



Dear Kevin Foster MP,

Following the Home Affairs Select Committee session on 4 November in which you gave evidence on the EU Settlement Scheme amongst other matters, we wanted to write to you about our shared aim to see all eligible citizens apply to the EU Settlement Scheme [EUSS] to secure their rights after free movement ends.

In that spirit, we would like to request again to meet with you. There have been commendable successes with the EUSS and it can be improved to avoid potential problems in the future. To achieve those improvements, we hope to hear from you (and indeed discuss at a future meeting) the following:

- Policy Equality Statement for the EUSS
- Status of someone who has 'reasonable grounds' for a late application to the EUSS
- Clarifying what we mean by declaratory
- Writing to every household in the UK to inform citizens about the EUSS

Policy Equality Statement for the EUSS

The Policy Equality Statement [PES] for the EUSS is instrumental to understanding how the Home Office aims to prevent discrimination and to establish who is at risk of failing to apply to the EUSS. This knowledge is vital to the success of the scheme, and will help those in the advice sector to identify who is most at risk of not applying to the EUSS.

We therefore welcome the commitment you gave at the HASC meeting that within 14 days, i.e. by 18 November, the PES will either be published, or that you will set out to the committee the exact reason why you are not able to do so. It goes without saying that we hope the PES will be published by 18 November.

We would be grateful if your office would notify us of the PES publication or the reasons why it cannot be published.

Status of someone who has 'reasonable grounds' for a late application to the EUSS

In our evidence¹ to the HASC meeting, we had asked what the practical implications would be for someone who is deemed to have 'reasonable grounds' for a late application to the EUSS.

¹ <https://committees.parliament.uk/writtenevidence/13830/html/>



Our concern arises from the well-publicised case of Albert Thompson (real name Sylvester Marshall) who was denied NHS treatment unless he first paid £54,000, combined with the Government’s statement that *“a person with reasonable grounds for missing the deadline [...] will not have those rights in the period after the missed deadline and before they are granted status”*.

We very much welcome your statement of the Home Office intention that if it is deemed reasonable grounds that someone has made a late application, then inherently it would be unreasonable for them to have an immigration penalty. Equally it was reassuring to hear that when considering someone who is rough sleeping, that consideration should be given as to whether that individual would be entitled to a late application to the EU Settlement Scheme. We are also pleased that you stated that you appreciate the importance of the issue, and why we and others would want clarity on this.

You mentioned discretion in a number of examples such as refunding NHS payments, removal decisions and future immigration related issues not considering such a period as unlawful residence.

Could you confirm what policy and legislative changes will be put in place to address the required protections for an individual’s interim status between 1 July 2021 and their eventual grant of status under the EUSS?

Misinterpretation of the ‘declaratory’ proposal

We have long sought a meeting with you previously to explain a misinterpretation of the proposal to make the legal basis of the EUSS declaratory.

During the evidence session, where it was acknowledged that late applications to the EUSS may take a while due to the need to find historical evidence of residence, you stated that such late applications despite their problems would certainly be ‘better than a declaratory scheme, **where they would not have had a chance to apply at all**’.

We agree with you that a purely declaratory scheme without any proof of rights is problematic, and indeed led to the problems experienced by the Windrush generation.

However, this is emphatically not what we have been proposing over recent years. We have made very clear that we would like to see declaratory legal status coupled with **mandatory registration (using the EUSS) to obtain proof of that legal status**.



We are completely aligned with you on the need to get as many eligible people as possible to use the EU Settlement Scheme to secure their rights, as soon as possible.

Where we differ are on the legal implications for someone who is eligible for status under the EUSS yet does not make an application before the deadline.

The Home Office position for such a person is that they are then without lawful status, dependent both on discretion to be granted reasonable grounds for a late application, and discretion regarding the practical implications of lack of status - such as loss of employment, loss of housing, lack of access to NHS treatment and uncertainty around future immigration related decisions.

By contrast, under our proposal such a person will indeed struggle with the practical implications of not having proof of status while not in possession of proof of status from the EUSS, but crucially they will not have been without lawful status.

We make our suggestions not to undermine the Government's plans but to improve how they are implemented. We recognise that it is not the intention of the Government to pursue a declaratory method of registration. As such, we wish to discuss what the Government is doing to ensure that as many people as possible apply and that those who do not (and have reasonable excuses for not doing so) are not disadvantaged.

Writing to every household in the UK to inform citizens about the EUSS

As mentioned above, we are in complete agreement with the Government that as many people as possible who are eligible for status under the EUSS should apply as soon as possible.

As such, as an example of improvements to the current communication strategy, we would propose the Government sends a leaflet to every single household in the UK, to reach as many citizens as possible. Some councils have done this, for example Brighton & Hove wrote to every household in their area².

² <https://twitter.com/brightonhovecc/status/1323958281044430848?s=21>



Such a leaflet should address various audiences:

- EEA/Swiss citizens and family members whose rights are dependent on an EEA/Swiss citizen
- Friends, family members, colleagues and carers of the citizens above
- People who are employers and landlords, explaining the rights of people with status under the EUSS

It should be very easy to understand and signpost information in all EU languages. This would be an improvement on the current digital campaign approach which will not reach those households who are not digitally engaged.

Request for a meeting

Finally, we would like to reiterate our request for a meeting (or indeed e-meeting) with you as soon as possible, to discuss the above questions and suggestions.

The deadline for the EU Settlement Scheme is only just over seven months away, and you have said that by the Home Office's estimates³ perhaps only three quarters of those entitled to status have applied to the EUSS.

Therefore it is really important that we work together to ensure the protection of everyone who has made the UK their home and is entitled to status under the EUSS.

Yours sincerely,

A handwritten signature in black ink that reads 'Luke Piper'.

Luke Piper
Head of Policy
the3million

³ <https://www.linkedin.com/pulse/uk-provide-physical-proof-settled-status-eu-citizens-andritsopoulos>