

European Union (Withdrawal Agreement) Bill Briefing for House of Lords Committee Stage

the3million supports amending the Withdrawal Agreement Bill [WAB] to provide additional protections for EU citizens living in the UK after Brexit.

For EU citizens to stay in the UK after Brexit, they must have a new immigration status to replace their current one. Most EU citizens have to apply via the EU Settlement Scheme (EUSS) to do this - if they do not so by the EUSS deadline, they will illegally overstay and risk their homes and jobs.

The draft Withdrawal Agreement [WA] between the EU and the UK offers a choice, allowing the UK to implement a declaratory scheme of registration - not application. the3million believes the UK Government is storing up serious consequences for many EU citizens in the future by choosing instead to implement a constitutive system where EU citizens do not have a new immigration status until they apply for it. No similar scheme anywhere in the world has ever managed to reach 100% of its target audience, so an application scheme is guaranteed to result in innocent citizens being criminalised for not applying before the deadline, even though they would otherwise have been eligible for settled or pre-settled status.

We therefore ask you to vote for the following two amendments tabled by Lords Oates and McNicol, replacing Part 3, Clause 7 in the Withdrawal Agreement Bill [WAB] and choosing an automatic guarantee combined with a registration scheme instead. The two amendments are alternatives - we would anticipate only one being put forward to a vote.

Amendment [SHORT] p3-4

This amendment removes all the WAB's references to a constitutive system, and instead makes clear it will implement the WA via a declaratory registration system. It does so by replacing the references to WA 18(1-3) with 18(4).

The **Withdrawal Agreement [WA]** contains a choice between a constitutive application system and a declaratory registration system.

Clause 7 of the (unamended) Withdrawal Agreement Bill confirms the Government's choice to implement the WA by way of a constitutive application system. This will inevitably result in scenarios similar to the Windrush scandal - see our briefing "Changing the EU Settlement Scheme to be declaratory" (www.t3m.org.uk/WAB_EUSS_declaratory). See also our briefing on our concerns around pre-settled status, and the creation of over a million individual cliff-edge deadlines (www.t3m.org.uk/WAB_EUSS_presettled).

A constitutive system is a deliberate removal of a legal safety net for a large group of EU citizens and family members.

This amendment firmly puts a legal safety net in place, by implementing the WA via a **declaratory registration system**.

It makes clear that the entitlement of a declaratory registration applies both to those who fall under the WA (i.e. those exercising treaty rights), and those who do not but are eligible under the UK's

current EU Settlement Scheme.

At the same time, it makes provision for EU citizens to receive **physical proof of their status**. Currently EU citizens are set to be the only group of citizens who will not be able to evidence their status to an agent (employer, landlord, healthcare provider etc.) in the Hostile Environment via a physical document. See our briefing (www.t3m.org.uk/EUSS_PhysicalDocuments) for more details.

This is the **most minimal amendment possible to prevent the WAB from consolidating a constitutive system**. Changing the system to declaratory at a later date will necessitate retrospectively amending the Withdrawal Agreement Act – making such a change far more difficult.

However, the details of the declaratory system are not set out in this amendment. Nor does the amendment consolidate the criteria of eligibility or define the rights EU citizens hold.

Amendment [LONG] p1-3

This amendment

- *is an alternative to, and building on, the short amendment above*
- *creates a declaratory registration system that provides incentives for registration but avoids making EU citizens unlawfully resident if not registered by the deadline*
- *ensures EU citizens receive physical proof of registration to prevent discrimination*
- *consolidates into primary legislation both the current eligibility criteria of the EU Settlement Scheme immigration rules, and the rights of those eligible under the Scheme.*

The EU Settlement Scheme has been created by secondary legislation, which unlike an Act of Parliament can be easily changed over time. The WAB gives Ministers sweeping powers to implement the citizens' rights provisions of the WA, and it is concerning to see Ministers already using delegated powers to make significant policy changes that will have a direct impact on EU citizens living in the UK¹.

To protect EU citizens in the UK and ensure they are not deprived of current rights in the future, **primary legislation** needs to do three things which the WAB makes no attempt to do:

- 1) Consolidate into primary legislation the current **eligibility criteria of the EU Settlement Scheme**.
- 2) Define in primary legislation the **rights of EU citizens and family members**, namely by defining the content of settled and pre-settled status. (Particularly those with pre-settled status are very vulnerable to a gradual undermining of their rights).
- 3) Change the constitutive application system into a **declaratory registration system** in order to avoid Windrush scenarios at a larger scale and severity.

The proposed Amendment addresses all three of these issues. It builds on the Amendment [SHORT] to ensure the system is declaratory, and defines the eligibility criteria and rights of EU citizens and family members in primary legislation. It does not create more rights for holders of settled status and pre-settled status than already exist in UK immigration rules.

¹ <https://publiclawproject.org.uk/latest/freedom-of-establishment-regulations-briefing/>