

Lord Boswell of Aynho
Chairman European Union Committee
Committee Office
House of Lords
London
SW1A 0PW

19 February 2018

Dear Lord Boswell,

Citizens' Rights

Thank you for your letter of 19 December, in response to my predecessor's evidence on citizens' rights following the House of Lords European Committee's report '*Brexit: Acquired Rights*'. I am responding as the new Minister of State for Immigration.

On 15 December, the European Council formally confirmed that sufficient progress had been made on the issue of citizens' rights to enable us to move to the second phase of negotiations. As the Prime Minister said at the time, this is an important step on the road to delivering a smooth and orderly Brexit and forging a new, deep and special partnership.

As part of our agreement with the EU on citizens' rights, EU citizens and their family members in the UK will need to apply for a status document confirming their right to reside in the UK. A bespoke new digital application system is currently being designed, and while I can confirm that it will be streamlined, user-friendly and will draw on existing Government data to minimise the administrative burden on applicants, a number of decisions are yet to be taken. These include the detailed evidential requirements of the scheme and the questions to be asked of applicants. However, the Home Office will

provide support to ensure an application is not turned down because of simple errors or omissions, and caseworkers considering applications will exercise discretion in favour of the applicant where appropriate. As a result, and as my predecessor said when he gave evidence on 12 December, we expect that the vast majority of cases to be granted.

With regard to the right of appeal against a refusal of settled status, we will establish an administrative review mechanism to quickly resolve any caseworking errors. Beyond this, applicants will have recourse to an independent judicial authority, in the same way as they do now when seeking to challenge decisions made under the Immigration (European Economic Area) Regulations 2016, which implement the Free Movement Directive. This will mean that, once the Withdrawal Agreement is implemented in UK law, EU citizens and their direct family members will have recourse to a statutory right of appeal, allowing the UK courts to examine the legality of the UK authorities' decision to refuse or revoke status, as well as the facts or circumstances on which the decision is based. They will be able to remain in the UK pending conclusion of the appeals process, unless a deportation decision is made, or the individual is in the UK in breach of a deportation or exclusion order. In the latter cases, the decision may be certified by the UK authorities, such that an appeal can be made but will not prevent removal. The individual may, however, be able to return to the UK to attend the appeal hearing. These provisions mirror the current arrangements in the Free Movement Directive, and the same procedural safeguards will apply.

Furthermore, where individuals without status are encountered after the deadline, we have agreed with the EU that a proportionate consideration will be made of their circumstances at that time and any reason why they did not apply for status before the deadline. Where there were good reasons for an individual not to have made an application, the UK authorities will consider exercising discretion to allow an 'out of time' application for status under the Withdrawal Agreement. We expect to see these and other undertakings we made in the Joint Report published by the UK and the EU on 8 December reflected in the legally binding text of the Withdrawal Agreement.

As Brandon Lewis set out in his oral evidence, we are working towards delivering a system that will deliver decisions on status applications within two weeks. However, given the system is still under development, the precise technical and resource requirements for assessing applications are yet to be fully established. We will provide further detail on timescales for decisions, as well as further information on the evidential requirements and what people need to do to make an application as soon as we can.

For those who need support to make an application online, we intend to provide an assisted digital service. We are also acutely aware of concerns raised about carers, children in local authority care, people with disabilities and other vulnerable individuals and their ability to benefit from the scheme. We are considering carefully what further provision may be necessary for these groups.

In response to your final bullet point, we have agreed that where existing law is not clear, our courts – and only our courts – will be able to choose to ask the CJEU for an interpretation prior to reaching their own decision. After eight years from the point of our withdrawal, this option of voluntary reference to the CJEU will come to an end.

Turning to your questions on the legal process under the Agreement, it is our intention that the Withdrawal Agreement and Implementation Bill will implement the major elements of the Withdrawal Agreement. We expect this Bill to cover the contents of the Withdrawal Agreement, including issues such as the agreement on citizens' rights, any financial settlement and the details of an implementation period agreed between both sides. In the interests of providing as much certainty as possible to citizens we will ensure that the provisions agreed on citizens' rights will be fully incorporated into UK law. The Secretary of State for Exiting the EU has always been clear that primary legislation will be used for all major policy changes.

Provisions for dispute resolution are still a matter for negotiation, so I am afraid I am unable to answer your final question. However, the purpose of any dispute resolution mechanism is, of course, to enable the parties to resolve any disputes effectively.



Rt Hon Caroline Nokes MP