



Comprehensive Sickness Insurance

Barriers to British citizenship for EU nationals settled in the UK

The message has been clear and consistent ever since the referendum – EU citizens who have made the UK their home are welcomed as friends, neighbours, family and colleagues. We trust that the Government wants the legal detail to match the warm words, and will rectify a policy anomaly which has created considerable barriers to EU citizens becoming British - causing stress and worry for many.

Why are EU citizens not becoming British?

The UK has set up the EU Settlement Scheme which has allowed EU citizens to acquire settled status, but many want to go on to become British. They want the right to vote and have security in the nationality of their adopted home – the United Kingdom. However, a requirement to have an obscure insurance policy is putting applications at risk of refusal and discouraging many from applying.

The British Nationality Act 1981 requires applicants not to have been in breach of immigration laws⁽¹⁾ for any period relied on in the application. For a lot of EU citizens this means that they not only need to have been living in the UK but for students and those self-sufficient, be in possession of Comprehensive Sickness Insurance ('CSI'). Surprisingly, the possession of CSI has never been a requirement for EU citizens to live in the UK or use the NHS, so most people don't and have never had it. More concerning was that the Home Office never communicated clearly to EU students and self-sufficient people that they needed to have CSI to be able to become British.



The Home Office, in charge of decisions relating to applications for citizenship, have maintained this policy despite questions from various organisations including **the3million**.

In May 2020, updated Guidance confirmed this, changing the application process to ask for CSI and directing caseworkers to check for it. The Guidance introduced a vague power of discretion, but no details are provided as to how it should be applied.

Who would take the expensive risk of applying now, uncertain how this discretion will be used?

We ask that this unnecessary deterrence to becoming British is removed
The UK is no longer in the EU, and is completely free to remove this obstacle

(1) legislation.gov.uk/ukpga/1981/61/section/50A – paragraph (4) (e)

CSI – the background

Before the Comprehensive Sickness Insurance (CSI) ‘scandal’⁽²⁾ broke in early 2017, CSI was in the large completely unheard of by anyone who had not had dealings with the Home Office. It was never required in daily life nor ever requested when accessing the National Health Service.

However, when EU citizens wanted to apply for Permanent Residence (PR – *a residence status under EU free movement law, before the EU Settlement Scheme existed*), they were confronted with the need to show evidence of possessing CSI for any periods where they were either students, or self-sufficient (e.g. carers, stay-at-home spouses, older people). This was not shown on any of the relevant Home Office web pages⁽³⁾, but instead was buried in the small print of the accompanying guidance⁽⁴⁾.

The requirement for studying and self-sufficient EU citizens to have CSI stems from the EU’s Free Movement Directive⁽⁵⁾. It applies across all the EU member states, most of which have insurance-based healthcare systems, requiring *both* nationals of the member state *and* immigrants to hold insurance policies to access healthcare.

Unlike other EU countries, the UK’s NHS is funded from general taxation (not only employment taxation but also for example Value Added Tax paid by everyone), and EU citizens living in the UK have been able to use the NHS on an equal footing with British citizens. Despite this, the UK has historically not considered access to the NHS as Comprehensive Sickness Insurance. The EU Commission considers this a breach of EU law and started infringement proceedings⁽⁶⁾ against the UK in 2012.

CSI and the EU Settlement Scheme

The issue was raised many times in Parliamentary debates, and the House of Commons Exiting the European Union Committee report⁽⁷⁾ on the rights of UK and EU citizens (March 2017) concludes:

“The Government should state that access to the NHS is considered sufficient to fulfil the requirements for CSI, and that it will introduce legislation to that effect if necessary.”

This was never done. However, in October 2017, the then Prime Minister Theresa May wrote an open letter⁽⁸⁾ to all EU citizens in which she promised that people applying for a new settlement scheme “*will no longer have to demonstrate Comprehensive Sickness Insurance as they currently have to under EU rules*”. This was confirmed by the publication, in June 2018, of the Home Office’s ‘EU Settlement Scheme: Statement of Intent’⁽⁹⁾, which states:

*Otherwise, those applying under the EU Settlement Scheme will not be required to show that they meet all the requirements of current free movement rules, such as any requirement to have held comprehensive sickness insurance or generally to detail the exercise of specific rights (e.g. the right to work) under EU law. **The UK has decided, as a matter of domestic policy, that the main requirement for eligibility under the settlement scheme will be continuous residence in the UK.***

CSI and naturalisation

Many EU citizens, having lived in the UK for decades yet experiencing over two years of deep frustration and anxiety, were relieved to be able to apply for settled status. Of these, many went on to apply for British citizenship.

However, the British Nationality Act 1981 requires applicants not to have been in breach of immigration laws⁽¹⁰⁾ for any period relied on in the application. Because pre-settled and settled status legally **only takes effect from the date it is granted**, we have been concerned about how the Home Office would treat historical periods where EU citizens were studying or self-sufficient, without having CSI.

We made repeated enquiries of the Home Office, but the issue was only clarified on 15 May 2020, by updated policy guidance⁽¹¹⁾.

The Home Office could and should have taken this opportunity to rectify this unfairness.

Instead, the guidance reiterates the need for CSI and only allows caseworkers to consider whether there are ‘compelling grounds to exercise discretion’. It is not known what constitutes compelling grounds.

(2) blogs.lse.ac.uk/politicsandpolicy/the-little-known-loophole-used-to-deny-eu-citizens-permanent-residency/

(3) gov.uk/permanent-residence-document-eu-eea

(4) First mentioned on page 13 of assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864756/Form-EEA-PR-guidance-notes-v5.pdf

(5) Article 7 of eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF

(6) ec.europa.eu/commission/presscorner/detail/en/IP_12_417

(7) publications.parliament.uk/pa/cm201617/cmselect/cmexeu/1071/1071.pdf

(8) gov.uk/government/news/pms-open-letter-to-eu-citizens-in-the-uk

(9) gov.uk/government/publications/eu-settlement-scheme-statement-of-intent

(10) legislation.gov.uk/ukpga/1981/61/section/50A – paragraph (4)(e)

(11) gov.uk/government/publications/naturalisation-as-a-british-citizen-by-discretion-nationality-policy-guidance



Why is this such a problem?

EU citizens are devastated that CSI has returned as a roadblock:

- It has brought back all the original unfairness of the Home Office requiring an insurance that was not known about, and never needed in everyday life – not even when using the NHS. People thought CSI was dealt with, a thing of the past, and now it has come back to haunt them.
- The effect of the Home Office's policy is to conclude that the applicant was **not lawfully resident** in the UK for those past periods. As one citizen put it to us: *"We reject utterly that we could be **criminalised** by the lack of an insurance we weren't asked for and didn't know we needed"*.
- Many EU citizens have applied to naturalise since being granted settled status. Often, applications are concluded within weeks. However to our knowledge all applicants affected by this issue have been waiting months – some in limbo for over a year – while the Home Office deliberated on the policy.
- Applying to naturalise is very expensive. It currently costs £1,330 plus fees for biometrics and 'Life in the UK' and language tests. A refusal results in the loss of those fees. Since applicants can wait five years (or three if married to a British citizen) until the period requiring CSI is no longer looked at, why would they take the risk? The effect of the policy therefore is to unnecessarily deter and delay EU citizens (many of whom have lived here for decades) from applying for British citizenship. For some EU citizens this causes extra heartache in not being able to apply in time to retain dual nationality.



What is the solution?

The Home Secretary can change the legislation. The following simple amendment to the Immigration and Social Security Coordination Bill would also achieve this end:

"In the event that a person with settled status granted pursuant to the EU Settlement Scheme applies for British Citizenship, the period of residence in the United Kingdom which was the qualification for settled status shall be treated as not in breach of any provisions, including the Immigration Acts and the Immigration Rules."



the3million is a non-partisan grassroots organisation of EU citizens in the UK, formed after the 2016 EU referendum to protect the rights of people who have made the UK their home.

For more detailed facts, references and briefings, contact us at advocacy@the3million.org.uk or see our website www.the3million.org.uk