

The Rt Hon Priti Patel MP
Secretary of State for the Home Department
Home Office
Apollo House
36 Wellesley Road
Croydon
CR9 3RR

30 June 2020

Re: Protecting EU citizens and families members from COVID-19

Dear Home Secretary,

We write to you as organisations that work with, are led by, support and represent EU citizens and their families resident in the UK. We strongly welcomed your statement that, “the UK continues to put the health and wellbeing of people first and nobody will be punished for circumstances outside of their control”, and hope the Government will adopt this approach in all instances where COVID-19 poses a threat to migrants’ rights.

However, we are concerned that the Government has not taken appropriate steps or made the adequate adjustments to the EU Settlement Scheme (EUSS) necessary to protect EU citizens and family members from COVID-19. We believe the Home Office must work with other Government departments to resolve the following issues as a matter of urgency.

Make pre-settled status an automatic ‘right to reside’ so that EU citizens and non-EU family members can access social security benefits and homelessness assistance

Due to the COVID-19 pandemic hundreds of thousands of people have been forced out of work and into reliance on Universal Credit and Jobseekers Allowance benefits. April 2020 has seen the largest monthly increase in applications since records began and it is unlikely that the demand will decrease any time soon. Access to Government support has never been more important and for so many is the difference between survival and destitution.

Despite this, we know that many EU citizens and their families are being denied access to crucial benefits or having their benefits suspended because they have not lived in the UK for more than five years. We believe this is a breach of the Withdrawal Agreement as it fails to treat people with pre-settled status equally to British Citizens and those with Settled Status, which is an automatic right to reside. As of April 2020, 1.3 million EU citizens and family members had been granted pre-settled status. Many of them are being forced to choose between following Government guidance, staying home and falling into destitution, or returning to work and risking their own and public health. It is vital that pre-settled status is made an automatic ‘right to reside’ to protect EU citizens from COVID-19, destitution and control the spread of the virus.

Make provision that any breaks in ‘continuous residency’ caused by COVID-19 do not affect EU citizens’ and family members’ ability to secure status through the EUSS or obtain British citizenship

To qualify for settled status, EU citizens and non-EU family members must have lived in the UK ‘continuously’ for at least five years, never leaving the UK for more than six months in any 12-month period. In addition, EU citizens who wish to apply for British citizenship must not have spent over 450 days over the five years or 90 days over the final 12 months outside the UK.

However, the introduction of lockdown measures in the UK and across the world meant that many EU citizens and non-EU family members have visited family abroad and been prevented from returning to the UK.

Whilst non-essential travel remains prohibited and there is no certainty over when “normal” travel will resume, many EU citizens are at risk of falling foul of residency requirements needed to secure their status and rights. It is vital that any breaks in continuous residency caused by COVID-19 are treated as exemptions so that no EU citizen is forced out of status through absolutely no fault of their own.

Adjust the EUSS application process to ensure that it complies with the Withdrawal Agreement and equality law so that vulnerable EU citizens and family members are not put at unnecessary risk of infection from COVID-19

We welcome the news that the operation of the EUSS has mostly resumed. However, we are concerned that a return to ‘business as usual’ puts vulnerable EU citizens, family members and therefore public health at greater risk of COVID-19.

The Home Office recognises that EU citizens and family members should apply to the EUSS as soon as practicable. This is particularly important for vulnerable EU citizens and family members whose applications are more likely to be complex and time-consuming. Many of the organisations that are signatories to this letter are funded by the Home Office to support vulnerable applicants to ensure they apply and secure status well before the deadline June 2021.

Now that postal application routes have reopened, applicants who apply on a paper application form or cannot scan their identity documents at home must go to the post office to submit their documents to the Home Office. For example, non-EU family members are expected to post their Biometric Residence Cards (BRCs) to the Home Office. This requires (potentially vulnerable) applicants to travel to a post office, increasing their risk of contracting and transmitting the virus. This requirement is entirely unnecessary since the Home Office holds the information in question on file from the time that it first issued the BRC.

Further, non-EU family members without a BRC are asked to attend a biometric enrollment appointment at the UK Visa and Citizenship Application Services (UKVCAS). Those unable to pay fees for local biometric enrolment appointments have to travel across the country to access a free appointment at one of only 5 free appointment centres in the UK (3 in England, 1 in each devolved nation). In some instances these journeys will be entirely unnecessary as the Home Office holds past biometric enrolment information relating to the individual.

We consider it to be very likely that elderly, disabled and BAME people, i.e. those at heightened risk of COVID-19 if they contract the virus, are disproportionately required to make postal applications. The Home Office is placing an undue burden on such individuals to decide whether to risk their own and the public’s health in order to apply to the EUSS, which no applicant should have to do. Adjustments need to be made to the application process to ensure that it complies with the Withdrawal Agreement and equality law.

Withdrawal Agreement

Articles 18(1) and 19 of the Withdrawal Agreement require that “any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative

burdens are avoided". This provision has direct effect in domestic law through the European Union (Withdrawal Agreement) Act 2020. This provision needs to be read in the context of the COVID-19 pandemic and as such the Home Office needs to avoid "administrative burdens" that risk the health of applicants.

Equality Law

Both the Equality Act 2010 and the Human Rights Act 1998 prohibit discrimination in the EUSS application process. If the application requirements for the EUSS put a particular protected group at a disadvantage, this may constitute unlawful indirect discrimination under section 17 Equality Act 2010 and Article 14 (taken with Article 8) of schedule 1 of the Human Rights Act 1998 if the application requirements cannot be justified.

As lockdown is eased, the risk of the COVID-19 pandemic remains significant to vulnerable applicants to the EUSS. The Home Office has accepted that anyone required to shield under the Public Health England guidance will need adjustments to be made. This flexible approach should be extended to all applicants, not just those required to shield.

We urge the Home Office to:

- i) Suspend any requirement that puts applicants at greater risk of COVID-19.
- ii) Introduce greater flexibility in the evidence requirements, including allowing digital copies of documents to be sent securely to the Home Office to avoid the need for them to be posted.
- iii) Undertake an Equality Impact Assessment of the EUSS addressing the impacts of the COVID-19 pandemic.

Given the unprecedented nature of the pandemic, we hope that you give this matter urgent consideration and we are available to discuss any of the issues in more detail.

Please respond 14 July 2020 to Caitlin Boswell-Jones, EEA Project Officer (EU Citizens) at the Joint Council for the Welfare of Immigrant.

We look forward to reading your response.

Yours sincerely,

Agnieszka Łuczak	EUSS Project Manager	Migrant Centre NI
Angela Kail	Director of Consulting	New Philanthropy Capital
Anna Yassin	Migrant Project Manager	Glass Door Homeless Charity
Azmina Siddique	Policy and Research Manager for Child Poverty and Inequality	The Children's Society
Brian Gormally	Director	Committee on the Administration of Justice
Caitlin Boswell	EEA Project Officer (EU Citizens)	Joint Council for the Welfare of Immigrants

Claudia Holmes	Founder	UKCEN
Denise McDowell	Chief Executive	Greater Manchester Immigration Aid Unit (GMIAU)
Dr Ruvi Ziegler	Chair	New Europeans
Gisela Valle	Director	Latin American Women's Rights Service
Ilse Mogensen	Head of Advocacy and Campaigns	the3million
Indre Lechtimiakyte	Immigration Advisor	Samphire
Isabella Mosselmans	Joint CEO & Co-Founder	Here for Good
Jackie Murphy	CEO	TGP Cymru
Julie Bishop	Director	Law Centres Network
Kush Chottera	Executive Director	Europia
Lumturi Podrimaj	Project Manager	Advice NI
Magda Fabianczyk and Marzena Zukowska	Co-Directors	Polish Migrants Organise for Change (POMOC)
Marianne Lagrue	Policy Manager	Coram Children's Legal Centre
Matthew Evans	Director	The AIRE Centre
Mhairi Snowden	Coordinator	Human Rights Consortium Scotland
Mr Juraj Tancos	EU Migrant Worker and Support Officer	Lilycroft & St Edmund's Nursery School and Children's Centre
Ms Joanna Mludzinska	Chair	Polish Social and Cultural Association
Naomi Webb	Executive Director	Good Chance Theatre
Nazek Ramadan	Director	Migrant Voice
Nicole Masri	Senior Legal Officer	Rights of Women
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Sylvia Ingmire	CEO	Roma Support Group
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