

Give full Withdrawal Agreement rights to those waiting in the backlog

What?

Article 18(3) of the Withdrawal Agreement very clearly sets out that individuals who have made a valid application for their new residence status under the EUSS should have the benefit of all the residence rights set out in the Withdrawal Agreement while they wait for a final decision, including if they are waiting for the outcome of an Administrative Review or Appeal process.

Although citizens who are waiting for a decision have some rights, such as the right to work, rent and access NHS healthcare, there are several rights that are denied them. These rights are all integral to being able to exercise residence rights in the UK, the lack of which can hamper employment duties, and they include:

- The right to travel and return to the UK
- The right to apply for a driving licence, or exchange an expired EU driving licence for a UK one
- The right to apply for an EHIC card
- The ability to update their digital UKVI account with a new identity document

Other rights are available in theory, but in practice are obtain very hard to access due to inadequate Government guidance, and inconsistent decision making:

- The right to obtain a National Insurance number
- The right to access welfare and housing benefits

If EUSS applications were dealt with very promptly, the lack of these rights would perhaps be a temporary inconvenience. However, many people wait months or even years for a decision – over 10,000 people had been waiting for more than 2 years as at the end of December 2023 (the latest statistics available). People suffer terrible stress and anxiety while waiting for their status to be confirmed.

We propose a number of simple adjustments that will ease some of the practical difficulties that citizens in this situation face, by ensuring all these rights are available to them while they wait.

Why?

Improving EU-UK relationship

On travel, the European Commission clearly stated its view¹ in April 2024 those waiting for a final decision have “a right of entry and residence in the host State”, and that they are aware of “the UK’s underlying view that such persons do not have a right of entry into the UK based on the Withdrawal Agreement”. They go on to state they are “in contact with the UK with a view to resolving this matter”.

Impacted citizens

By being denied the right to travel, many are missing out on important family events outside the UK including funerals, and many are unable to fulfil duties that are part of their employment.

¹ https://www.europarl.europa.eu/doceo/document/E-9-2024-000062-ASW_EN.pdf

Similarly, being unable to apply for driving licences, or exchange an expired EU licence with a British one, means many are left unable to take up employment opportunities. In some cases people are unable to effectively care for a family member and have been unable to drive them to hospital when faced with unacceptable ambulance delays.

Citizens waiting for status should in theory be able to receive welfare benefits but are frequently denied as the guidance on those waiting for a decision is unclear.

Why not? Reasoning behind UK Govt position and why we disagree

The previous Government has sought to limit these rights pending application in various ways, initially denying them altogether to late applicants before having to U-turn in August 2021 following pressure from both civil society and the EU Commission. Other examples included putting extra barriers in accessing the rights to work and rent, and denying National Insurance numbers to those waiting for a decision.

We are unclear why the previous Government resisted implementing Article 18(3) in full, so that people who are awaiting a grant of status are still denied certain rights including travelling and returning to the UK, and obtaining driving licences.

Cost?

This will be a cost saving to the Home Office, the court system, the DWP and other departments.

How?

- Primary legislation
- Secondary legislation
- Immigration Rules
- Guidance change**

The detail

The new Government should ensure that those who have submitted a valid application to the EUSS, as evidenced by a Certificate of Application (CoA), should have access to all residence rights under the Withdrawal Agreement, including supporting rights that the residence rights depend on. Given that holders of a CoA can create share codes in exactly the same way as holders of EUSS status, the required policy changes should be extremely easy to implement.

These include:

- Travel - change Border Force and carrier guidance to allow non-visa nationals, and visa nationals who submitted in-country EUSS applications, to board carriers and enter the UK with a CoA.
- Driving licences - mandate DVLA to issue driving licences and provisional driving licences to citizens with a CoA.
- European Health Insurance Cards (EHICs) – mandate DHSC to issue EHICs to citizens with a CoA.
- Change the Home Office systems such that CoA holders can correctly update their UKVI account with a new travel document.
- Improve all departmental and local authority guidance such that eligibility for obtaining National Insurance numbers, and welfare and housing benefits is clarified for CoA holders.