

The Rt Hon Priti Patel MP
Home Secretary
Home Office
2 Marsham Street
London
SW1P 4DF

23 August 2019

Dear Ms Patel

Urgent clarification requested regarding the position of EEA nationals and their family members in the event of a no-deal Brexit

I am writing to request urgent clarification regarding the position of EEA nationals and their family members in the event of a no-deal Brexit. ILPA has been concerned by statements attributed to sources close to the Home Secretary in relation to a no-deal Brexit, as well as by social media reports of alarming advice being given by Home Office staff. Collectively these either contradict elements of the published policy in relation to no-deal Brexit or have created the appearance that this policy is being abandoned.

ILPA's members represent EEA nationals, their family members, businesses who employ them and institutions that provide education to them. The recent media reports have led to a great deal of confusion and fear among our members' clients, who are concerned the government is withdrawing from assurances it has repeatedly made since the referendum in 2016. Businesses are struggling to make preparations for the future because of the uncertainty.

ILPA has reviewed the published guidance and legislation and compared these against the factsheet published by the Home Office media team on Monday, 19 August 2019, as well as the email sent to those subscribed to the Settlement Scheme update service on Wednesday, 21 August 2019. Despite these attempts at clarification, we believe many areas remain unclear.

This situation is no longer tenable. The confusion has already, it appears, triggered unusually high demand on the Settlement Scheme mobile application, which had to be taken down for maintenance on Wednesday. We are therefore seeking urgent clarification in relation to the matters set out below.

A. The position of new entrants after exit day

Article 3(1) of the Immigration (European Economic Area Nationals) (EU Exit) Order 2019 (SI 2019/686) grants EEA nationals arriving in the UK after exit day leave to enter automatically for three months. Article 6 of the Order indicates the only condition of leave imposed will be that it lasts for three months. No work or study restriction is provided. Further, in [a policy paper](#) published on 28 January 2019, the Home Office outlined that EEA nationals will be required to apply for "European temporary leave to remain" if they wish to remain in the UK for longer than three months, and that this will include the right to work and study.

However, ILPA is concerned that this position is contradicted by the Home Office factsheet, which states:

“EU citizens will still be able to come to the UK on holiday and for short trips, but what will change is the arrangements for people coming to the UK for longer periods of time and for work and study. Details of other changes immediately after 31 October and improvements to the previous government’s plans for a new immigration system are being developed.” (emphasis added)

The government’s intention appears, therefore, to be that new entrants will not have the right to work or study, indicating the European temporary leave to remain system is being abandoned.

The [webpage](#) on European temporary leave to remain remains live. If this policy has been abandoned, this webpage must be taken down as a matter of urgency so that it is not relied on incorrectly.

B. The position of those eligible under the EU settlement scheme

The Home Office has reiterated that EEA nationals and their family members who are resident by 31 October 2019 will be eligible to apply under the EU settlement scheme until 31 December 2020.

However, if newly entering EEA nationals will not have the right to work or study, there is uncertainty as to whether organisations will now be obliged to carry out checks to distinguish between those eligible under the Settlement Scheme and those who are not. If these checks will be required, it is also unclear how they will be able to be carried out.

C. Legislative process

ILPA notes that paragraph 2 of the Home Office’s policy paper published on 28 January 2019 states:

“All provisions outlined in this policy paper are subject to parliamentary approval of the necessary legislation, where relevant. In particular, before these proposals can be implemented, Parliament will need to have enacted the Immigration and Social Security Co-ordination (EU Withdrawal) Bill to end free movement.”

However, ILPA understands from media reports that the government has no intention of proceeding with the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. In light of this, it is unclear on what legal basis the government proposes to repeal the primary and secondary legislation that implements free movement in the UK, especially given the government’s previous acceptance that the ending of free movement could only be done by primary legislation.

D. Guidance and instructions given to Home Office staff

ILPA has been particularly alarmed by reports of inconsistent and misleading advice being given by Home Office staff, some of whom have suggested that individuals will need to apply under the Settlement Scheme prior to 31 October 2019. It is clear that the Home Office knows this advice is incorrect and it has therefore attempted to clarify the situation. However,

ILPA remains concerned that some individuals may be relying on incorrect or misleading advice. Further, ILPA is concerned that such advice was given in the first place and that there is the potential for this to continue.

E. Questions

1. Has the “European temporary leave to remain” policy announced on 28 January 2019 been abandoned or revised?
2. If so, what system will replace European temporary leave to remain, if at all, after exit day?
3. If the Home Office is not yet in a position to reveal the new system, when can we expect the system to be announced?
4. If new European entrants will not be given the right to work, study, rent and access healthcare on entry, will employers, education institutions, landlords and healthcare providers be required to distinguish between Europeans who are eligible under the Settlement Scheme and those who are not?
5. If employers, education institutions, landlords and healthcare providers are required to distinguish between Europeans who are eligible under the Settlement Scheme and those who are not, how will they do so?
6. Under what legal route does the government intend to end free movement if it decides not to proceed with the Immigration and Social Security Co-ordination (EU Withdrawal) Bill?
7. What systems are in place to ensure that individuals who have been given incorrect advice in relation to a no-deal Brexit will be contacted and informed of the correct position?
8. Has the Home Office issued clarification guidance to its caseworkers and helpline staff to ensure advice remains accurate?

I look forward to hearing from you as a matter of urgency.

Yours sincerely

Adrian Berry
Chair
ILPA

Cc: Seema Kennedy MP, Parliamentary Under Secretary of State
Clive Peckover, UK Visas and Immigration