures are now in place to prevent any reoccurrence.

I am sorry that you found that my previous response did not address all the concerns you raised in your letter, and to ensure sufficient detail is provided this time I have addressed each of your points in turn in the annex attached to this letter. Where I have been unable to provide a definitive answer, I will seek to update the Committee as soon as possible.

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 Co-ordinator, Home Office.

*Your ever  
Caroline*

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- 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 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.***

As the Committee is aware, we are currently working with the European Commission to convert the Citizens' Rights deal agreed in December into a legal text which will set out the full details of the agreement reached with the EU and which can be ratified by our respective parliaments. In parallel, we are drafting the Immigration Rules which will set out the detailed arrangements for the Settlement Scheme in UK law. We are not at this stage in a position to confirm definitively the grounds of refusal for applications, which we will do over the coming months. However, we have agreed with the EU that the UK authorities will have no discretion to refuse an application for any reason other than those set out in the Withdrawal Agreement. We have also decided, as a matter of domestic policy, that the main criterion for assessing eligibility will be residence in the UK. Therefore, applicants to the Settlement Scheme will have to satisfy three key requirements to be granted settled status. Firstly, identity: is the applicant an EU citizen or their family member? Secondly, eligibility: are they resident in the UK (continuously resident for five years, generally, to gain settled status; or simply resident to gain pre-settled status until they accumulate five years' residence). Thirdly, suitability: are they a serious or persistent criminal or is there a security or other public policy reason for refusal?

We therefore anticipate that refusals will be limited to individuals who do not fall within scope of the Withdrawal Agreement because they are not an EU citizen or their family member (including where they make a fraudulent application) or to serious or persistent criminality or other public policy issues meeting the threshold set out in the Withdrawal Agreement. Applications will not be refused for minor omissions or technicalities; instead, caseworkers will contact applicants to give them the opportunity to rectify any issues. Caseworkers considering applications will also exercise discretion in favour of the applicant where appropriate. We therefore expect that the overwhelming majority of applications will be successful, but this does not amount to a legal presumption in favour of granting settled status and I apologise if we inadvertently gave that impression. I must emphasise, however, that we are not looking to trip people up and we are designing a scheme that aims to make it simple and straightforward for people to establish their new legal status.

**2. Please provide a full list of documents that would be acceptable to prove residence in the UK in order to obtain settled status.**

Our intention is to develop a system which draws on existing government data, for example, employment records held by HMRC, which will, for the majority, verify residence without the applicant having to provide any further evidence to the Home Office. Where government records do not show residence (whether in whole or in part), our priority is to minimise the burden of documentary evidence which will be required. We are working closely with stakeholders to ensure that we include a comprehensive range of acceptable evidence that those applying for UK status can provide us with if we are not able to verify their residence using government data, particularly for more vulnerable groups in society. Our user groups include representatives of EU citizens, community and support groups, the consulates of the EU27 in London, the European Commission, and employer groups. Given the wide range of circumstances that resident EU citizens may find themselves in, we will not seek to produce a definitive list of acceptable evidence and caseworkers will have discretion to accept evidence that is not listed in our published guidance should the circumstances require it. As these discussions are ongoing, I am not yet in a position to confirm what will be included in the list of acceptable evidence but we will be setting this out, along with other information and guidance on the requirements for the Settlement Scheme, in due course.

**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.**

Questions we are considering for the application form are being tested with a variety of different users and stakeholders, and we are committed to ensuring that the application form contains as few questions as necessary. Each question will be drafted in plain, simple language and not legalese, asking only for straightforward responses – ‘yes’ or ‘no’ where appropriate – and collecting factual information such as names and reference numbers. However, the application form is currently being developed with stakeholders so I am not yet able to confirm the specific questions applicants will be asked as part of their application for UK status. We will provide more information ahead of the launch of the voluntary scheme later this year, but we currently anticipate that the information applicants will be required to provide will include the following, in order to meet the three key tests:

- To confirm identity and enable suitability (criminality) checks: biographical information and document details as contained in the person's passport or national identity card, other names they have been known by and other nationalities they hold; as well as contact information, including email, telephone number and address.
- To check eligibility: National Insurance number if they have one, to facilitate automatic checks with HMRC; or, where necessary, further evidence to demonstrate residence.
- In addition, the reference number of any previously issued UK document, e.g. permanent residence documentation, so the fee can be waived if applicable.

**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?***

Paragraph 18 of the Joint Report with the EU, published in December, allows for the host state to remove applicants who have submitted fraudulent or abusive applications for status under the conditions set out in Directive 2004/38/EC – in particular, Articles 31 (procedural safeguards) and 35 (abuse of rights). Where an applicant has sought judicial redress following the rejection of such an application, a removal may take place before a final judgment has been handed down. Any non-suspensive appeals arrangements to be provided for a refusal of settled status will need to be compatible with the Withdrawal Agreement. We will set out further details in due course, but I would stress this relates to fraudulent or abusive applications, not minor omissions or technical errors (which will result in the applicant being contacted by a caseworker and given the opportunity to rectify the issue).

With regard to the circumstances in which deportation would be justified, the relevant EU test of 'public policy, public security and public health' will continue to apply to any conduct committed prior to the UK's exit from the EU. After withdrawal, the UK's position – as set out in the December Joint Report – is that the domestic deportation rules will apply in respect of post-exit conduct. A person may be deported under the provisions of the Immigration Act 1971 where it is conducive to the public good or where the automatic deportation criteria in the UK Borders Act 2007 are met.

In the Implementation Period which the Prime Minister has proposed and which we are currently negotiating with the EU, the existing rules and regulations would continue to apply, and so deportation decisions would continue to be made in accordance with EU law throughout this period. We are currently discussing with the EU the rights of EU citizens who arrive during the Implementation Period.

**5. *Is it still the Government's intention to commence registering individuals in the second half of 2018?***

Yes. We expect a voluntary application process, under which EU citizens and their family members will be able to apply for their new UK status, to be launched in late 2018.

**6. *What progress has been made on commissioning the new digital application system and when would it be available for testing?***

Work is well underway to build a new digital application system for UK status, with new processes, technology, rules and support for applicants. User representatives are helping design the scheme – through our user groups and user testing by individual volunteers from within the attendees. Feedback so far has been positive.

**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?***

*and*

**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?***

The Joint Report provides that the Withdrawal Agreement should enable citizens to rely directly on their rights as set out in the citizens' rights part of that agreement. The Secretary of State for Exiting the EU confirmed in a Written Ministerial Statement on 13 December 2017 (HLWS337 and HCWS342) that the Withdrawal Agreement and Implementation Bill will implement the major elements of the Withdrawal Agreement. It is the intention that this Bill will therefore give effect to what has been agreed on citizens' rights in accordance with our domestic constitutional arrangements.

It is, however, impossible to say with any certainty what shape the domestic implementing legislation will take at a stage when the legal text of the Withdrawal Agreement itself is still being drafted. We nevertheless continue to stand behind all the commitments made in December and we will work with the European Commission in the coming months to agree how they should be reflected in the final text of the Withdrawal Agreement.