



Holly Lynch MP
House of Commons
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Dear Holly,

CITIZENS' RIGHTS

Further to our helpful conversation yesterday I write to make clear the Government's intentions in relation to those who are eligible to apply for the EU Settlement Scheme (EUSS) based on their residence in the UK, but who are not exercising free movement rights by virtue of the EEA Regulations at the end of the transition period on 31 December 2020.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which returns to the Commons next week, enables us to deliver on our manifesto commitment of ending free movement to the UK and taking back control of our borders.

In delivering on those priorities, the Government has made it clear we will protect the rights of EU, other EEA and Swiss citizens ("EEA citizens") who have made the UK their home and extend a generous offer to those who have made the UK their home, but may not be exercising a specific Free Movement right. They are our friends, neighbours and family members and we want them to stay.

We have guaranteed their rights in the UK through the European Union (Withdrawal Agreement) Act 2020 and through the EU Settlement Scheme, which makes it simple for them to obtain the status under UK immigration law they need to carry on living here after 30 June 2021 with the same rights and entitlements as they have now. We have also made the scheme far more generous than the citizens' rights agreements¹ require, by basing eligibility on continuous residence in the UK rather than on also meeting all the other requirements of the Free Movement Directive. This not only expands the scope of the scheme but makes it much easier for those with Free Movement rights to apply. It also ensures we provide a basis of stay for those of our neighbours who might be unknowingly affected by Free Movement requirements such as those around Comprehensive Sickness Insurance.

I am delighted to say more than 4 million applications under the EU Settlement Scheme have been received and nearly 3.8 million grants of status have already been issued. There is plenty of time left for those who still need to apply to do so before the 30 June 2021 deadline for those resident here by the end of the transition period on 31 December 2020. There is also plenty of support available for any person who needs help in applying, including through the Settlement Resolution Centre open seven days a week, our Assisted

¹ The EU Withdrawal Agreement, the EEA EFTA Agreement and the Swiss Citizens' Rights Agreement.

Digital service and, as I announced last week, the expanded network of now 72 organisations across the UK being funded by the Home Office to help vulnerable people to apply to the scheme.

The House of Commons will today debate further measures which, consistent with the citizens' rights agreements, the Government is putting in place to protect the rights of EEA citizens resident in the UK by 31 December 2020. These include the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, a Statutory Instrument (SI) to be made under the 2020 Act, and known as the "grace period SI".

The grace period SI will set the deadline of 30 June 2021 for applications under the EU Settlement Scheme for those EEA citizens and their family members resident in the UK by 31 December 2020. ***It will not change in any way the eligibility criteria for status under the scheme or the deadline for anyone to apply to it.*** It will also not affect the scope for an application to be made after the deadline where there are reasonable grounds for this, regardless of whether eligibility for this status under UK Immigration Rules derives from simply residence in the UK (the test we have focused on under domestic policy) or having exercised a free movement right in accordance with the EEA Regulations. This scope will be reflected in the Immigration Rules for the scheme and in non-exhaustive guidance which we shall publish, early in 2021, to inform a pragmatic and flexible approach to dealing with such applications. In the meantime, it is right our focus should remain on encouraging those who have yet to apply to do so as soon as they can.

Where a person has yet to obtain status under the EU Settlement Scheme, the grace period SI will protect any relevant EU law rights which they hold when, subject to Royal Assent to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, free movement to the UK ends at the end of the transition period. It will protect those rights pending the final outcome of an application made by them to the scheme by the 30 June 2021 deadline, as is required by the citizens' rights agreements. This means those who have yet to apply to the scheme will be in no lesser position as regards their rights of residence in the UK on 1 January 2021 than they were on 31 December 2020, pending an application to the EU Settlement Scheme.

The grace period SI delivers this by continuing the effect of relevant provisions of the Immigration (European Economic Area) Regulations 2016 (which implement the Free Movement Directive in the UK) when they are otherwise revoked by the Bill on 31 December 2020. It saves the existing rights of those EEA citizens and their family members who are lawfully resident in the UK at the end of the transition period by virtue of those Regulations or who have a right of permanent residence in the UK under them. This is in line with the citizens' rights agreements and reflects the current position under EU law.

Where they have not already done so, an EEA citizen or their family member who is resident in the UK at the end of the transition period, but who does not have a right of permanent residence and is not exercising specific free movement rights – as a worker, self-employed person, self-sufficient person, student or family member – will still be able to apply to the EU Settlement Scheme by the deadline of 30 June 2021. Whilst they will not have residence rights under EEA free movement rules to be protected during the grace period, their current position, and they will not be able to start exercising free movement rights in the UK after free movement to the UK has ended at the end of the transition period, they will still be able and encouraged to secure the status they need under UK law to continue living in the UK beyond 30 June 2021 by obtaining status under the EU Settlement Scheme.

During the grace period from 1 January to 30 June 2021, the Home Office will continue to take enforcement action against those who are involved in serious or persistent criminality or who pose a risk to the security of our country. Yet EEA passports and EEA national ID cards will still be able to be used to confirm eligibility under compliant environment checks, e.g. Right to Rent, until the end of the grace period on 30 June 2021 ensuring EEA citizens resident in the UK have rights to at least the same level as they had before the transition period ended. Those who have obtained status under the EUSS may immediately start using it, as some EEA citizens are already doing, given the convenience a digital proof of status offers. An employer will be able to accept an EEA passport as proof of right to work during the grace period, without separately confirming if status under the EUSS has already been secured or a specific Free Movement right was being exercised prior to 31 December 2020.

As you will appreciate, I state “at least the same level as they had when the transition period ended”, not the same position, as some EEA citizens will become eligible for settled rather than pre-settled status during the grace period, for example if they first arrived in the UK during February 2016.

Finally, those who have an outstanding application to the EUSS at the end of the grace period, based on the UK law test of residence, regardless of whether they were also exercising Free Movement rights prior to 31 December 2020, will be able to continue living here as they do now, until their application is determined.

I am copying this letter to all members of the Delegated Legislation Committee for these SIs and will arrange for a copy of this letter to be placed in the Libraries of both Houses.

With my very best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K Foster', with a large flourish at the end.

Kevin Foster MP
Minister for Future Borders and Immigration