

Protecting the rights of EU Citizens: Scottish Government Response to UK Government Citizens' Rights Paper

1. EU citizens make a vital contribution to Scotland and to our economy, society and culture. 181,000 EU citizens live in Scotland, choosing to work, study and build their lives here. They must have clarity about their future rights, and what Brexit will mean for them and their families.
2. The First Minister, and the Scottish Government as a whole, have repeatedly called on the UK Government to immediately guarantee the rights of all EU citizens currently here. It is extremely disappointing that they have chosen not to do so - and that it has taken them a year since the Referendum to set out their plans, which they do in their paper "Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU". There can be no excuse for leaving so many EU citizens in a state of uncertainty since last June.
3. It is equally disappointing that, apart from showing us the finished paper few hours before publication, there has been no proper engagement with the Scottish Government, or with the people of Scotland, in reaching that position.
4. By contrast, Scottish Government Ministers and officials have spoken to many EU citizens, across Scotland, since the Referendum. This paper reflects the concerns that they have raised with us, about their future rights and status, and that of their families.

Scottish Government position

5. The Scottish Government set out our position in Scotland's Place in Europe. We believe that the United Kingdom should remain in the EU single market and continue to benefit from the free movement of people. This is the only way to absolutely guarantee the ongoing rights of EU citizens and their family members, and British people living and working elsewhere in the EU.
6. We are clear that ending free movement of people in the UK will have a negative impact on individuals, families and our wider economy and society as a whole. Ending free movement will mean a significant reduction in the rights and benefits that EU citizens in the UK, and UK citizens in EU countries, currently enjoy.
7. We are concerned that the UK Government's paper leaves open a large number of very important questions that will have a direct impact on EU citizens and their families. These are not abstract issues, but real concerns that affect people's lives.
8. We urge the UK Government to immediately clarify these points in order to ensure that all EU citizens have the certainty about their future to which they are entitled. People must never be used as bargaining chips in negotiations.

The rights of all EU citizens, and their families, should be protected

9. One of the first concerns that EU citizens have highlighted since the Referendum is the question of whose rights will be protected. In the UK Government paper, the scope of protection offered is significantly less than that proposed by the European Commission.
10. The European Commission, in their paper setting out 'Essential Principles' on citizens' rights, say that *all* EU citizens residing in the UK (and UK citizens in EU countries), *including* those with permanent residency status, and those who reside or *have resided* in the past in the UK, and those who have worked here for short periods (e.g. as so-

called cross-border workers) are protected. That means not just an ongoing right to live here, but a future right to benefit from social security and pension rights that have been earned here.

11. However, the UK Government paper focuses only on people who have lived in the UK for a sustained period and would qualify (or be on a path towards qualifying) for the new UK 'settled status'.
12. Firstly, it is essential that the UK Government sets out in more detail what this new status will mean for those who can qualify – which rights will be associated with 'settled status', what individuals will need to do in order to qualify, and how settled status may be lost – and the consequences. The UK Government paper notes, for example, that settled status 'would generally be lost if a person was absent for more than two years, unless they have strong ties here', but not what this means in practice, or what is meant by 'strong ties'.
13. Secondly, the UK Government must be clear what Brexit will mean for the wider set of citizens affected by the UK's withdrawal, who for example have lived in the UK in the past but have been gone for more than two years, or have lived here on a temporary basis.
14. A further question of scope concerns the rights of Irish citizens in the UK. The UK Government paper makes clear that they do not need to apply for settled status, but does not make clear whether Irish citizens would continue to benefit from the full and complete guarantee of equal treatment with UK nationals that they currently experience - for example, as a non-EU citizen spouse of an Irish national residing in the UK, or an Irish national who had worked on and off in the UK.
15. In moving from free movement rights guaranteed in EU law to a new 'settled status' under domestic law, the Scottish Government believes that rights must be secured as close as possible to existing rights. EU citizens who came to the UK, with their families, and have built lives here on the basis of an expectation of ongoing EU law rights, should not find that those rights have been diluted. It is essential that the Withdrawal Agreement, as well as the future arrangements, respect the rights of EU citizens and their families.
16. Furthermore, the Scottish Government is concerned that the UK Government's paper focuses almost entirely on access to benefits, when the EU guarantee of 'equal treatment' for all EU citizens goes far beyond just access to welfare and public services, and also includes, for example, protection against discrimination regarding working conditions, social and tax advantages, access to education, apprenticeships and vocation training, and collective bargaining rights; as well as political rights such as the right to vote in local and devolved elections.
17. We are concerned that the UK Government's paper proposes a far more limited set of rights and protections than EU citizens in the UK, and UK citizens in EU countries, currently enjoy and that this represents a significant scaling back of rights.

Issues that must be clarified immediately

18. Another central question is **how the rights of EU citizens will be protected and enforced**, both in the Withdrawal Agreement and in future, under UK settled status. EU citizens need to have confidence that their rights will continue to be effectively protected and that they will continue to have access to independent judicial enforcement mechanisms. The UK Government proposals offer the protection of domestic law. That

means existing rights on which EU citizens rely could be changed by future domestic legislation. Depending on the reciprocal measures implemented by the EU, it is possible that UK citizens residing in EU countries could equally see their rights diminished in future as a result of changes to national law in the country in which they live, and for which there would be no independent adjudication or enforcement (as currently provided by EU law).

19. It is not acceptable to have this level of continuing uncertainty for EU and UK citizens. There is now an active debate about the best way to do this. Both the EU and the UK Government have made initial proposals. The Scottish Government urges continued application of the rights acquired by EU citizens residing in the UK along with a credible mechanism to ensure effective and guaranteed enforcement of those rights.
20. The UK Government say that they are prepared to make commitments in the Withdrawal Agreement which will 'have the status of international law'. We urge the UK Government to make clear what this will mean in practice and to provide further detail on how disputes relating to the application and interpretation of the Withdrawal Agreement will be determined under its proposals, to ensure the agreement is applied consistently and fairly by the contracting parties.
21. Another vital issue is that of the **cut-off date** (the so-called 'specified date'), before which EU citizens already in the UK will be on a path to 'settled status', whereas EU citizens who arrive afterwards will not, and will instead be subject to UK immigration rules after Brexit. The UK Government paper does not clarify what this date will be, only that it will be sometime between the triggering of Article 50 on 29 March 2017, and the expected date of UK exit from the EU in 2019.
22. The Scottish Government urges the UK Government to immediately clarify the cut-off date, and believes that it would be unacceptable for this date to be retrospective. The UK Government has repeatedly advised EU citizens that there is no change to their current rights and status in the UK at present, and they should not go back on this commitment.
23. The Scottish Government's view is the cut-off date should be date of the UK's exit from the EU, and that any EU citizen who resides in the UK on the basis of EU law before that date should be on a path to settled status and a guaranteed right to remain in the UK.
24. The Scottish Government strongly supports the right to family life and continues to provide a welcoming environment for new Scots and their families. We have continually called for a less restrictive, and more humane, UK immigration system that recognises individual circumstances and respects family life and family unity.
25. We welcome the commitment that the **family members of EU citizens** will continue to be able to move to and reside in the UK on the basis of their existing rights under EU law, until the point of the UK's exit from the EU. That is crucial to the continued enjoyment of the right to family life.
26. However, we have concerns about the rights of family members, particularly those who come from non-EU countries, after the UK's exit from the EU. We urge the UK Government to clarify these rights immediately, particularly with regards to children, including those born in the UK to parents with settled status who will automatically acquire British citizenship, which might not in all cases be compatible with the nationality and citizenship rules of other EU countries.
27. We also call on the UK Government to provide further details about the nature and rights that flow from 'settled status' for family members, as well as the criteria and process for

applying for 'leave to remain' during the grace period, and the rights that family members will have in that period, before acquiring settled status.

28. The Scottish Government believes that the current process under which EU citizens can apply for permanent residency is long, complex, and overly burdensome, and is a source of frustration and anxiety for many EU citizens. We therefore welcome the UK Government's commitment to overhaul this system and introduce a new, '**streamlined and user-friendly**' process for applying for status, making use of existing Government data to minimise documentation requirements. This new process must respect rules on data protection and use, and be proportionate in any requirement for biometric data.
29. We note the commitment that any fees will be 'reasonable' as the very high costs associated with the immigration rules are an area for concern. EU citizens should not be denied documentation because the costs are too high. We also welcome the dropping of the requirement for students and economically inactive EU citizens to provide evidence of comprehensive sickness insurance, which in our view is incompatible with EU law.
30. The Scottish Government believes that EU citizens who have successfully navigated the complicated process of applying for permanent residency should not be forced to apply again for new documentation, and should automatically be replaced with documentation confirming settled status.
31. We urge the UK Government to set out the expected process, and costs, as soon as possible.

Conclusion

32. The Scottish Government welcomes that EU citizens, and their families, residing in the UK, will now have some clarity about the UK Government position on safeguarding their future rights and status. It is unacceptable that it has taken so long for the UK Government to set this out.
33. However, there are a large number of issues that remain unclear and which must be resolved immediately in order to provide EU citizens with the comfort and security to which they are entitled. These include the details of the different statuses applicable to EU citizens and their family members and the associated rights, as well as the process and costs of applying for these statuses, the mechanism for resolving disputes about the application and interpretation of the Withdrawal Agreement, and the crucial issue of the cut-off date.
34. It is deeply disappointing that the UK Government paper does not go as far as the European Commission's position. The European Commission seek to guarantee the same level of ongoing protection for all EU citizens as set out in EU law at the date of withdrawal, and include a clear mechanism to resolve disputes about the application and interpretation of the Withdrawal Agreement – using the experience and expertise of the European Court of Justice.
35. The Scottish Government is concerned to note that if agreement is not reached on the Withdrawal Agreement, the UK Government confirms that its commitments to EU citizens here, and EU states' obligations to UK citizens in their countries may be modified, limited or removed using the powers in the European Union (Withdrawal) Bill as they "fall away" at the point of the UK's exit from the EU, unless there has been agreement between both parties (Explanatory Notes to the Bill as introduced, p. 10). It is essential that the issues above are resolved in the Withdrawal Agreement.

36. It is vital that the UK Government properly consults and engages closely with the Devolved Administrations of the UK to clarify these points, and to ensure that the very real concerns of the many EU citizens, and their families, who will be affected by the agreement reached, are addressed, and to ensure that we have the opportunity to properly engage with the Scottish Parliament. The Joint Ministerial Committee on EU Negotiations is the appropriate mechanism, and should have been consulted to ensure that the views of the Devolved Administrations were taken into account. Unfortunately the JMC(EN) has not met since February. We urge the UK Government to establish an effective means for discussion of such issues, consistent with the Terms of Reference of the JMC(EN). The agreement reached with the EU must meet the needs of all four nations of the UK, and of citizens living here and across the EU.

Scottish Government
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