



T: 0300 244 4000
E: scottish.ministers@gov.scot

Jeremy Morgan QC
British in Europe

By email: jeremymorganit@gmail.com

10 October 2019

It was a pleasure to meet with you and with Ms Pouget in August, and I'd like to thank you for making the journey from Italy to attend. Thank you also for sending me your analysis of the position on protecting the rights of UK nationals in other EU countries, and the detailed information on rights in France in both a deal and no deal scenario.

As you know, Scotland has a long history of welcoming people of all nationalities, and of supporting their integration into Scottish society, and this history has taken on even more importance in light of Brexit. Since the EU referendum, EU citizens in Scotland, and Scots living in other EU countries, have been forced to live with unacceptable levels of uncertainty as to how Brexit will affect their lives, their careers and their families. We have been consistently clear that free movement, and all the advantages it brings, should be allowed to continue. We also value the benefits of freedom of movement enjoyed by our own citizens, such as the rights conferred by free movement to live, study and work in other EU countries and benefit from their healthcare and social security systems. Ending free movement of people in the UK will have a negative impact on individuals, families and our economy and society as a whole.

It is right that EU citizens who have built their lives here and chosen to make Scotland their home should have all the rights they currently enjoy protected. The Scottish Government does not believe that EU citizens in Scotland should have to apply to retain their right to live, work and study in this country. We have consistently called for a declarative system to be introduced and will continue to push for this. EU citizens need real and substantial

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

reassurances about their rights and position in this country and this Government will do all it can to support EU citizens through this difficult time, and we are pushing the UK Government to do the same. We want EU citizens in Scotland to feel settled and secure and to continue to make a strong contribution to our country. And that is why we have redoubled our efforts to reach out and give EU citizens in Scotland the support they need to decide to stay here.

Our '*Stay in Scotland*' package of support includes a range of materials to provides key information to individuals, businesses and other organisations and to help guide employers and EU citizens through the EU Settlement Scheme process, including where to access further advice if required. We are funding Citizens Advice Scotland £800,000 over three years to deliver an advice and support service for EU citizens who may need additional support in applying to the EU Settlement Scheme. This service, which includes a full time Freephone advice line is over and above what the UK Government is proposing to support EU citizens living here. We are also working with the Citizens' Rights Project to deliver events across Scotland to try and raise awareness about what EU citizens and their families need to do to stay in Scotland. These events will focus on making sure that vulnerable EU citizens and those with complex needs are made aware of the Scheme and supported in making an application.

The Scottish Government would prefer to maintain our existing relationship with the EU including welcoming EU citizens to study and work in Scotland, with the ability for our citizens to travel, study and work in the EU. Mobility arrangements for short or longer term student exchanges, including in research, support the realisation of the full benefits of European programmes for Scotland. We need to ensure that our universities can continue to attract EU citizens and that students coming to Scotland do not face any barriers. The Scottish Government has confirmed that EU students undertaking their studies in 2019/20 and 2020/21 at a Scottish college or university will have their tuition fees paid for the duration of their course. This guarantee will also remain in the event of a no-deal Brexit. We continue to wait for the outcome of the UK Government negotiations on EU exit, which will inform the longer term position for EU students studying in Scotland beyond 2020/21. We are also deeply concerned about the UK Government's proposed European Temporary Leave to Remain of three years for EU citizens coming to the UK after EU Exit, which does not work for Scotland where the majority of degrees are four years. This amounts to direct discrimination against Scottish institutions and we have called for this to be scrapped immediately.

The UK Government must ensure that UK nationals, including Scots, are not placed at risk if they can no longer access state healthcare at no, or reduced cost, while residing in, or visiting, other EEA countries in the event of no deal, and you will be aware that they have introduced an "exceptional circumstances" scheme for this purpose. As a responsible Government, we also have worked closely with UK Government to ensure that UK-wide primary and secondary legislation is in place to facilitate the continuation of reciprocal healthcare in a no deal situation, as far as that can be achieved.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



Current UK Government policy is to unilaterally continue to apply the existing EU rules on social security coordination until the end of 2020. This will ensure that UK benefit payments currently made to UK nationals living in other EEA member states are protected and that EEA member state nationals living in the UK retain existing entitlements to UK benefits until then. We understand that UK is seeking to protect the social security coordination rights of UK nationals in the EU by reaching reciprocal arrangements either with the EU or with Member States to maintain existing rights until the end of 2020. If the UK Government fails to reach agreement with the EU as a bloc or bilaterally with other EEA member states with regards to social security co-ordination, EEA nationals living in the UK could lose entitlement to benefits being paid to them in the UK from another Member State, and UK nationals living in another EEA member state may lose entitlement to benefits paid by their state of residence. This would be unfortunate.

When we met we also discussed the uncertainty that UK nationals currently living in other EU countries are facing over their return to the UK. As a consequence of the UK Government's published proposals, UK citizens living in the EU will find it much harder to bring family members with them when they return to the UK in the future. It is wholly unacceptable that under the UK Government's proposals, someone with a non-UK national spouse and children will no longer be allowed to return to Scotland with their family unless they meet strict financial thresholds. UK nationals living in the EU deserve guarantees from the UK Government about their rights to return home with family members.

We also spoke about the uncertainty that some UK students currently studying in the Europe may face about continuing their studies, particularly if the UK leaves the EU without a deal. In March this year, the Minister for Further Education, Higher Education and Science, Richard Lochhead, gave an assurance that eligible Scottish and UK students who have to return from the EU to complete their studies will still be able to access student support and tuition fee support. The Scottish Government has also committed to protecting the longer term rights of UK nationals currently residing in the EU/EEA or Switzerland who wish to return here after EU exit. We announced on 5th April that current rights of UK nationals to access student support will remain in place for up to seven years after EU exit, subject to meeting normal eligibility conditions.

We spoke about returning UK nationals accessing healthcare in Scotland after Brexit. UK nationals currently residing in the EEA or Switzerland have a right of abode in the UK and will be able to access NHS healthcare without restriction if they choose to return to take up residence in Scotland. UK passport holders and others with the right of abode do not require leave to remain in the UK and are entitled to receive NHS healthcare at no charge and without restriction when they take up residence in Scotland. There is no ordinary residence test for citizens returning from the EU/EEA to live in Scotland. People may be asked by NHS healthcare providers to show their passport or immigration document and to provide evidence

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



that there is some permanence to their return, for example: a permanent address in Scotland; a rental or mortgage agreement; a utility bill, a council tax document, or invoice covering goods shipped to the UK, but that is all.

Most UK benefits are still controlled by the UK Government's Department for Work and Pensions, including benefits for individuals who are out of work. The UK Government has stated that returning UK nationals and their family members have the same rights to access benefits as other UK nationals or UK residents, and that UK nationals who return to the UK and who wish to make a new application for in-country benefits and services will be able to do so. The UK Government has also stated that they will continue to receive any benefits they are already receiving whilst living in Europe, as long they continue to meet the entitlement conditions. Eligibility criteria for benefits which are currently being delivered by Scotland's devolved social security agency, Social Security Scotland, require applicants to be ordinarily resident in Scotland, which individuals returning to live in Scotland will be able to satisfy.

We also briefly touched on the issue of school places for children in Scotland. Local authorities have a duty to provide adequate and efficient provision of school education for all children residing in their local area. This duty does not distinguish between children and young people on the basis of their country of origin, and so applies to UK, non-UK and non EU children.

Ms Pouget also expressed an interest in the progress of the Scottish Elections (Franchise & Representation) Bill which was introduced on 20 June this year. As you may know, the Bill seeks to extend voting rights for Scottish Parliament and local government elections to all resident foreign nationals with leave to remain in the UK. All those with refugee status will be enfranchised by the Bill. Asylum seekers and anyone else without leave to remain in the UK will be ineligible to register or vote in devolved elections. This will include individuals who are illegally present in the UK and/or subject to deportation or removal. Allowing persons of all nationalities legally resident in Scotland to vote at Scottish Parliament and local government elections has been estimated to extend the franchise to include around 55,000 non-EU, non-Commonwealth citizens who are currently not able to vote in any elections in Scotland. This figure is based on 2011 census data.

The Bill also reaffirms the existing rights of EU and Commonwealth citizens to vote and extends the ability to stand as a candidate in Scottish Parliament and local government elections to all those with an indefinite right to reside in Scotland. Extending the franchise to foreign nationals was strongly supported in the 2018 public consultation on electoral reform - by 92% of organisations and 78% of individuals. The Standards, Procedures and Public Appointments Committee is currently holding Stage 1 evidence sessions on the Bill.

We want Scotland to continue to be a vibrant, diverse country and a confident and responsible global citizen. People who choose to make Scotland their home provide a vital contribution to

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

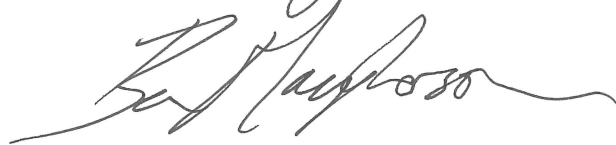
St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



our country's economy and our communities, helping to make Scotland the open and forward-looking nation that it is today. We will continue to push the UK Government for an immigration system that meets Scotland's needs, recognises individual circumstances, and provides a welcoming environment for people who choose to live here.

Thank you again for a very constructive meeting and I look forward to continued engagement on these important issues.

Kind regards,



Ben Macpherson MSP

Minister for Europe, Migration and International Development

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTOR IN PEOPLE

