

Liz Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs

Priti Patel, MP, Secretary of State for the Home Office

Nadim Zahawi, MP, Secretary of State for Education

Therese Coffey, MP, Secretary of State for Work and Pensions

cc: Marie Simonsen and Giles Portman, Joint Chairs, Specialised Committee on Citizens' Rights

Luxembourg and Berlin

12 January, 2022

Dear Secretaries of State,

British in Europe was formed in 2017 in response to the referendum in the UK on leaving the European Union. Since that time, we have advocated to protect the rights of the approximately 1.2 million UK citizens living in the European Economic Area and European Free Trade Area countries that were put at risk as a result of the decision to leave the EU. We have engaged actively with UK government ministers, including then Secretary of State Stephen Barclay, and civil servants in all of your respective departments along with Members of both Houses of Parliament. In addition, we have engaged intensively with the EU Commission's Article 50 Task Force and its successors, the European Parliament, and national parliaments, ministers and civil servants across the EU. We are now recognised as the only civil society organisation representing the rights of UK citizens across the EU that is invited to address the Specialised Committee on Citizens' Rights set up under the auspices of the EU-UK Joint Committee on Withdrawal Agreement (WA) implementation.

We are writing to all of you today because after six years of voluntary work, British in Europe will be closing its virtual doors at the end of January. We are closing not because there is nothing further to be done to protect and implement citizens' rights, but because we have been unable to secure the necessary core funding to continue our work, notwithstanding the generosity of many individual donors living in the EU. We are closing reluctantly because we know we leave a long list of unresolved issues and people in need of competent and targeted assistance to access their rights.

As the relevant UK Secretaries of State, the responsibility for ensuring that the rights of 1.2 million UK citizens in the EEA and Switzerland are protected and implemented lies with you. Below we outline some of the outstanding issues in the following areas:

1. Implementation of the WA and Norway-UK and Swiss-UK agreements
2. The right to return to the UK of UK citizens with non-UK family members
3. Draft changes in the Nationality and Borders Bill on deprivation without notice of UK citizenship for dual nationals
4. Implementation of the 7-year grace period on home fees and student finance for prospective UK citizen students living in the EEA and Switzerland
5. Potential changes to Personal Independence Payments (PIP) for recipients in the EEA and Switzerland

Implementation of the Withdrawal Agreement and Norway-UK and Swiss-UK agreements

Brexit is only now beginning for UK citizens living in the EEA and Switzerland. The final deadlines for applications for status closed on 31.12.2021 yet we know that many thousands of UK citizens had yet to apply before Christmas. They may have woken up on 01.01.2022 as undocumented migrants in countries where they may have lived for years.

Even where applications have been made, many are still waiting for their residence cards or permits to be delivered and may encounter significant problems when trying to travel in the first months of next year as we enter a new wave of Covid Omicron infection.

The Withdrawal Agreement is a complex document and implementation issues will continue to arise for years, if not decades, not least because the vast majority of British citizens affected are of working age or younger. Issues will arise not only in relation to residence rights but in areas ranging from family reunification, to employment, to recognition of qualifications and social security rights. The European Commission is the entity charged with overseeing implementation of our rights but is not resourced to do this. Neither is the FCDO and its consular posts. The UK National Support Fund (UKNSF) has ended and the future of the citizens' rights officers in posts across the EU remains uncertain. From where we sit it appears that the entire architecture of support for 1.2 million British citizens in the EU is falling away in the first quarter of 2022, after which British citizens will be on their own, before many of them have reached a point where they can obtain permanent residence under the WA.

This contrasts sharply with the situation in the UK where the Independent Monitoring Authority is tasked with resolving issues related to the implementation of citizens' rights of EU nationals living there and the EU delegation to the UK provides regular information and financial support for WA legal advice. Both the UK and the EU appear to think that UK citizens living in the EU, Norway and Switzerland are each other's problem and neither party is prepared to provide us with the level of advice, information and support we need. Our situation in the EU will also not be helped by the fact that the IMA has considered it necessary to bring legal action on behalf of EU citizens against recent Home Office decisions to make holders of pre-settled status reapply for settled status: https://ima-citizensrights.org.uk/news/judicial-review-claim-issued-by-ima/?utm_source=Twitter&utm_medium=social&utm_campaign=Orlo

Furthermore, the [travel problems between the UK and France](#) over the recent holiday period have shown that there is a continued need for active engagement by consular posts with member state governments to ensure that policies that are not Brexit-specific do not impinge on our ability to exercise our Withdrawal Agreement rights. We welcome the support given by the Paris, Brussels and Luxembourg embassies over Christmas but we need more of it, not less.

We are, therefore, asking you to revisit your decision not to continue dedicated funding in consular posts to support British citizens in the EEA, in particular, during the first five years of implementation of the WA, to keep citizens' rights officers in post until at least the end of

2022, and to consider providing individual casework support for those UKinEU in particularly difficult situations, whether or not they are also vulnerable.

The right to return to the UK of UK citizens with non-UK family members

UK citizens in the EU previously had a right to return to the UK with non-UK family members without being subject to conditions such as a minimum income requirement to do so. Before Brexit, they established families in the EU with non-UK nationals secure in the knowledge that should e.g. their elderly parents one day need them to return to the UK to take care of them, they would be able to do so relatively easily. Both they and their families in the UK relied on this option in the legitimate expectation that it would continue for life.

British in Europe campaigned from 2017 for and were granted a three-year grace period during which UK citizens could return to the UK with their non-UK family members. Unfortunately this grace period, announced in April 2019, actually commenced in March 2019 before the rules changed in January 2021. This meant that in practice British citizens have only had a fifteen month window from the end of transition to return before the rules change at 11pm on 29 March 2022. During that window, they face two deadlines. They and their family must, in the vast majority of cases, physically be in the UK before that date. In addition, the family members must also submit their EUSS application before 11pm on 29 March 2022. To get to the UK, they will usually need an EUSS Family Permit but delays in obtaining these are running at six months or more. The deadline is now in 3 months and COVID delays and restrictions, plus the difficulties of making relocation decisions in a pandemic, are running that time down further.

We have had assurances that the Home Office will consider reasonable grounds for late applications under this route. However, one assurance that is lacking is a clear statement that those family members who are entitled to enter the UK on a visitor permit will be able to do so in order to move physically to the UK to make an EUSS application. This was the subject of our letter to Minister Foster of 31 December 2021. This would not only simplify the lives of those UKinEU and their families caught up in (and often separated) due to backlogs in processing EUSS family permit applications, but also remove an additional step in the process, and reduce the volume of applications, for the Home Office, while the eligibility of the relevant family members will in any event still be considered in full when they make their EUSS application. Given that this is a finite group of people who have a window of only three months left in a pandemic to complete this process, this would be a gesture of goodwill to British citizens in the EU, whom the UK government consistently stated were a priority in the Brexit negotiations, and which is in the UK government's own gift to make. It would also help the government to keep the promise it made to its own citizens in the EU as regards the grace period.

Draft changes in the Nationality and Borders Bill on deprivation of UK citizenship for dual nationals

British in Europe has not previously raised this an issue but we now find ourselves forced to do so with the post-debate additions of amendments to the Bill which would reinforce the

current power that a UK Secretary of State for the Home Office has to withdraw British citizenship by allowing this to be done without informing a UK citizen in advance, inter alia, if they hold or are suspected of being able to acquire another nationality.

Prior to Brexit most UK citizens in the EEA and Switzerland were not dual nationals. Since 2016 many of us have applied for and obtained another EEA/Swiss citizenship in order to maintain our free movement rights and thereby secure livelihoods and family contacts in future. These decisions have not been taken lightly and in many instances have cost us many hundreds, if not thousands of pounds.

We are well aware that the Secretary of State for the Home Office would argue that we are not in the sights of this proposed clause but that is now; things could change in the future – draconian powers do, after all, have a habit of becoming embedded and then widely used – and our concerns are widely shared amongst the British community in the EEA and Switzerland, which is why we feel strongly that we should make this request on their behalf. We call on the Secretary of State to withdraw Clause 9 from the Bill.

Implementation of the 7-year grace period on home fees and student finance for prospective UK citizen students living in the EEA and Switzerland

In the Integrated Review the FCDO highlighted the importance of the soft power in assisting the UK to reach its foreign policy and other strategic goals. A key element of soft power is education through attracting students from overseas to study in the UK's universities.

Brexit affected the basis on which British citizens who have grown up in the EEA and Switzerland could study in the UK. It threatened to make them liable for international fees which few of them or their families can afford, to exclude them from UK student finance and to remove the option of studying in the UK for tens of thousands of British nationals. This is the reality of how Brexit reduced the opportunities of these British young people.

British in Europe campaigned from 2017 for UK students from the EEA and Switzerland to be granted home fee status and access to student finance. This is standard practice in many countries across the world who treat their overseas nationals as residents for this purpose. We were given a grace period of seven years from 31.12.2020. The first applications under the new regime opened in September 2020 for entry in September 2021. From the outset it became clear that a significant number of universities across the EU were either unaware of the grace period or aware, but choosing not to implement it. Hundreds of UK applicants from the EU were made international offers even after supplying evidence that they were covered by the grace period. Many prospective students spent months arguing with universities over their fee status when they should have been studying for their exams. Some gave up and applied to other European countries such as the Netherlands and Ireland or even outside Europe. Many of these students were STEM applicants. Those that persisted often then found that they were unable to comply with the requirements for student finance and could not therefore take up their hard won offers and places.

British in Europe raised this in a letter sent to Universities Minister, Michelle Donelan, in June. We received a response in November which did not address our concerns around

implementation and only restated the policy. We know what the policy is, the problem is that it is not being implemented.

Now that applications have started for the 2022-23 entry, we are again hearing that UK universities are making international fee offers to UK students covered by the grace period. None of this is acceptable. British applicants living in the EEA and Switzerland should not be made to jump through arbitrary hoops because a university admissions department cannot be bothered to look up the rules, or, worse, knows what the rules are but decides to see if they can circumvent them anyway. Applications from EU citizens have fallen by 40% this academic year and Covid is making it harder for other international students to travel to the UK. The government should be doing all it can to attract highly motivated, well-educated British students from across the EEA and Switzerland if it has the slightest wish to remain competitive as a country known for its research and educational excellence. More importantly, the government should be doing all it can to ensure that its promises to young British citizens in the EU are kept.

Accordingly, we ask the Secretary of State, in consultation with his counterparts in Scotland, Wales and Northern Ireland, to revisit the guidance for UK universities and ensure that where it appears from the evidence supplied by the applicant on the UCAS form that they are entitled to home fees they are made a home fee offer and not an international offer. Furthermore, the FCDO or relevant department should ensure that presenters at promotion webinars for UK universities should explain that UK students in the EEA and Switzerland are entitled to home fees as many do not know this.

Changes to Personal Independence Payments (PIP) for recipients in the EEA and Switzerland

The rules for administering benefits are, of course, subject to a review currently being undertaken by DWP. We understand that this is in its early stages. However, Dr Coffey's refusal (both in responses made to the media and in a DWP official reply to BIE) to rule out consolidation of PIP within Universal Credit is causing a great deal of concern and anguish for UK recipients of PIP living overseas - elements of PIP are payable ex UK, Universal Credit is not. Dr Coffey is also reported as saying that consolidation is very much under consideration at a fringe meeting at the Conservative party conference this year. Although DWP ignored our request for hard figures, we subsequently discovered that, according to StatX-plore, in July 2021, globally (ex UK) 'PIP cases with entitlement' amounted to no less than 2,756,832! We would ask Dr Coffey to make an unambiguous statement assuaging the concerns of recipients that their PIP benefit will be lost in future. We would also point out that Article 30 et seq of the WA and the government's statement on citizens' rights in June 2017 preserves the rights of existing claimants to this benefit. In addition, Ministers have made numerous comments to the effect that UK citizens in the EU would not be worse off as a result of Brexit. This is an issue that individual organisations representing UK citizens in the EU will have no hesitation in raising to the FCDO and the European Commission for consideration in the Specialised Committee on Citizens' Rights, should the need arise.

The issues we have raised above are only a small selection of the problems confronting UK citizens living in the EU, Norway and Switzerland as a direct consequence of Brexit as we start 2022. British citizens who failed, in some cases for perfectly valid reasons, to apply for their WA rights before the relevant 2021 deadlines will face even more problems. As should be perfectly clear, these issues require a whole of government response. In her [Chatham House speech](#) on 8 December, 2021, Secretary of State Liz Truss said,

“The (Foreign) Office itself is a national asset. We have the best diplomats in the world, and a diplomatic network with unique reach and expertise.”

We hope and expect that this expertise will be available to the estimated 1.2 million UK nationals living in the EEA and Switzerland and that, with the active involvement of all your departments, the support to which we are entitled as UK citizens will be forthcoming when and for as long as it is needed.

Yours sincerely

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