

Consultation Response

EU Settlement Scheme: Statement of Intent

27 July 2018

All rights reserved. Third parties may only reproduce this paper or parts of it for academic, educational or research purposes or where the prior consent of Age UK has been obtained for influencing or developing policy and practice.

Emily.McCarron@ageuk.org.uk

Age UK
Tavis House
1-6 Tavistock Square
London WC1H 9NA
T 0800 169 80 80 F 020 3033 1000
E policy@ageuk.org.uk
www.ageuk.org.uk

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House 1-6 Tavistock Square, London WC1H 9NA.

About this document

The Home Office have published the Statement of Intent on the EU Settlement Scheme. This document sets out how EU citizens resident in the UK and their family members will be able to obtain UK immigration status after the UK leaves the European Union.

Key points and recommendations

- In 2017 there were an estimated 110,000 non-Irish EU nationals living in the United Kingdom at private addresses who were 65 years and over.¹
- The 2011 Census included 5,600 non-Irish born EU nationals age 75 or older who were living in communal establishments such as care homes.
- Many of these EU nationals will be very long-term residents who might not realise that they will have to apply for settled status having been granted Indefinite Leave to Remain, permanent residency or refugee status some decades ago.
- A significant number of older EU nationals living in the UK will have physical and mental disabilities including Alzheimer's and dementia which will significantly curtail their ability to apply for settled status: from not realising they have to apply, not remembering where their documents are, to simply not having the capacity.
- The principle of evidential flexibility enabling caseworkers to exercise discretion in favour of the applicant where appropriate, should be set out in the immigration rules.
- There should be a duty for the Home Office to make reasonable enquiries and check records on behalf of vulnerable applicants with public and other private bodies which might hold relevant evidence on behalf of vulnerable applicants.
- The Home Office should contact the Care Quality Commission to discuss how it could best notify care homes and EU national care home residents of the need to apply for settled status.
- We would like clarity regarding what will happen to those vulnerable applicants who do not apply on time and whether they will be covered by the exceptional circumstances principle.

¹ The Migration Observatory, *Unsettled status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?* The University of Oxford, 2018, p.

1. Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Internationally, we support programme and policy work in lower- and middle-income countries through our partner and subsidiary charity Age International, who has contributed to this submission. Age International is an active member of the HelpAge Global Network and the Global Alliance for the Rights of Older People, a large and growing coalition of civil society organisations world-wide working to strengthen older people's rights globally.

2. Evidentiary requirement

Paragraph 4.8 of the Statement of Intent stipulates that the applicant will need to provide a valid passport or national identity card. It is very likely that a significant number of older people who have been resident in the United Kingdom for long periods of time or those older people with mental capacity issues, or experiencing physical disability, will no longer possess a current passport or identity card. Furthermore, if in order to apply for settled status these individuals have to apply for an up to date passport from their member state consulate office, they may face significant physical, individual capacity and bureaucratic barriers in doing so. For example, someone living in a care home with dementia is likely to find the process of applying for a new passport challenging.

The statement of intent refers to a principle of evidential flexibility which will enable caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. We welcome this principle but strongly believe that it should be set out in the immigration rules in order to give it more force.

3. Application process

The EU Settlement Scheme application process will be delivered digitally with assistance available for those who need it in order to complete the online application process. The supported digital assistance scheme will be provided over the phone via a customer centre and where appropriate, assistance will be delivered in person to the applicant. Precise details of this programme are yet to be finalised.

Older EU nationals living in the UK may also have poor digital literacy. Although internet use among older age groups has increased substantially over the last six years, many older people are still non-users of the internet. By illustration, 3.8 million people aged 65+ have never used the

internet. Almost a quarter (22.5%) of people aged 65 to 74 and around three-fifths (59%) of people aged 75+ have not recently used the internet (in the last 3 months).²

The supported digital assistance scheme is likely to support those who are 'willing' but 'unable' by virtue of their limited digital literacy. That is people, who possess the correct documentation and who have the capacity and understanding to know to call the telephone service in order to get assistance with the digital process thereby progressing their applications.

However there will be a group of vulnerable older EU nationals who for the same reasons listed above, will simply be unable to engage in the application process. This group will include older people residing in the community or in care homes with limited mental capacity and physical ability. Some of these individuals might have family members or attorneys who can assist them with the application process. But there will ultimately be a group of very vulnerable individuals who do not have family members, or other individuals to help them. This barrier is additional to the already existing barriers caused by lack of capacity and or evidentiary documentation. Given the approximately 5,600 EU nationals living in care homes, this could be a significant number of people.

There are a number of unanswered questions regarding what will happen to this group of individuals. How will they be identified as needing to apply? If they are identified, who will be responsible for applying? Finally, what evidence will they be allowed to use in order to prove their status if they no longer have a valid passport or identity card? What will happen to the extremely vulnerable group who will be simply unable to apply? Or those who cannot provide any evidence at all?

In theory, it could be possible for care home managers or indeed the local authority to recognise and apply on behalf of residents. However in the face of significant funding constraints as well as data protection issues, it is unlikely that care homes will have the capacity or indeed the legal remit to apply on behalf of residents.

4. Reaching citizens: duty to make reasonable enquiries

There needs to be a strategy, which includes a description of the customer journey, outlining how the most vulnerable groups, including older EU nationals living in care homes, will be reached. At present the scheme seems to rely on individuals taking a proactive approach or for third sector organisations to identify and contact people which given the scale of the undertaking, will be very difficult.

Age UK would like the Home Office to make a commitment to helping those groups who will be unable to make an application themselves. We would like there to be a duty for the Home Office, without cost recovery, to make reasonable enquiries on behalf of vulnerable applicants including checking their own records for relevant evidence, contacting other government departments or local authorities for relevant evidence, contacting past or current employers for relevant evidence

² Age UK, *Later Life in the United Kingdom*, April 2018, p.18.

and offering to make enquiries with any other public or private body the applicant confirms holds relevant evidence.

We suggest that the Home Office might also wish to contact the Care Quality Commission to discuss how it could best notify care homes and EU national care home residents of the need to apply for settled status.

In requesting this duty we make reference to the Public Sector Equality Duty to have due regard, in particular, to the need to:

- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; and
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.

5. Failure to apply

The Home Office have said that they will consider late applications from those people who they believe have exceptional, compassionate reasons for not applying for settled status by the due date. However, we are still concerned that there will be a group of people who will be unable to apply for the reasons we have outlined above. The question remains then, what exactly will happen to those people? Whilst the Home Office have demonstrated firm commitment to make the process for settled status much easier as well as commitment to those people with exceptional circumstances, without any firm parameters around what exactly these 'exceptional circumstances' will include, we are still concerned that some vulnerable individuals will become illegal immigrants if they don't apply. Whilst we acknowledge the need for a rigorous and credible system for applying for settled status, the recent Windrush scandal tells us that vulnerable and older people are not immune to the harsher end of immigration policy. There needs to be comprehensive guidance concerning 'out of time applications' and what constitutes exceptional circumstances to ensure that vulnerable and older EU nationals will not be disproportionately affected by the proposed scheme.