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My Lords

Thank you for your contributions to the debate on Thursday 14 February, on improving immigration procedures in the United Kingdom. I stated during the debate that I would write to Noble Lords to respond to questions and offer further clarification.

Lord Greaves raised a number of questions regarding the EU Settlement Scheme. I have attempted to address each of his questions below.

Lord Greaves' first question concerned settled status for EU citizens living in the UK. The Government is clear that EU citizens play an important role in our economy and society and we want that to continue after we leave. Representatives of EU citizens in the UK form a User Group that meets regularly, to ensure the system is designed to reflect users' needs. This is an absolutely essential part of the Government's exit approach.

We meet with representatives from the 3 million regularly, as members of the Representatives of EU Citizens User Group and the Safeguarding User Group, both of whom meet monthly to discuss the development of the EU Settlement Scheme for EU citizens in the UK. This includes the design of the rules, guidance and systems, testing them as they are developed, understanding the range of user needs, and our plans for communications about the Scheme to ensure EU citizens understand what they need to do.

During these sessions, the Home Office has always been clear that we will not respond to the 168 questions individually. We have published the Statement of Intent on the Settlement Scheme, which we believe provides guidance and answers to the questions raised. This can be found here <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>.

A wide range of information about the scheme is also available on GOV.UK, at <https://www.gov.uk/settled-status-eu-citizens-families>. The Home Office has also published the toolkit for the EU Settlement Scheme, case worker guidance for each beta testing phase as well as the 'no deal' policy for all EU citizens resident in the UK. These documents provide all the required information for EU citizens who wish to remain in the UK once we leave the European Union.

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Lord Greaves also asked for clarity on the definition of pre-settled status. The draft Withdrawal Agreement published in March 2018, guarantees the rights of EU citizens and their family members living in the UK, and UK nationals living in the EU. If applicants apply before they have five years' 'continuous residence', they will usually receive pre-settled status rather than settled status and can apply for settled status once they meet the residency criteria. This approach is in line with the Draft Withdrawal agreement, as agreed with the European Union.

Further information is also available on gov.uk at <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

Lord Greaves also raised concerns about the automation of the application process and the perceived lack of human interaction.

May I first reassure you that, while automated checks are a key element of the application process, minimising the burden on applicants and speeding up the application and decision-making process, each case is checked by a caseworker to ensure all applicants are given the correct status.

However, it may be helpful to provide further information on how the application works and how we have designed the system to minimise the evidential burden on applicants. During the application process, where the applicant chooses to provide their National Insurance number (NINo) we conduct real time checks against Government data to see whether that indicates a continuous five-year residence period. Where that is the case the applicant will be granted settled status, subject to identity and criminality checks.

Where the data checks alone cannot establish a five-year continuous residence period, the applicant is asked if they agree that this is correct (they have been living in the UK for less than five years) or whether they have been living here for more than five years, or that they qualify for settled status without five years' continuous residence here because they meet particular criteria.

If they agree that they have been living in the UK for less than five years, after confirmation of identity and security checks, they will be granted pre-settled status. If they say they have been living here for more than five years (or qualify under specific criteria), then they can upload additional evidence of residence, such as utility bills etc.

We will seek to guide applicants to use the evidence they may have which most readily evidences their continuous residence. We have published a draft list of recommended documents, which we have compiled following discussions with stakeholders. The list is not be prescriptive or definitive, so that we can take account of individuals' specific circumstances.

We recognise that some applicants may lack documentary evidence in their own name for various reasons, and we will work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them.

Where further evidence is required, applicants will be able to upload scans or photographs and send them to us as part of the online application.

Applicants do not have to provide their NINo, this is entirely optional, but it has helped a significant proportion of applicants demonstrate their residence without the need to provide any evidence. As noted in the report on the second phase of private beta testing (PB2)¹:

¹ <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report>

Of the 27,211 decisions made and issued by 14 January 2019, 22,723 cases (84%) did not need to provide any additional evidence of UK residence. The decision was made on the basis of automated checks made against HMRC and DWP data, or because the applicant already held a valid PR document or ILR.

While providing a NINo has helped the majority of applicants demonstrate when they have been here, there may be cases where the data may not prove the applicant's residency period. If this happens it is simple and easy to use other evidence to demonstrate their residence in the UK. Information on the broad range of evidence an applicant can provide is available here <https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>.

On Lord Greaves' concern about the burden of the Scheme, we do not underestimate the scale of the challenge and we need to get the design and communication right, but the Home Office does already process millions of applications every year across its visa and passport operations, so processing this volume of applications is feasible.

Finally, I would like to address the Noble Lord's comment regarding appeals.

As we move towards a single, global immigration system it is fair to provide for consistency between the remedies available to EU nationals refused leave and the remedies generally available to non-EU national's refused leave to remain in the UK.

Applicants who are refused on eligibility grounds will have a right to apply for administrative review. Eligibility under the EU Settlement Scheme is primarily focussed on how long a person has been in the UK. An administrative review of these cases will be able to correct any errors that have been made in calculating this time-period by considering new evidence if necessary.

There is a fee of £80 for applying for administrative review which is refunded if the challenge succeeds. An individual in these circumstances who cannot, or does not, wish to pay the fee for an administrative review has the alternative option of submitting a fresh application under the EU Settlement Scheme which is free.

Where a refusal is based on suitability grounds there is no right to administrative review. Refusals on suitability grounds will be made if, for example, there is evidence of serious criminality.

However, where someone is refused on criminality grounds and is subject to deportation they can make a human rights or protection claim against their removal and may have a right of appeal under existing legislation if that claim is refused.

In addition, applicants who are refused leave under the settlement scheme, have the right to apply for judicial review of the refusal.

An applicant can also challenge a decision by applying for judicial review to the independent judiciary but there would be no preliminary reference procedure to the Court of Justice of the European Union, as it would not have any jurisdiction in the UK.

Lord Kennedy raised the issue of international students, as did Lady Redfearn.

I agree with Lord Kennedy that perception is very important, but I would take issue with the suggestion that the current system is having a detrimental effect. As Lady Redfearn pointed out, university student visa numbers rose by 9% last year to their highest ever level and there are currently nearly half a million international students in the UK. There will continue to be no limit on the number of students who

can come here and, as we set out in the Immigration White Paper which was published just before Christmas, we will be increasing the length of time that students can remain in the UK at the completion of their studies to help improve our sector's international competitiveness.

The Bishop of Durham commented on the complexity of the Immigration Rules. As you know, the Law Commission has been asked by the Home Office to review the Immigration Rules.

The terms of reference for the project as agreed between the Home Office and the Law Commission are as follows:

- (1) To review the Immigration Rules to identify principles under which they could be redrafted to make them simpler and more accessible to the user, and for that clarity to be maintained in the years to come.
- (2) The project might include consideration of the structure and drafting of the Rules, the timing and frequency of amendments to the Rules, the division of material between Rules and guidance and the way in which the Rules are published. The Commission will seek to identify the underlying causes of complexity in the Rules and make recommendations to improve them for the future.
- (3) The project will include a public consultation. It will conclude with a report setting out the Commission's recommendations, and including a redraft of some of the Rules, putting some of those recommendations into effect.
- (4) The review will not consider substantive immigration policy.

For further information, the full consultation paper can be found at; <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>.

The Home Office welcomes the Law Commission's work in this area as simplified Rules are key to improving the experience of applicants and helping people navigate the immigration system. We look forward to receiving the Law Commission recommendations in the summer, once they have completed their consultation.

Finally, I would like to address the Bishop of Durham's concerns regarding faith literacy across the Home Office.

We continue to work closely with the All Party Parliamentary Group (APPG) on International Freedom of Religion and engage a range of faith groups to improve our policy guidance and training so that we approach claims involving religious persecution and conversion in the appropriate way.

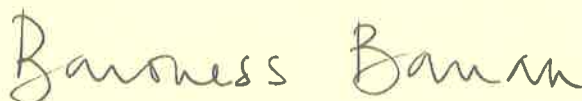
This Government is committed to providing protection to those who need it, irrespective of faith or religious belief. The APPG report acknowledged that we have appropriate guidance in place on how decision-makers must consider religious based claims. This is regularly reviewed, and we continue to work closely with a range of stakeholders, including faith groups, to improve decision making in this important and complex area.

The report highlighted that policy guidance is not always being followed in practice, so we are focusing on improving our training. For instance, the Home Office runs a foundation training programme for all asylum decision makers. This covers all Refugee Convention reasons including religion and, during the course, trainees consider case studies involving religion or belief-based persecution. We have also worked with the APPG to develop specialist training on these claims. We are finalising the training and intend to roll this out in April.

On the subject of the 2020 Lambeth Conference, I am pleased to say that representatives from both the Home Office and the Prime Minister's office met with the organisers last year to discuss those who would be applying for visas. I hope you agree that this demonstrates the positive engagement taking place on this matter.

More broadly, religious workers may visit the UK to preach or do pastoral work. The Immigration Rules set out the requirements to visit the UK, usually for up to six months. The requirements apply to all visitors to the UK and applications for visit visas or for entry as a visitor are considered on their merits regardless of the nationality of the applicant.

I hope you find this letter helpful. I will also place a copy in the House library.

A handwritten signature in cursive script that reads "Baroness Barran". The ink is dark and the handwriting is fluid and legible.

BARONESS BARRAN