

LETTER FROM THE HOME SECRETARY TO THE EUROPEAN PARLIAMENT BREXIT COORDINATOR

Guy Verhofstadt
Member of the European Parliament
European Parliament Brexit Coordinator
Group of the Alliance of Liberals and Democrats for Europe

Dear Mr Verhofstadt

Thank you for your letter of 30 April and for inviting Home Office officials to present to members of the European Parliament the draft online administrative procedure (Settlement Scheme), which is being developed by the Home Office to allow EU citizens and their family members in the UK to demonstrate in future their rights, as provided for in the Withdrawal Agreement.

The UK Government's key priority, like that of the European Parliament, is to make this process simple and effective for EU citizens. Our default position will be to say 'yes' to applications. As you say, we are still developing the system and discussing its design with stakeholders in the UK, as we head towards launch of the Scheme by the end of this year. I therefore welcome views from you and your colleagues, and would like to provide some further information and clarify some of the points you raised in turn.

The UK Government is equally committed to the interests of UK nationals living and working in the EU, and we would welcome further details on how the administrative procedures will be enacted in other Member States. It is currently unclear what systems other EU Member States are creating to ensure the rights of UK nationals in their countries are protected after the end of the implementation period and we would welcome it if the European Parliament were also willing to focus attention on Member States' plans.

Vulnerable citizens

As you note in your letter, we fully recognise the need to ensure we support vulnerable citizens to succeed in their applications, and we are working hard to accommodate the diverse needs of these more vulnerable EU citizens in the UK.

Our services will include an Assisted Digital Service for those who need support to make an online application. This will provide a variety of support depending on the person's needs, including on the telephone, at a local location such as a library, or if necessary at home.

We have established user groups to discuss the development of the Scheme. This includes the design of the Rules, guidance and systems; testing them as they are developed; understanding the range of user needs; and our plans for communications about the Scheme to ensure EU citizens understand what they need to do.

We have set up an additional user group of organisations that support the vulnerable and that represent EU citizens to obtain their views on how vulnerable groups can be supported through the application process. This group includes organisations which

serve or represent a range of needs including those of disabled people, the elderly, the homeless, children in care, victims of domestic violence, and many others.

In addition, we are exploring other ways in which users can be supported such as through community and employer groups – this is an active topic of discussion with members of the user groups and we are pleased at the level of interest and support shown by communities and employers in helping EU citizens. There will also be a dedicated customer contact centre to support people appropriately through the application process.

Digital process

We are building a streamlined, user-friendly application system to enable EU citizens and their family members to quickly and easily obtain a UK legal status confirming their right to stay in the UK after we leave the EU. We are designing the Scheme from scratch, and learning from other parts of the borders and immigration system.

The online application system will be accessible from any computer, laptop, smartphone or tablet that has internet access.

As part of this simple process, people will be asked to confirm their identity. This is important to protect against fraud and abuse, and consists of two elements: confirming that the travel document (passport or ID card) is genuine, and that it belongs to the person making the application.

Across all immigration routes to the UK (and as is common across the EU and globally), it is mandatory that ID be checked, and this is currently done manually with the original document to hand.

As we demonstrated to you, the Home Office is developing a new, alternative option for people to confirm their identity and document authenticity remotely from their own home – without having to send in their documents or attend an appointment – via an app.

This app is an option which we believe many EU citizens will find convenient. The app will not be the only way that people can prove their identity – they will still be able to post their ID to us if they wish, and there will be a dedicated team to check those documents and return them in a matter of days. Moreover, the identity check is only one part of the online process, and the online application can still be completed by those who choose not to use the app.

The app can be downloaded free onto any smartphone. Currently, the ID verification element (reading the chip to check authenticity) only works on Android devices, but the Home Office and Apple continue to engage to see if we can achieve the same outcome for those with Apple devices.

Families

In line with your suggestion, we already anticipate linking applications between family members and dependants to ensure consistency of approach. However, based on our experience of dealing with families in the UK immigration system, the Home Office is proposing that individual family members should apply on separate

forms, reflecting the many different circumstances of modern families. This allows each family member to receive the status in their own right, and apply at different times if they are not co-located. It also protects the privacy of individual family members, who may not wish other family members to see what data the Government holds on them in terms of their tax footprint or criminal records, for example. Parents and guardians will be able to complete applications on behalf of their dependent children.

Paper applications

As discussed above, we are building a digital system with due support for those who will find this more difficult. However, as the Immigration Minister told the UK Parliament, there will still be the possibility for those who cannot use technology at all, to be able to apply on paper. We shall still be encouraging the majority to apply online, as the quickest and easiest route.

Outcomes

As already stated, we are starting from the position that we should be looking to grant status, not for reasons not to do so. We agree that cases should not be kept waiting unduly for the outcome of their application. The Home Office's ambition is for straightforward applications to be turned around in no more than two weeks, as the previous Immigration Minister told the UK Parliament. We shall provide automated acknowledgements of the application upon receipt, and everyone will receive confirmation of the outcome of their application. But it is important that we have time to ensure applicants are genuine EU citizens (or family members), are resident in the UK, and do not have a serious criminal record or pose a security threat to the public.

Nonetheless, we have committed to ensuring that applications will not be refused on minor technicalities and that caseworkers processing applications will exercise discretion in favour of the applicant. Where there are omissions, we will seek to resolve them with the applicant before the decision and make clear what is required. We are therefore creating separate case-working teams to handle Settlement Scheme applications, and training will support the expectation that most cases will be granted, not refused. Moreover, we are establishing a new contact centre so that people can speak to a caseworker about their application and be supported through the process.

Criminality checks

As with the rest of the process, we shall be transparent in guidance about the criminality checks. These are intended to protect the UK from serious or persistent criminals, and are not targeting the vast majority of law-abiding EU citizens who should have nothing to fear from this part of the process.

Settlement Scheme applications will be subject to a criminality and security check and applicants will be asked about their criminal record, including overseas convictions. Where the applicant declares an overseas criminal record, they may be asked to provide further details about their criminal behaviour. As provided for by the Withdrawal Agreement, checks of overseas convictions with other Member States may also be undertaken in certain cases, strictly in accordance with EU law.

Where the applicant's conduct meets the conditions set out in the Withdrawal Agreement, their application for leave under the settlement scheme may be refused

and deportation action considered. In relation to conduct before 1 January 2021 (and thus before the end of the Implementation Period), the existing EU law public policy and public security test will apply, meaning the consequences will be the same as today.

General Data Protection Regulation (GDPR)

The Settlement Scheme will, of course, comply with the General Data Protection Regulation (GDPR) and other relevant legislation. I understand there has been concern about the proposed immigration restriction in the Data Protection Bill but would like to reassure you that it will only be used where there is a likelihood of prejudice to effective immigration control, for example in relation to on-going or planned enforcement activity EU citizens will, as now, be able to request data via a Subject Access Request to the Home Office, and if necessary, to rectify the data held about them. However, we do not expect this to happen frequently owing to the simple design of the Scheme.

We will not be enrolling fingerprint data from EU citizens as part of the process.

Fees

We have agreed in the draft Withdrawal Agreement that applications for settled status will cost no more than the equivalent document for UK nationals, i.e. a British passport (currently £75.50). However, we have also agreed with the EU that the Scheme will be free to holders of a valid permanent residence document.

In addition, those who have valid indefinite leave to remain (ILR) do not need to apply as their status pre-dates the UK's accession to the EU and remains valid. Nevertheless, they may find it convenient to do so in order to obtain an up-to-date digital status, and we committed in the draft Withdrawal Agreement that the fee will also be waived for those with proof of ILR.

While the UK Government has not in the past required EU citizens to register their residence in the UK, registration schemes are common across the EU under the Free Movement Directive, and an administrative fee is frequently charged. We shall be setting out further information about the fees in the coming months.

Monitoring and redress

We are working through the detail of the Independent Monitoring Authority, and the review and appeals processes, and will be happy to provide more detail in due course. As you know, we have committed to incorporating the Withdrawal Agreement into UK law so it can be directly upon by EU citizens in the UK courts.

Communications

As my officials set out in their presentation, we agree that communications will be crucial to ensure the three million EU citizens and their family members living here understand the need to apply, and the deadline for doing so. We have already launched a national marketing campaign, which will increase in the coming months, and we have been regularly updating the information on the Gov.UK website. As well as the regular user groups, there is a significant and increasing programme of face-to-face information events for EU citizens. Over 200,000 people have signed up for

official email updates on citizens' rights and the Settlement Scheme and we continue to promote sign-ups.

We will continue to do everything we can to reassure EU citizens in the UK and inform them of the need to apply under the new Settled Status Scheme.

Conclusion

Protecting the rights of EU citizens in the UK and their family members, remains a top priority for the UK Government. The Home Office is working hard on the Scheme that will enable those EU citizens and their families to obtain documentation of their status in a straightforward way. As the new Home Secretary, I will be giving this my close attention in the months ahead. I would, of course, be happy for officials to provide more information as the design of this Scheme develops further.

As you would expect, the UK Government also cares very deeply about the reciprocal arrangements for UK nationals living in the EU27 Member States. We are, concerned that as yet we have seen little information about the practical arrangements for securing their rights under the Withdrawal Agreement. Is the European Parliament able to provide any reassurance about progress on equivalent arrangements for UK nationals? We are discussing this issue with the Commission and I would encourage the you to press for similar assurances to protect UK nationals.

Finally, I would like to reiterate the UK's commitment to making the Settlement Scheme process as simple as possible, and to continuing to work with all stakeholders to design the best system we can.

I am copying this letter to Michel Barnier, the EU's Chief Negotiator, and David Davis, the Secretary of State for Exiting the EU.

Rt Hon. Sajid Javid MP