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Rt Hon Brandon Lewis MP
Minister of State
Home Office
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4 October 2019

Dear Brandon,

Thank you for your letter of 15 August sharing the latest figures on the number of successful applications to the UK Government's EU Settlement Scheme.

People who choose to make Scotland their home provide a vital contribution to Scotland's economy, enhance our communities' social and cultural well-being, and help to make Scotland the open and outward-looking nation that it is today. We want EU citizens to continue to feel welcome in Scotland. Therefore, I welcome the news that over 67,000 EEA and Swiss citizens have successfully applied to stay in Scotland.

However, there are a number of outstanding issues and concerns that need to be urgently addressed and resolved. I am concerned about the high numbers of individuals being awarded Pre-Settled Status and the potential confusion about this status. While a number of EU citizens have applied to the Scheme there are real concerns about the very significant numbers of people who have not yet applied, and therefore risk losing their legal right to remain in the UK. It is also clear that the UK Government's rhetoric around the ending of Freedom of Movement has created a very real risk that EU citizens may face discriminatory treatment when seeking to access services to which they are entitled.

I know that you have been very clear in your public statements that the UK Government wants EU citizens to stay in the UK. The challenge is to ensure that the actions and policies of the UK Government match that aspiration. The EU Settlement Scheme figures clearly show that there is a challenge to increase application rates, especially amongst certain communities.

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The Scottish Government has always been clear that EU citizens should not need to apply to maintain rights they already have and that the EU Settlement Scheme should be declarative. Removing the need to make an application, and consequently avoiding the threat of refusal, would best protect the rights of EU citizens living here. This includes the right to remain in the UK, and to retain the associated rights to which they are entitled.

Alternatively, a similar outcome could be achieved by dis-applying the requirement to accrue five years' residence for Settled Status, and thus removing the differential status of Pre-Settled Status. This would mean that any EU citizen (or their eligible family members) applying to the EU Settlement Scheme with evidence supporting the minimum eligibility requirements for Pre-Settled Status (or more) should be granted Settled Status. Anyone who previously obtained Pre-Settled Status would automatically be granted Settled Status.

This would represent a decisive action to clearly secure the rights of all EU citizens resident in the UK at any point of leaving the EU, avoiding the creation of several distinct cohorts, each with differing rights and status, and removing the requirement for some individuals to apply twice to secure their long-term right to remain in the UK. Additionally, it would be a simple step towards mitigating possible discrimination based on status and reduce unnecessary bureaucracy for the UK Government, and for both those delivering front-line services and those who access them.

The UK Government has the power to provide EU citizens with clarity and certainty and I would urge the UK Government to fulfil the Prime Minister's commitment to provide EU citizens with "absolute certainty to live and remain" through "a guarantee in law." Short of establishing a declarative system, ensuring that all EU citizens are granted the more secure Settled Status would be a valuable step in achieving this, underpinned by primary legislation and with the option of physical proof of status if requested.

We also remain unsighted on the process for landlords and service providers to distinguish between EU citizens resident in the UK before EU exit, who are yet to apply for Settled Status, and those arriving after any EU Exit day. There is a real danger that EU citizens face future discrimination and are refused access to vital services they are entitled to. Ensuring that all EU citizens are awarded Settled Status would be a key step towards mitigating some of the great risks of ambiguity presented to EU citizens, and also to their employers, businesses and public service providers.

The Scottish Government wants EU citizens to stay in Scotland. We have committed over £1 million to provide practical information, advice and support to EU citizens about how their rights are affected by any EU exit, and how they can continue to access devolved public services. We have therefore consistently pressed the UK Government at both official and ministerial levels for access to appropriate Scotland level data on applications to the EU Settlement Scheme, to ensure that we can target our support appropriately. While the public release of some Scotland level data is helpful, it is disappointing that this data was not shared with the Scottish Government several months ago when we made the original request.

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It would be valuable to have further detail incorporated in the Scotland level data in future, including age and gender. This information would provide vital insight into applications, highlight any equality issues and allow us to target our support to those who need it most.

There are a number of other important outstanding issues, which I raised in correspondence with your predecessor. These include the process through which frontier workers, including Scottish Government staff working on fisheries compliance and research vessels, and the crews of two Northern Isles freight ships providing vital lifeline services for the island communities that they serve, will be able to certify their rights. This issue was urgent when I first raised it in April, and these EU citizens, who are undertaking critical roles in remote locations, urgently need clarity on their position.

I am mindful that I have now written to you on a number of occasions since your appointment. There are clearly issues on which we fundamentally disagree but there is a shared obligation on us to work together to safeguard the rights of EU citizens, and to ensure that any new immigration proposals meet the needs of all parts of the UK including Scotland. Scotland has distinct demographic needs and all of our future population growth is projected to come from migration. In their February 2019 report, the independent Expert Advisory Group on Migration and Population forecast that Scotland will experience greater population ageing than other parts of the UK. We should engage constructively to provide solutions to seek to address these challenges.

Therefore, it would be helpful to reinstate the regular meetings between Home Office Ministers and the Devolved Administrations. We had agreed that these should take place on a quarterly basis, with the last meeting in July.

To reiterate, in conclusion, the UK Government must now urgently implement the Prime Minister's promise to guarantee the rights of EU citizens in the UK. Short of a declarative system, the current extraordinary circumstances should mean that those who have chosen to make the UK their home should be granted full Settled Status, and not have to accrue five years' residence before being given an indefinite right to remain. Pre-Settled Status is an unnecessary step in the process, should be scrapped and should be replaced with full Settled Status for all successful applicants to the EU Settlement Scheme.

I am copying this letter to Counsel General and Brexit Minister of Wales, Jeremy Miles and the Secretary of State for Scotland.

I look forward to your response.



**Ben Macpherson MSP
Minister for Europe, Migration and International Development**

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