With the United Kingdom set to leave the European Union in 2019, the country stands on the cusp of major constitutional change. One of the many dimensions of that overall transformation is an important change in the status of ‘citizens’. UK citizens will no longer be ‘EU citizens’, protected under EU law. Hence they lose both the bundle of socio-economic rights associated with the EU Treaties (free movement, non-discrimination, etc.) and the political status associated with this, including the right to vote in European Parliament elections. EU27 citizens retain their status, but EU citizenship loses – subject to any withdrawal agreement negotiated under Article 50 TEU – most, if not all, of its political and legal traction in the UK. In other words, EU27 citizens will be ‘third country nationals’ in the UK. So far as we can tell, subject to whatever transitional arrangements are put in place for those who are presently in the UK or have some attachment to the UK that needs to be protected (e.g. former residence), the status of ‘second country national’, which nicely describes the ‘privileged foreigner’ status of EU citizens resident in other Member States at present, will disappear at the point of Brexit.

The issue of Brexit and EU citizenship receives scant mention in the Select Committee’s Call for Evidence. It is none the less one of the most important items of context providing the background to the Committee’s work on citizenship and civic engagement because of the important status changes to be introduced and the processes through which the UK and its citizens and residents are going. It is worth noting – in the context of the Call’s interest in political participation – that adding the total number of EU citizens resident in the UK to the number of UK citizens long term resident outside the UK creates a total which is larger than the number of votes which separated the respective tallies of Leave and Remain. And yet those groups of people, few of whom had the right to vote in the Referendum, who are some of those most intimately affected by the Referendum outcome, as regards their legal status and ‘citizenship rights’.

This response to the Call for Evidence therefore proceeds on the assumption that it is important to itemize the citizenship-related dimensions of Brexit, so that this roster of implications can be carefully built into the Select Committee’s deliberations. These reflections need to go beyond setting up a simple dichotomy between ‘British citizens’ and ‘others’, because the reality is much more complex. Nor should the work of the Committee be premised on the assumption that Brexit marks a straightforward revival of national sovereignty in relation to citizenship matters, along with everything else. International law, and some aspects of EU law, will continue to affect these questions, especially if a withdrawal agreement is successfully negotiated under Article 50 TEU. But internally there is an ethical imperative for policy-makers to proceed in a manner that is conscious of the threat to individual rights that Brexit poses. This is a threat that is unprecedented in the context of citizenship developments within the UK’s core European territories (i.e. leaving aside questions relating to the treatment of citizenship status and ‘subjecthood’ in current and former colonies and territories, as well as the historic and ongoing implications of the unraveling of the British Empire).

A country which is about to embark upon a phase of major constitutional change is a country that needs to take a hard look at the contours of its citizenship regime, in order to ensure that it is operating optimally. A citizenship regime encompasses the formal legal status of membership – or nationality as it is sometimes known – as well as other elements. ‘Nationality’ is the status recognized under international law, the external dimension of which ‘sorts’ persons and allocates
them to one, or sometimes several, states (depending upon national approaches to dual citizenship). Internally, citizenship determines access to some residual rights that most western liberal democracies reserve only to citizens, such as absolute protection against deportation (also prohibited under international law), most rights to vote and stand for election (although the UK has been an exception in this sphere with its allocation of rights to Commonwealth and Irish citizens hitherto, as well as rights under EU law), as well as access to many public service positions, especially in areas of national security and defence.

Beyond formal membership in this sense, citizenship as a membership status generally has fuzzy edges, because so many rights and duties (e.g. to pay taxes) or opportunities to provide service (e.g. to serve in the armed forces) can and do attach to various categories of settled non-citizens. Those who enjoy rights similar to, but not entirely identical to those of citizens, are often called ‘denizens’. Residence is a very important marker of this type of entitlement, which is why cases where stability of residence is threatened receive prominent coverage in the media. One recent example is that of Shane Ridge, who was born in the UK and who long thought that he was a UK citizen. He was incorrectly judged by the Home Office not to be a UK citizen and received a warning that he had no right to reside in the UK because he did not have leave to enter as a non-UK citizen, and that he should therefore leave the country where he had lived all of his life. In this case, it seems that UK law was too complex even for the Home Office to understand, and it was forced into an apology and a rapid climb down when it transpired that in fact Ridge was a UK citizen via his grandmother.¹

Many of the fuzzy edges of citizenship involve not only rights-based elements, but also aspects of identity and belonging: the feeling of ‘home’. In this context, Prime Minister Theresa May’s ‘citizens of nowhere’ comment during her speech to the Conservative Party conference of 2016 undermined confidence in the inclusiveness of the UK citizenship regime in its apparent dismissal of the values and practices of multiple identity and attachment which are important not only for EU27 citizens resident in the UK (and their families, from wherever they hale) but also for many UK citizens who have been, are currently, or were in the future planning to use their EU citizenship rights. It is one thing to rail against the entitlements of ‘citizens of the world’ who are literally, with their airport lounge passes, business class travel and travel-friendly passports, ‘citizens of almost everywhere’, but quite another to lace that challenge to ‘elites’ also with an attack on ‘citizens of nowhere’, many of whom have few if any choices about where they live. For these groups, low cost air travel and coach travel are more familiar forms of transport than business class air travel. With statements such as May’s, there is a risk that those who are exercising free movement rights end up feeling as if they are less than equal citizens in the societies in which they live, even if they still have full rights to be there. At this moment of constitutional change, there is a risk that a statement from a leading politician claiming that ‘this is citizenship and this is not citizenship’ will be unhelpful and demoralizing for those most at risk of a loss of rights following Brexit.

With the UK leaving the EU, an important distinction between the operation of EU law in relation to free movement and the broad structure of UK immigration law will disappear. UK immigration law operates on the basis of ‘permissions’ – leave to enter and remain, ‘indefinite leave to remain’, etc. This is what the ‘settled status’ that the UK intends to offer EU citizens resident in the UK at the time of Brexit will be; it will not be a ‘rights-based’ status, as is EU citizenship, which offers individual citizens rights anchored in EU free movement law in the Treaties and secondary legislation, and guaranteed by national courts, under the supervision of the European Court of

Justice. But more than that, the evidence thus far (largely anecdotal, but also research-led deriving from projects undertaken by academics such as Professor Catherine Barnard, Dr Nando Sigona, and Dr Charlotte O’Brien amongst others) highlights the sense of ‘loss of home’ that EU citizens have already been experiencing, which is affecting their conduct in a variety of ways. With EU citizenship likely no longer to provide an effective back-up status, many people who feel vulnerable are applying for UK citizenship, although first they must establish the intermediate status of ‘permanent resident’ under EU law. This is a status that the UK government appears determined to render legally meaningless after Brexit, with all EU27 citizens needing to apply for settled status, regardless of whether they have already obtained a permanent residence card. Other EU27 citizens, including many highly skilled workers as well as those in the vital hospitality and agricultural sectors, are articulating current and future intentions to leave the UK, and yet other workers and service providers are declining the opportunity to come to the UK because they see it as a less attractive destination both economically and culturally. These actions will not only harm the UK economy but also the fabric of UK society, as children in particular experience a sense of dislocation and loss (including UK citizen children who are members of transnational families who are forced into difficult decisions because of the operation of the harsh UK family reunion rules).

Focusing now on the issue of naturalisation, the question can be asked whether there is an ethical imperative on the part of the UK as a state to make adjustments to its regime of citizenship in order to make it more accessible for those groups of resident EU27 citizens who see this as the most important step if they are to retain both a sense of belonging and legal security. The excessive cost of UK citizenship, and the sense that those who do have substantial resources may well have various other means of protecting their interests through the ‘purchase’ of residence permits and even citizenship (in some countries) highlights the intrusion of issues of economic inequality deep into the fabric of citizenship in a way that is disturbing, given that citizenship is meant – above all – to be about equality. Matthew Grant has argued that UK citizenship has become rather unattractive in recent years, and this situation may become worse if the bureaucratic systems are placed under ever higher levels of stress after Brexit, through the ‘settlement’ process and more and more applications for naturalisation. It is also important to recognize that for some EU citizens naturalisation is not an option, not only for reasons of cost, but also because their country of origin has a very restrictive approach to dual citizenship: problems will arise for some Dutch, Swedish, Austrian and Estonian citizens as a result of this, because they do not wish to placed in the situation of making an invidious choice which EU citizenship protected them from having to make.

One interesting dimension of the post-Brexit vote contestation of these issues of citizenship and belonging has been that there has been much more civic engagement around this status than there was before it became an ‘endangered species’. The factors which prompted the Brexit vote are, of course, not an issue for the Committee, but it is worth pointing out that for decades EU citizenship – as a set of rights and principles – has largely been taken for granted both in the UK and elsewhere in the EU. But many UK citizens are starting to see that they will lose something of value as a result of the UK’s departure from the EU, even if this is something as apparently trivial as the EHIC card. It is also arguable that the increasing realization that the task of protecting the rights of UK citizens resident in other EU states as well as EU27 citizens in the UK is rather more

complex than was evident in the airy assurances of those advocating a Leave vote in 2016 has perhaps further undermined the delicate relation of trust between citizens and politicians which is central to a sense of effective civic engagement in a liberal democracy. This final point should certainly be a matter of concern for the Committee as it develops its work.

31 August 2017