



House of Commons

Exiting the European Union
Committee

**The progress of the
UK's negotiations on EU
Withdrawal: The rights
of UK and EU citizens:
Government Response
to the Committee's
Eighth Report**

**Eighth Special Report of Session
2017–19**

*Ordered by the House of Commons
to be printed 9 January 2019*

Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

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The Committee is one of the departmental select committees; its powers are set out under a Temporary Standing Order of 4 July 2017.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/execom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are James Rhys (Committee Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Duma Langton (Committee Specialist), Adrian Hitchins (Committee Specialist), Julian Mazowiecki (Committee Specialist), Eoin Martin (Committee Specialist), Leo Oliveira (Senior Committee Assistant), Hannah Finer (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), Estelle Currie (Senior Media Officer) and Ben Shave (Media and Communications Officer).

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Eighth Special Report

The Committee on Exiting the European Union published its Eighth Report of Session 2017–19, *The progress of the UK's negotiations on EU Withdrawal: The rights of UK and EU citizens*, (HC 1439), on 23 July 2018. On 21 December 2018, the Committee received the Government Response to the Report. It is appended below.

Appendix: Government Response

Chapter 1 - UK citizens in the EU

Onward Movement

1. In our May Report on the Progress of the negotiations, we said that both sets of negotiators had failed to make it clear whether ongoing free movement rights for UK citizens in the EU would form part of negotiations and the future relationship between the EU and the UK. There are associated rights that will fall alongside the loss of free movement. These include the ability of some professionals to operate in more than one Member State, their ability to offer cross border services and the right to open a business in another Member State. We do not think these matters should be left wholly to the negotiations on the future relationship as this would mean a period of continuing uncertainty. We call on the UK Government to raise the matter again in the negotiations before the Withdrawal Agreement is finalised, and ask for an agreement on ongoing free movement within the EU27 for UK citizens currently resident in the EU. At the very least, it should be explicitly included in the political declaration. (Paragraph 15)

The Government recognises that onward movement is an important issue for UK nationals in the EU. That is why we pushed strongly for the inclusion of ongoing movement rights during withdrawal negotiations. While we have continued to raise the matter, the EU has been quite clear that they were not ready to include these rights. The Government has further set out its position in the Future Relationship White Paper and will seek to secure onward movement for UK nationals living in the EU in negotiations for our future relationship with the EU. Unfortunately the EU did not want to include it in the Political Declaration, but we intend to return to it during detailed talks on future arrangements.

On the future recognition of professional qualifications in the EU, we have agreed in the Withdrawal Agreement, the continued recognition of qualifications, where recognition decisions were made or where recognition procedures were ongoing, before the end of the implementation period. This will cover the European Professional Card, qualifications recognised under the Professional Qualifications Directive for the purpose of establishment (but not for the temporary and occasional provision of services), lawyers practising under host State title, approved statutory auditors and persons engaged in the trade and distribution of toxic products.

As set out in the Political Declaration on our future relationship, we have agreed with the EU to seek agreement on a comprehensive, predictable and timely system covering a

broad range of professions. The UK is seeking ambitious provisions, as it is in the interests of both the EU and the UK to agree a system of mutual recognition of qualifications, which will support UK and EU professionals, public services and businesses.

Current systems to demonstrate right to residence

2. We welcome the efforts made by the Home Secretary and the Immigration Minister to seek more information about registration of UK citizens from their counterparts among the EU. We note that the European Parliament Brexit Steering Group has joined the call for Member States to set out preparations for how they will approach the registration of UK citizens on their territory. We repeat our previous recommendation to the UK Government to seek urgent clarification from the EU-27 as to their preparations to regularise the status of UK citizens on their territory. Any requirements need to be made public by EU Member States and disseminated widely as soon as possible. UK citizens living in other EU countries cannot be left in the dark as to how they can secure their rights. (Paragraph 23)

The Government is committed to providing UK nationals overseas with clear and appropriate information, and is working closely with Member States to ensure that any introduction of, or changes to, administrative procedures are communicated to resident UK nationals.

However, it is for Member States to decide how they will implement the provisions of the Withdrawal Agreement, including if they wish to create a requirement to obtain a new status, such as settled status in the UK. Under the Withdrawal Agreement, any administrative procedures introduced for UK nationals are required to be smooth, transparent and simple and avoid unnecessary administrative burdens. How the Withdrawal Agreement is implemented in each Member State whether by the introduction of new administrative procedures, or by maintaining those currently in place, will be decided by each Member State.

The Government is engaging with Member States to ask them to confirm their procedures, and to encourage them to ensure that any measures introduced for UK nationals are light touch and user friendly. A number of Member States have begun publicly sharing their plans for implementation, for example, Cyprus has released public documents stating their plans for residence rights. The Netherlands have also publicly issued guidance on permanent residency and the Czech Republic have published a public notice to UK nationals encouraging them to register for a certificate of temporary residence.

The Government will be running an information campaign to let UK nationals know of any changes on how they access their rights and services. We would recommend that all UK nationals resident in the EU sign up for exit related updates on gov.uk, where they can also find a country specific Living in Guide for their Member State of residence.

Voting rights

3. The Immigration Minister told us that the EU has declined to consider a reciprocal agreement for the continuation of voting rights as part of the Withdrawal Agreement negotiations. This is highly regrettable. Unless the negotiations change this position, the UK will have to secure bilateral agreements with each Member State. We look

forward to hearing how the UK intends to take this forward and call on Member States to respond positively. We trust that the UK Government and devolved administrations will continue to enable EU citizens living in the UK to stand and vote in local elections and in elections to the Scottish Parliament, Welsh and Northern Ireland Assemblies. (Paragraph 27)

The UK pushed hard in negotiations for reciprocal voting rights, but they do not form part of the Withdrawal Agreement. The voting rights of both EU citizens in the UK and UK nationals in the EU need to be considered together. The Government has made clear that we will pursue bilateral arrangements with individual Member States to secure reciprocal rights for both UK nationals living elsewhere in Europe and EU citizens in the UK. We have now written to all Member States requesting a bilateral agreement.

The UK Government has confirmed that we do not anticipate any changes to the current primary legislative framework for candidacy and voting rights being made before the May 2019 English and Northern Ireland local elections. These are devolved competences and the Scottish Parliament and Welsh Assembly are responsible for their own franchises.

To provide certainty to prospective candidates, it will be the policy intent of the UK Government that candidates who are validly nominated and elected at the May 2019 local elections in England and Northern Ireland should be able to serve that term of office in full, notwithstanding any wider changes to voting and candidacy rights in the future.

Dual nationality

4. The rules on dual citizenship differ between Member States, and it is not practicable in all circumstances for British citizens in the EU to apply for dual citizenship in their host state—for example Austria, Estonia, Lithuania, Netherlands and Slovakia do not allow dual nationality. In the absence of an agreement enabling them to continue to benefit from free movement, some may have to choose to renounce their British citizenship and apply to become a citizen of their host country to enable them to continue to live their lives as now. This would be unacceptable and we urge Member States, and the European Parliament, to look at this issue so that UK citizens can maintain their rights without having to renounce their citizenship in the event of there being no Withdrawal Agreement. (Paragraph 29)

Whilst the UK recognises dual nationality, each Member State will have different rules surrounding citizenship - some will allow dual nationality, some will not. The agreement reached on citizens' rights will allow UK nationals to continue living their lives broadly as now in their Member State of residence.

The UK understands that some Member States are considering measures which would continue to allow for UK nationals to apply for dual nationality after our exit. For example, under current German law, only nationals of another EU Member State are able to hold German dual citizenship. In order to facilitate dual citizenship for the future, Germany recently published draft legislation that would recognise the UK as an EU Member State until the end of the implementation period. Subject to its adoption into German law, this will allow for UK and German nationals who acquire dual British-German citizenship by the end of the implementation period to retain this status.

On the terms of onward movement, the Government knows that this is still important to UK nationals and we made clear in the Future Relationship White Paper that UK nationals who have chosen to make their lives in the EU should have the opportunities available to them respected if they decide to change their Member State of residence.

Chapter 2 - EU citizens in the UK

Evidence of Settled Status

5. In the past, the ability of a non-UK passport holder to demonstrate their immigration status has been to show a document such as a Biometric Residence Permit or a non-UK passport with an endorsement showing their status. This has been important to enable individuals to demonstrate their right to be in the UK to employers, landlords, and to access public services. The Government has acknowledged the difficulty in proving a right to work, rent or access public services, without documentation. Documents, such as endorsed passports or biometric cards, are understood as forms of identification and are likely to be the default document requested by a landlord or employer. (Paragraph 45)

The Home Office has decided not to issue a hard document or endorsement on passports as evidence of Settled Status, but instead to send the successful applicant a digital code, which is then passed to an employer, or landlord, who would need to input the digital code into a Home Office website, enabling them to access information that confirms the individual's immigration status. We note that the preferred method is for the individual to have an electronic device—such as a smartphone or tablet to receive the digital code—and for the employer to also have access to an electronic device to be able to go online, and be willing to go through the process. The Government should clarify how employers and landlords are meant to take and keep copies of digital records of settled status as they are currently required to do for physical documents. (Paragraph 46)

We have heard evidence from the EU citizens in the UK that they would prefer a hard document to be able to show their legal status and to minimise the chance of them experiencing discrimination. The evidence of the Windrush generation—where many people who were perfectly entitled to be in the UK but found it difficult to persuade others of this without physical documentary evidence—has heightened this concern. (Paragraph 47)

The Minister told us that the Home Office has started to roll out online checking of digital status for right-to-work checks. We recognise that, in future, other groups of non-UK passport holders will be using similar digital processes as a matter of course to demonstrate their immigration status. However, we are concerned that this is a task of unprecedented scale for the Home Office and it is being done within a very tight time frame. The experience of the Windrush generation shows that, where errors occur, it can lead to devastating consequences for individuals and their families. We are also concerned about the potential for fraud and the incentive for individuals to be exploited if they cannot persuade an employer or landlord of their status. (Paragraph 48)

The Home Office has said the digital code system will be less resource intensive, reduce fraud and be simple to use. We are concerned that the Home Office is introducing a new

system on a large scale, and which relies upon employers, or landlords, understanding and embracing a new way of working. This might work well for many, but for some the risk of a civil penalty for employing or renting to someone without the correct immigration status, and a lack of understanding of the new system, may deter them from employing or renting to EU citizens, or create difficulties in enabling their status in other circumstances to be confirmed. We call on the Government to issue a physical document to EU citizens. (Paragraph 49)

All applicants to the EU Settlement Scheme will receive confirmation of the outcome of their application. This will include details of the status granted and other information such as their unique reference number. But this will not be a secure document and so cannot be used as proof of the applicant's immigration status. They will therefore also be issued with their status digitally; this will be a secure and permanent record held by the Home Office that is accessible to the holder at any time.

This is part of moving the UK's immigration system to digital by default, introducing a simpler and more convenient system for conducting immigration checks that is accurate, secure and reliable. Digital status holders will control who they wish to share their record with in order to demonstrate their status and exercise their rights under the Withdrawal Agreement. This digital status checking service is already live for some non-EU citizens and in future will provide the same convenient and secure way for EU citizens to demonstrate their rights.

The key issue for the Windrush generation was that they did not have documentation to evidence their legal immigration status. We do not want EU citizens to have similar experiences in the future and therefore the EU Settlement Scheme design already anticipates many of the Windrush issues. The digital status service is a permanent way of moving away from hard documents that can get lost or stolen or become out-of-date, leaving people in a vulnerable position. It will enable the Home Office to present to employers and landlords more detailed information about the individual's rights in the UK, compared to the limited space afforded by biometric residence documents and can be updated in real time so that it is always up-to-date. EU citizens who apply under the scheme will be able to evidence their status in future through the digital status checking service, but in the meantime can continue to use their passport or national identity card to do so during the implementation period. Non-EU citizen family members of EU citizens will be issued with a digital status and will also be issued with a biometric residence document (where they do not already hold one) because, unlike EU citizens, they are not easily able to use their passport or identity card to demonstrate a right to reside in the UK.

The Government appreciates the cultural change required amongst those used to checking physical documents and we are working with employers, landlords and other government departments to support them as we transition to the new digital service. However, the roll-out of the digital checking service is already being welcomed by employers and other service providers as providing simplification of the current system, under which they are expected to differentiate between a wide range of documents. The fact that no EU citizen's ability to evidence their rights will be contingent upon them having a digital status until July 2021 means that this group in particular will have adequate time to become familiar with the new process. As is currently the case, appropriate action will be taken where anyone has been found to have been denied employment, a tenancy or any service unlawfully.

Digital application process

6. We welcome the Immigration Minister's recognition that some EU citizens living in the UK will face linguistic challenges in dealing with standard application forms designed to accept only English. This is a real concern where the application form may ask for names in a different format to how it is displayed in their passport, or other identity document. (Paragraph 61)

The EU Settlement Scheme application form will follow the existing standards and policies regarding special characters within names. Applicants will be able to enter these characters and they will be stored as entered.

Accompanying guidance will make it clear to applicants that they should enter their name as it appears in their identity document, as in other online immigration applications.

Key information, such as the scheme application guidance, will be provided in all the official languages of the EU to ensure that all EU citizens living in the UK fully understand the scheme and how to make an application. If obvious mistakes are made in completing the application form, the Home Office will work with the applicant to resolve them.

EU citizens who choose to use the new ID verification app on their smartphones or tablets will have their names and other details completed automatically as the data is taken directly from the passport chip.

Categories excluded from the Withdrawal Agreement

7. We welcome the Government's position that it will protect carers and children who might not be covered by the Withdrawal Agreement or have acquired rights through EU case law and would otherwise be at risk of losing their ability to demonstrate their right to reside in the UK. The Home Office has said it may have to legislate to provide this protection and will provide further information in due course. We look forward to these commitments being given legal effect. (Paragraph 64)

Chen carers and Ibrahim and Teixeira children and carers (i.e. those who have residence rights as a result of the CJEU case law in Chen [CJEU reference: Chen and others C-200/02] and Ibrahim and Teixeira [CJEU reference: Ibrahim C-310/08 and Teixeira C-480/08]) have a right of residence not under the Free Movement Directive, but under wider EU law and will have their residence rights protected by the Withdrawal Agreement in line with their current rights.

These persons may be EU citizens eligible to apply for status under the EU Settlement Scheme. Otherwise, provision will be made in the Immigration Rules for them to apply for leave to remain, consistent with the Withdrawal Agreement.

Although not covered by the Withdrawal Agreement, a non-EU citizen who is the primary carer of a British citizen in the UK and also currently derives a right of residence from wider EU law (a Zambrano carer) will also be provided for in the Immigration Rules. Further information will be provided in due course.

Cost

8. **The fee for Settled Status applications has been a factor in the negotiations. The EU-UK December Joint Report said that residence documents will be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents. The Minister told us that the UK and the EU have agreed to a fee being charged for each application. The cost—£65 and £32.50 for children—is the same as the cost charged by the Home Office for permanent residence applications. We welcome the reduction in cost for children and ask the Home Office to consider a comparable reduction for retired people. We welcome the assurance that the Home Office will produce an impact assessment explaining the costs of the Settled Status scheme and look forward to its publication at the earliest opportunity. We call on the Home Office to ensure that this impact assessment examines the likely effect of the fee on the take-up of the settled status scheme. It should review its policy if the impact assessment indicates that take-up would be substantially negatively impacted by the charging of a fee. The European Parliament has maintained that the application should be free; and we would support this position, but only if it were to be reciprocated to the extent that no charges would be imposed on UK citizens in the EU to regularise their status. We are concerned that persons who came to the UK in good faith, in exercise of their right of freedom of movement and with the reasonable expectation that they could continue to do so without charge, should have to pay a fee to apply for a status that is being retrospectively applied to them. If employers choose to reimburse their staff for the cost of any application for Settled Status this should not be classified as a benefit in kind. (Paragraph 68)**

The Withdrawal Agreement allows a fee up to the cost of an equivalent document for UK nationals – we have used the cost of a passport (£75.50) as the point of reference. The fee of £65 to apply for status under the EU Settlement Scheme is in line with the current cost of obtaining permanent residence documentation here under EU law, and is considerably lower than the fee for other settlement routes.

We have taken into consideration the groups that we could provide exemptions for and we have decided there will be an exemption from the £65 fee for EU citizens and their family members who have valid permanent residence documentation or valid indefinite leave to enter or remain. This will include some retired people that have resided in the UK for a number of years, for example EU nationals who moved to the UK before the UK (or their home state) joined the EU, but we are not proposing to waive the fee for all retired people.

We have also gone further than the Withdrawal Agreement by providing a reduced fee of £32.50 for children under 16, representing a discount for families and a fee exemption for children being 'looked after' by a local authority. Applicants who are not yet able to evidence the five years' continuous residence necessary to obtain settled status, but who can evidence that they were resident by the end of the implementation period, will be given pre-settled status. From April 2019, an applicant who has been granted pre-settled status under the scheme will be able to apply for settled status for free.

Importantly, this approach to fees ensures fairness for all EU citizens in the UK, many of whom have already paid £65 for documentation to demonstrate their permanent residence status under EU law. If we were not to charge an application fee for the scheme, that would disadvantage those who had already paid a fee to obtain evidence of their status, as well

as passing significant additional costs on to the taxpayer. Similarly, even if the EU agreed that applications from UK nationals for status in each of the EU27 should be offered free of charge, this would disadvantage those who had already registered and paid a fee in accordance with the various requirements in Member States. The reduced fee for children under 16 is in line with the equivalent reduction for a UK passport.

Under the Withdrawal Agreement EU citizens who are here before exit and those who arrive during the implementation period can continue living and working in the UK without having to apply under the scheme until the end of June 2021. This means that those covered by the Withdrawal Agreement have almost three years to arrange their finances in order to apply before the deadline. Nonetheless, the situation will be kept under review over the next three years.

An [Impact Assessment on the EU Settlement Scheme](#) was published in July. As stated in the assessment, the fee for the scheme is in line with the fee for the permanent residence document available under free movement law and is low compared to the benefits of remaining in the UK, or compared to the cost of leaving. For example, for all employees in the UK in 2017, across all occupations, a £65 fee would represent around 0.3 percent of employees' gross annual median earnings (£23,474 in 2017)[1]. Moreover, the application process is designed to be streamlined and user-friendly. Therefore any behavioural impact is expected to be small.

In terms of employers choosing to reimburse their staff for the cost of applying to the settlement scheme, taxation rules are not a matter for this department or for the Home Office. However, HMRC has advised that in situations like these, where an employer pays or reimburses their employees' application costs, such a payment would be taxable as earnings from their employment and may also attract a National Insurance contributions (NICs) charge. However, employers can also choose to meet the cost of this tax and NICs charge for their employees. For many employers, this can be managed within their existing arrangements with HMRC, using a PAYE Settlement Agreement (PSA) which allows employers to make one annual payment to cover all the tax and NICs due on minor, irregular or impracticable expenses or benefits for their staff.

Information provision

9. The UK Government has said it wants EU citizens in the UK to stay. The provision of information relating to the new scheme will be of paramount importance in ensuring its success. There are two clear audiences that need to know why it is necessary and how it will work: EU citizens currently resident in the UK and those who may have reason to ask a EU citizen to demonstrate their immigration status. The 3 million European citizens are spread throughout the UK, including many remote and rural locations. They may not all be connected to the internet or have a good mobile telephone signal. Many do not currently understand that applying will be necessary to regularise their status in the UK. It would be regrettable if there was a low take-up for the scheme due to a lack of awareness. (Paragraph 76)

The Home Office will not be the only body delivering any information campaign. We welcome the engagement that the Home Office has started with Embassies, consulates, user groups, and local authorities. It will be very important to disseminate information through representatives of the various European communities established

in the UK so that the message can be amplified to the people who need to apply. The Government should consider how it might provide additional resources to such community organisations that will be doing valuable work on the Government's behalf. (Paragraph 77)

It is clear that the Home Office is moving towards greater reliance on digital methods to carry out its work. It has invited EU citizens to sign up to email alerts to keep abreast of the Settled Status scheme. Bearing in mind the scale and diversity of the settled EU population in the UK, it is important that the Home Office utilise a variety of media to make sure they get their message across. For example, given that many EU citizens travel back and forth, and will do so during the transition period, a cost-effective measure would be to publicise the scheme via transport operators and ticketing agencies. (Paragraph 78)

Effective communications will be crucial to ensure that the three million EU citizens and their family members living in the UK understand the need to apply and when to do so. That is why the DExEU and the Home Office have been engaging with EU citizens in the UK, reaching out to EU citizens at meetings, events and online. Ministers from DExEU have met delegates from groups representing EU citizens in the UK and have led on community outreach events at Member State Embassies to hear their concerns. The Government works closely with Member State Embassies to invite leaders of community groups from around the UK, to communicate clearly the agreement reached on citizens' rights and answer detailed questions they might have.

The Home Office in partnership with DExEU, have launched a national awareness campaign, are holding monthly meetings with EU citizens' representatives to understand their needs, and are planning a range of support for vulnerable groups such as the elderly, victims of domestic violence and those with limited English language ability.

The Government has also launched a national communications campaign, including social media and digital radio, which will increase in the coming months as we approach the launch of the scheme, and we have been regularly updating the information on the Gov.UK website. As well as the regular user group meetings, there is a significant and increasing programme of face-to-face information events for EU citizens.

More than 200,000 people have signed up for official email updates on citizens' rights and the EU Settlement Scheme and we continue to promote sign-ups.

In addition, the Home Office has launched a new communications toolkit, which is part of the package of support for employers, local authorities and community groups on the EU Settlement Scheme. The communications toolkit provides practical advice on the scheme for EU citizens, employers and service providers, and the Government hope it will be widely used to disseminate information about what EU citizens need to do.

On 25 October 2018 the Home Office announced grant funding of up to £9 million for voluntary and community organisations across the UK to provide support to EU citizens who might need additional help when applying for their immigration status through the EU Settlement Scheme. The grant will help these organisations to both inform vulnerable individuals about the need to apply for settled status and support them to complete their applications under the scheme.

Those who do not obtain Settled Status - Criminal record checks

10. **There needs to be clear guidance on what the threshold is for not being awarded Settled Status on the grounds of criminality. Such guidance for applicants and Home Office caseworkers will help ensure fair and consistent application of the law. The Government has said it wants all EU citizens in the UK to apply for the Settled Status. We do not want large numbers of people to be deterred because they fear a minor or old conviction would disqualify them before they have even applied. But it is right that the Government should know about the serious criminal convictions of someone applying for settled status in order to decide whether it should be refused. Importantly, clear guidance will encourage EU citizens in the UK to feel they can apply and be treated fairly. In turn, this should also reduce the potential number of appeals. (Paragraph 81)**

Criminality and security checks will be conducted to ensure that we identify any serious or persistent criminals, or anyone who poses a security threat. However, this will not affect the overwhelming majority of EU citizens and their family members.

The Withdrawal Agreement provides for cases to be refused where the applicant has criminality committed before 1 January 2021 which meets the EU public policy test and for criminality committed after 31 December 2020 to be considered in accordance with the UK deportation rules.

Any decision taken on public policy or public security grounds must show that the person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society. Decisions are taken on a case-by-case basis taking account of the personal conduct of the person concerned, including the number and seriousness of any offences committed and the person's individual circumstances for example, the length of their residence in the UK, any social and cultural links formed and whether they have family in the UK.

Guidance on how conduct is considered under the EU public policy test is available at:

<https://www.gov.uk/government/publications/eea-decisions-taken-on-grounds-of-public-policy>

The UK deportation rules provide for the deportation of a person on non-conductive grounds, including where a person has been convicted of an offence and received a custodial sentence of 12 months or more, has committed an offence which has caused serious harm, or is a persistent offender.

Guidance on deportation on non-conductive grounds is available at:

<https://www.gov.uk/government/publications/deporting-non-eea-foreign-nationals>

Those who do not obtain Settled Status - Data protection exemption

11. **There is understandable concern that appellants might not have access to all the data that the Home Office has used to form a decision on their application. This may lead to individual circumstances where EU citizens are denied Settled Status and the applicant is unable to challenge a refusal without access to the evidence which led to**

the decision. We therefore call upon the UK Government to waive the data protection exemption to EU citizens and give them full access to their Home Office files in cases where their application is rejected. (Paragraph 85)

The immigration exemption within the Data Protection Act 2018 is limited in scope and can only be applied where disclosure of personal data would be likely to prejudice the effective maintenance of immigration control. This would not apply where people are simply asking for background information on their cases.

Most immigration investigations in the UK involve administrative sanctions rather than criminal sanctions, which is not always the case in other EU Member States, and so the Law Enforcement Directive exemptions would not always have been appropriate for the UK context.

Article 23 of the General Data Protection Regulation (GDPR) allows Member States to restrict rights in certain areas where it involves an important objective of general public interest of the Union or a Member State. The Government considers that the need to maintain effective immigration controls is one such objective.

There is no data protection exemption that targets EU citizens. Applicants are able to make a subject access request at any time, either to DExEU, the Home Office or to the other government departments whose data we will be using to assess UK residence. Where a legal claim is being made, the Home Office will always work with the claimant and their representative to disclose any data that we hold to assist them in such circumstances where we are able to do so under the law.

Post 2020 - Timetable and deadlines

12. A test version of the online site is expected to be available in Autumn 2018 and open to all by March 2019. We note the difficulty in anticipating the rate at which people might apply once the online Settled Status scheme is operational. Similarly, it is difficult to anticipate the number of EU citizens who might not have applied by the end of the transition period. For those who arrive before 31 December 2020—the end of the transition period—but do not submit an application, the Government has offered a six-month grace period. In addition, the Government has said it will take a ‘proportionate response’ to those who apply after the deadline through ‘no fault of their own’. (Paragraph 91)

However, the scale of the task means that if even a small proportion of those eligible to apply do not do so, or are refused, there is a risk of a large number of EU citizens in the UK by July 2021 not having certainty as to their legal status. The UK Government needs to set out what it would do with thousands of EU migrants unable to demonstrate their legal status. (Paragraph 92)

While we welcome the spirit of the Government’s approach to those who apply after the end of the transition period, it is not certain what will be required of an EU citizen entering the UK after transition. The Government’s White Paper published on 12 July says that free movement will end when the UK leaves the EU and describes an aspiration

to a future labour mobility framework. We look forward to taking evidence on this fundamentally important aspect of the future UK-EU relationship as the negotiations progress (Paragraph 93)

The Political Declaration on the framework for the future relationship makes clear that free movement of people will end. In future, it will be for the UK Government and Parliament to determine the domestic immigration rules that will apply. Recognising the depth of the UK-EU relationship, the UK has made a sovereign choice to seek reciprocal mobility arrangements with the EU in a defined number of areas, for example to allow business professionals to move to provide services, or tourists to continue to travel visa-free. This is reflected in the Political Declaration on our future relationship. The detail will be discussed in the next phase of negotiations.

The framework for mobility that we are seeking to agree with the EU will:

- provide for visa-free travel for short-term visits, including for tourists and business travellers;
- support businesses to provide services and move their talented people;
- allow students and young people to continue to benefit from world leading universities and the cultural experiences the UK and EU have to offer;
- facilitate passage for legitimate travel while strengthening the security of the UK's borders; and
- seek to ensure that UK nationals living in the EU can continue to benefit from their pension entitlements and associated healthcare.

This framework only represents what we want to agree reciprocally. The UK will set the rules in relation to immigration, social security, healthcare or related matters where no commitments are taken. We will set out further detail on the UK's future immigration system in due course, taking into account the recommendations of the Migration Advisory Committee's (MAC) report on EEA migration in the UK. The MAC report provides a clear direction for us to develop a single, global immigration system, based on skills rather than nationality.

Post 2020 - Independent oversight and appeals

13. The Immigration Minister told us that she was confident that the Independent Chief Inspector of Borders and Immigration (ICIBI) will be able to carry out the role of safeguarding the rights and EU citizens in the UK, until the Independent Monitoring Authority (IMA) is ready. We are not as confident that the ICIBI is entirely suitable for the role, and fulfils the requirements set out in Article 152 of the draft Withdrawal Agreement. Part of the reason for the delay is that the IMA will require primary legislation to pass through Parliament before it can be operational. However, this should not stop the UK Government from providing detail in relation to the IMA's powers, procedures and resources. This is vitally important to instil confidence in the process, particularly given concerns expressed about the ability of the Home Office to manage such a task effectively. We look forward to receiving an update in writing on the work being carried out. (Paragraph 100)

In the White Paper published by DExEU, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), the Government has set out the details on the protections for citizens' rights and the IMA. The EU (Withdrawal Agreement) Bill will establish the IMA in domestic legislation.

The IMA will help provide certainty and security to EU citizens in the UK by ensuring that the citizens' rights part of the Withdrawal Agreement is properly implemented by UK public authorities. So that it can perform an effective and robust monitoring role, this new, independent, UK-wide authority will be empowered to receive complaints from citizens covered by the Withdrawal Agreement. It will be able to launch inquiries into alleged breaches of the agreement by UK public authorities. Where appropriate, the IMA will also be able to bring legal action, with the aim of preventing future breaches from occurring.

The IMA will be operational from the end of the implementation period. This is because, during the implementation period, common rules will remain in place, and EU citizens coming to the UK and UK nationals going to the EU will be able to live, work and study as they do now. After the end of this period, when the terms agreed in the Citizens' Rights agreement come into force, the IMA will be operational to monitor the implementation and application of these rights.

Additionally, as the Committee has highlighted, the Independent Chief Inspector of Borders and Immigration (ICIBI) will, through his existing statutory functions in respect of the UK immigration system, provide oversight of the operation of the EU Settlement Scheme. The ICIBI will be able to report on the functioning of the scheme, enabling improvements to be made as appropriate, and, if there are particular aspects of the scheme warranting more detailed enquiry, the ICIBI will be able to inspect these and report on them.

In a no deal scenario, there would be no requirement for the IMA to be established as its purpose would be to monitor the Citizens' Rights part of the Withdrawal Agreement, which would not be in force.

However, there are existing complaints and review procedures for public authorities that EU citizens can access. The key routes of challenge available for individuals are the right of appeal (meaning decisions by administrative authorities can be reviewed and challenged in a court or tribunal), judicial review, and the ability to complain to authorities such as Ombudsmen. EU citizens would have the right to challenge a refusal of UK immigration status under the EU Settlement Scheme by way of administrative review and judicial review, in line with the remedies generally available to non-EEA nationals refused leave to remain in the UK.

Clarity on the situation for Irish in the UK

14. Irish citizens in the UK have a unique set of rights. As they have the option of applying for Settled Status and may find it easier to exercise some of their rights if they have Settled Status, we recommend the Government sets out detailed guidance to clarify the situation and avoid uncertainty. Given their special status we do not think any Irish citizen should be charged a fee to apply for settled status. (Paragraph 106)

Irish citizens residing in the UK do not need to do anything following the UK's exit from the EU. Their rights are protected under the UK-Ireland Common Travel Area (CTA) arrangements. Thanks to these arrangements, citizens of the UK and Ireland have a special status in each other's country which predates our membership of the EU and reflects the close and historic ties between our countries. Nonetheless, Irish citizens will be able to apply to the EU Settlement Scheme if they choose.

As highlighted in the report (paragraph 105), the Withdrawal Agreement includes rights in addition to those protected by the CTA arrangements, specifically that EU citizens resident in the UK can be joined by existing close family members. Irish citizens do not need to have settled status to draw on the protections afforded by this aspect of the Withdrawal Agreement. Their family members (who are not Irish citizens or British citizens), as protected by the Withdrawal Agreement, will need to apply for status under the EU Settlement Scheme. However, where an Irish citizen wishes to apply for status under the scheme to facilitate any such application by their family members (for example by confirming the Irish citizens' UK residence), they may do so.

Guidance, both for the public but also for service providers, including employers, will include clear information on the rights of Irish citizens. We are working closely with Ireland to understand the questions and concerns of Irish citizens in the UK, and British citizens in Ireland.

The Government does not propose to provide an exemption from the EU Settlement Scheme application fee for Irish citizens who, as set out above, are not required to apply for settled status to protect their rights in the UK. Where an Irish citizen chooses to apply to support future applications by existing close family members, as provided for by the Withdrawal Agreement, our approach to fees ensures fairness for all EU citizens in the UK.

Chapter 3 - Ring fencing citizens' rights in the event of no deal

The EU in the UK

15. The Withdrawal Agreement is not finalised. While we welcome the positive statements from the Ministers that they would honour their commitments to the EU in the UK in the event of no deal, more could be done to provide reassurances as to how this would be put into legal effect. The Withdrawal Agreement contains protections for EU citizens in the UK and for UK citizens in the EU. However, in the event of No Deal, there would be uncertainty around establishing the right to reside and work and the right to return after a period of absence. There are also protections built into the Withdrawal Agreement which would be lost, such as the right to refer cases to the CJEU for eight years. (Paragraph 112)

We have now agreed the terms of the UK's smooth and orderly exit from the EU, as set out in the Withdrawal Agreement. We have also agreed the broad terms of our future relationship as set out in the Political Declaration. This Agreement will secure the rights of more than three million EU citizens living in the UK and around one million UK nationals living in the EU. The Government is clear that the reciprocal deal with the EU as

set out in the Withdrawal Agreement is the only way to fully protect the rights of both UK nationals in the EU and EU citizens in the UK. The Withdrawal Agreement gives these citizens certainty that they can go on living their lives broadly as now.

On Thursday 6 December, we published the [Citizens' Rights - EU citizens in the UK and UK nationals in the EU policy paper](#), which sets out the details of our offer to EU citizens in the UK in the unlikely event of a no deal scenario; removing any ambiguity over their future. This demonstrates our continued commitment to put citizens first.

The paper confirms that in the unlikely event of a no deal scenario, EU citizens resident in the UK by 29 March 2019 will be able to work, study and access benefits and services on broadly the same terms as now. The UK would continue to run the EU Settlement Scheme. The basis for qualifying under the scheme will remain the same and will be focused on residence in the UK. This means that any EU citizen living in the UK by 29 March 2019 will be eligible to apply to this scheme, securing their status in UK law.

We are urging the EU and all its Member States to make the same commitment to protect the rights of UK nationals in the EU and the Secretary of State has instructed Ambassadors and Heads of Missions to raise this with their host governments.

We recognise the uncertainty UK nationals in the EU will face in a no deal scenario. The UK cannot act unilaterally to protect all of the rights of UK nationals in the EU, which is why we have always prioritised reaching a reciprocal agreement with the EU and why the deal we have negotiated is the best way forward. However, where it is in our control, we will support UK nationals through this unlikely outcome, such as through bilateral arrangements on healthcare, as reflected in the recently introduced Healthcare (International Arrangements) Bill.