

TECHNICAL NOTE: CITIZENS' RIGHTS - ADMINISTRATIVE PROCEDURES IN THE UK
Response by the3million

The title 'Technical note' (TN) on 'administrative procedures' is misleading, as it deals with policy points such a criminality checks and other policy issues. Fundamentally, the UK proposes to deprive EU citizens of current rights and is trying to impose 'settled status' instead, which is inferior to Permanent Residence in terms of loss of status, family reunion rights, risk of deportation and many other issues set out below.

From the outset, it is important to note that the Technical Note (TN) refers to "UK authorities". This suggests that the Home Office may have a diminished role in implementing the settled status proposal. If that were the case, more details need to be provided. The Home Office have a poor track record of correct decision making. A suggestion that responsibility may be shared would exacerbate existing problems, not least in terms of errors due to data sharing and insufficient training and supervision of staff. We have seen powers of the Home Office delegated to corporate companies such as G4S, Serco and Capita which have created very unwelcome results.

the3million has put forward an Alternative Proposal to settled status, which ensures EU citizens keep all their current rights, and which can be implemented via a simple registration procedure (based on residence and ID proof to be provided at local government level). This respects the declaratory nature of registration under EU law. Yet, given the UK is leaving the EU, the unprecedented number of people to be registered in a short timeframe, and the fact that the UK never had a registration system, the proposal is to use only residence and ID as criteria for registration.

TECHNICAL NOTE	the3million Response
<p>1. The UK will be bound by the obligations set out in the Withdrawal Agreement as a matter of international law. The citizens' rights chapter of this Agreement will be incorporated in UK law, which means that the UK authorities will be required to confer the status and rights defined in the Withdrawal Agreement upon those EU citizens and their family members who fall within its scope, and EU citizens will be able to enforce their rights on that basis.</p>	<p>This refers to the UK being bound by the obligations of the Withdrawal Agreement but has not clearly set out how this will be achieved, or how this will be incorporated into UK law. Will this be done</p> <ul style="list-style-type: none"> • via a Withdrawal Agreement Act? • via a separate Citizens Rights Act? • part of the Immigration Act? • not via primary legislation? <p>The Alternative Proposal clearly identifies the crucial mechanisms that can implement an agreement. It states that only a Withdrawal Agreement Act or a separate Citizens Rights Act, via primary legislation, with direct effect and CJEU oversight can give sufficient protection to EU citizens in the UK.</p>

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<p>2. In the UK, the route for individuals to obtain this status will be by application to the UK authorities, made within a period of time after exit as specified by the UK authorities. Obtaining this status will be a condition for lawful residence in the UK and enable these people to easily prove their unique status and rights, as guaranteed by the Agreement, to the UK authorities, employers, public service providers and others, in a convenient way in the future.</p>	<p>This confirms that EU citizens will be stripped of their existing rights, and be considered illegal in the UK if they are not granted this status. Those who fail to apply in time for example will be rendered unlawfully resident in the UK and may be asked to leave the UK. In our opposition to settled status, we have clearly set out the consequences of settled status being implemented and why an alternative is needed. An agreement preserving and confirming our existing bundle of EU citizenship rights is required, as opposed to a grant of inferior status.</p> <p>The Alternative Proposal makes clear that, whilst residence documents would be required to access employers and public service providers, these documents should be declaratory.</p>
<p><i>Streamlined application system</i></p>	
<p>3. People are concerned that the application process will be complicated and bureaucratic. The UK recognises that the system it currently has in place for dealing with the processing of registration certificates and residence cards under Directive 2004/38 is not fit to deal with the situation after we leave the EU. We are therefore designing a new system from scratch, with new processes, technology, rules and support for applicants. The process will be designed with users in mind, and we will engage with them every step of the way. The UK has established user groups, consisting of representatives of EU citizens in the UK, and digital, technical and legal experts, to help us factor stakeholder views into the design and operation of the new scheme. These groups will enable us to test implementation systems and guidance as they are developed, build our understanding of the range of user needs, and develop communications in line with user needs.</p>	<p>This paragraph acknowledges that the current Home Office systems and capacity are not fit for purpose. It is arguably impossible to design a new IT system from scratch within such a short timeframe, to arrange to deal with millions of applications with such varied individual circumstances. This conclusion is compounded by the decreasing resources of the Home Office and lack of recruitment.¹</p> <p>The Alternative Proposal puts forward a practical registration scheme at local government level.</p> <p>With respect to the 'user groups', it has become clear that the views of the3million and British in Europe have been disregarded. In fact, at the first 'user group' meeting in early November, this proposal was not discussed. the3million were told that the 'user group' would neither consider nor discuss policy issues, such as reservations about the proposed 'settled status' scheme. It would not even address concerns such as appeal rights and what would happen if errors occurred in the system.</p> <p>Furthermore, we were not consulted on the TN, nor were any other groups (that we are aware of).</p>

¹ <https://www.instituteforgovernment.org.uk/blog/can-home-office-cope-three-million-eu-residents>

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<p>4. Recognising the scale of the challenge of granting status to potentially more than three million EU citizens and their families, and ensuring that there is no suggestion that those lawfully here will be required to leave on the day we exit the EU, those currently resident will be given sufficient time after exit to make their application. Subject to getting an early agreement with the EU on these issues, we are also planning to set up a voluntary application process before we leave the EU so that those who wish to do so can get their new status at their earliest convenience. The voluntary scheme will sit alongside any existing EU law rights, until those rights fall away.</p>	<p>The procedure can only begin once there is a EU-UK Treaty on Citizens Rights (whether the Withdrawal Agreement or a separate Withdrawal Citizens Rights Treaty). The substance and guarantees must be sorted out before a bureaucratic implementation is discussed, not vice versa.</p> <p>The phrase "until those rights fall away" again confirms that EU citizens in the UK will be stripped of their existing rights under EU treaty law.</p> <p>The Alternative Proposal ensures that all rights are detailed at EU-UK treaty level, and are reciprocally guaranteed with UK citizens in the EU.</p>
<p>5. Notwithstanding this voluntary scheme, the UK estimates that the period made available for individuals to make an application after exit will last for around two years after the UK's exit from the EU. Those EU citizens and their family members in scope of the Withdrawal Agreement will have their status in the UK protected during that time.</p>	<p>This gives no detail as to HOW the status of EU citizens will be protected during the proposed grace period. The only way to do so is to have no distinction between any EU citizens, regardless of when they came to the UK. The reference to 'those EU citizens and their family members in scope of the Withdrawal Agreement' is therefore ambiguous because it suggests it would be practically possible to distinguish between this category of EU citizens and other EU citizens.</p> <p>The Alternative Proposal makes clear that during a grace period, there can be no discrimination whatsoever between EU citizens with or without residence documentation.</p>

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<p>6. Learning lessons from applicants' experiences of the existing routes for obtaining EEA documentation, the UK is designing a streamlined, user-friendly, digital application process. This will include an assisted digital service for those who need support to make an online application. Our intention is to develop a system which draws on existing government data, for example, employment records held by HMRC will be checked, which will, for the majority, verify residence as a worker. Our priority is to minimise the burden of documentary evidence required to prove eligibility under the Withdrawal Agreement.</p>	<p>We have already set out our concerns relating to the ability of the government to develop, test and implement a new system relying on digital services. We know that the Universal Credit system took a very long time to develop and is still facing considerable difficulties. We know also that whilst an online system can be helpful to some, it does not solve the problems of a flawed concept such as settled status. The relationship between a digital application system and requirements of proof is not clear.</p> <p>The assisted digital service is intended to deal with people who are not computer-literate. However the issue is one of resources, as such a service would be needed by a great number of people (including for example citizens with disabilities or learning difficulties, elderly or vulnerable citizens and so on).</p> <p>Making use of existing data from HMRC will only cover part of the citizens concerned and is likely to overlook precisely the most vulnerable. We have concerns that the proposed data mining of HMRC and other records may surface data protection issues, error rates, delays and administrative challenges. We have particular concerns about what will happen if someone is found not to be a 'worker'. We are also still unclear what data will be retained and stored by the government, or indeed contracted out services to private companies, as part of this process.</p> <p>Concerns relating to our data have been recently exacerbated by the government's proposed exemption from Data Protection in their new immigration bill, which could see EU citizens being denied access to information held by the Home Office about them.²</p> <p>The Alternative Proposal states that a simple check of <i>only</i> ID plus evidence of residence, at local government level is the only way to process 3 million citizens in a relatively short timeframe.</p>
<p>7. The fee for applying for this status will not exceed the cost of a British passport. The cost will not be linked to other Home Office immigration application fees, for example, the fee for indefinite leave to remain or naturalisation as a British citizen.</p>	

² <http://www.politics.co.uk/comment-analysis/2017/11/03/buried-in-a-government-bill-an-immigration-rule-strips-milli>

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<p>8. For those who already hold a valid EEA permanent residence document, there will be a simple process to exchange this for a settled status document, subject to ID verification and submission of a photograph, a security check and confirmation of ongoing residence. The previous residence assessment will not be re-done. We intend to charge a reduced fee to these individuals.</p>	<p>There is no justification whatsoever for charging <i>any</i> fee for someone who already has EEA PR documentation. Moreover, while it is against EU law to impose systematic criminality checks in the context of a registration system, it is even more out of line to require such security check for people who have already obtained permanent residence.</p> <p>The Alternative Proposal makes clear that there should be no criminality or security checks for residence document applications, and holders of EEA PR should be able to swap for new residence documentation free of charge.</p>
<p>9. As the Prime Minister set out in her Florence speech, people will continue to be able to come and live and work in the UK during the implementation period after the UK leaves the EU, and there will be a registration system.</p>	<p>This conflates and confuses the issues of:</p> <ul style="list-style-type: none"> - registration for Settled Status of EU citizens already in the UK pre-Brexit - registration of future immigration of EU citizens to the UK post-Brexit, and - a transition period during which free movement may well legally need to continue to apply.

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<i>Criteria for granting status and circumstances under which status may be refused</i>	
<p>10. The criteria applied will be simple, transparent and strictly in accordance with the Withdrawal Agreement. In accordance with our obligations under the Withdrawal Agreement, EU citizens and their family members who can evidence to the UK authorities that they fall within the scope of the Withdrawal Agreement (i.e. are lawfully resident before the specified date) must be granted status by the UK authorities unless one of the grounds for refusal permitted by the Agreement is met. The UK authorities will have no discretion to refuse an application in other cases. We have already agreed with the EU that the conditions for EU citizens acquiring permanent residence/settled status under the Agreement will be as per the conditions set out in Article 16 of Directive 2004/38 (five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof).</p>	<p>This states that all 3 million or so EU citizens will be checked against Article 16 of Directive 2004/38, and by implication Article 7. It states the UK authorities will not apply other criteria for refusal. However, further in this document additional criteria related to criminal checks are introduced which are not allowed by Directive 2004/38.</p> <p>The systematic application of Article 7 criteria in the context of a registration system introduced at the point when a country is leaving the EU is also highly problematic. It makes sense to apply these criteria to a registration system applied relatively early after an EU citizen enters the country, as most EU member states do, but it is problematic to apply this retrospectively in a country that never had a registration system. The huge number of citizens to be registered also makes it practically impossible. Moreover, the consequence of a failed application is far more dramatic for an individual citizen once the UK is no longer part of the EU.</p> <p>Applying these criteria for registration is wholly unrealistic and will lead to a huge number of errors, delays, refusals, appeals, human rights applications and overburdened administrative and judicial processes. The refusal rate for PR applications previously stood at almost 30%.</p> <p>The Alternative Proposal allows the 3 million or so EU citizens in the UK to continue to live their lives without disruption. It proposes a registration system based on simple proof of residence and identity, while the Government can ask EU citizens to comply with Article 7 criteria in the five years post-Brexit but not as a systematic controlling system in the context of registration. Our Alternative is user friendly and practical, with straightforward transparent criteria, taking into account real lives and providing a realistic solution to registering such a vast number of citizens away from restrictive UK immigration laws and the hostile environment.</p>

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<p>11. In order to streamline the application process, the UK intends to adopt a pragmatic approach to the application of the agreed conditions, for example, by not checking that comprehensive sickness insurance has been held by those who are not economically active or are studying, or applying a genuine and effective work test. We will also not seek to account for undocumented periods where we are satisfied that, overall, the residence requirements have been met, meaning people will not have to account for every trip that they have taken in and out of the UK.</p>	<p>Given the reasons we set out in point 10, we welcome the fact that the UK will not check for comprehensive sickness insurance (CSI) or ‘genuine and effective work’.</p> <p>In any case, the CSI requirement should always have been covered by the National Health Service in the UK, as has also been the view of the Commission since 2012.</p> <p>However, a ‘pragmatic approach’ should not mean unclear criteria and legal uncertainty. Whilst there have been concessions made by the Home Office in relation to CSI and ‘genuine and effective work’, we note that the government will still look to assess whether or not a person meets the definitions set out in the Citizens’ Directive. This raises the question which criteria exactly it intends to apply. In earlier rounds of the negotiations, it had been suggested that a residence test would be sufficient.</p> <p>The Alternative Proposal states that the Withdrawal Agreement sets out exhaustively the criteria for registration, as well as the rights and criteria which can be applied while holding permanent and temporary residence. It proposes that the criteria for registration of permanent and temporary residence are simply based on residence (respectively five and less than five years of residence prior to Brexit). While those who have five year residence prior to Brexit will obtain Permanent Residence (with full rights of that status as it is today), those with less than five years obtain Temporary Residence, during which they can be asked to comply with the criteria of the Directive, taking into account that access to the NHS complies with the CSI requirement, and subject to further commitments by the UK not to apply certain criteria. In any case, application of these criteria will not be systematic and thus not part of the registration system.</p>
<p>12. We will verify identity and are considering digital ways to do this in order to make it both secure and user-friendly. We intend to ask applicants to submit a photograph. We will not ask EU citizens for other biometric data such as fingerprints.</p>	

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<p>13. Applicants who are not yet able to evidence the five years' continuous residence necessary to obtain settled status, but who can evidence that they were resident before the specified date, will be given temporary status. This will enable them to remain in the UK until they have built up five years' continuous residence allowing them to apply for settled status.</p>	<p>This provides no detail on the rights of the proposed temporary status or whether any conditions or restrictions are attached to it.</p> <p>The Alternative Proposal recognises the need to have a temporary status for those who have not acquired 5 years' residence prior to Brexit. Those with temporary residence in our proposal will have the same rights as EU citizens now who do not have Permanent Residence, and they can be asked to comply with the criteria as set out in the Directive. However, their registration remains simply based on residence.</p>
<p>14. The only circumstances in which an application for status under the citizens' rights chapter of the Withdrawal Agreement may be refused will be as provided for in the Agreement. Subject to final agreement with the EU, we expect that these circumstances will be either that the applicant does not fall within scope of the Agreement, either because they were not resident before the specified date or because they did not meet the conditions as prescribed in the Withdrawal Agreement, or because the applicant is refused on criminality or security grounds as set out in paragraphs 19 to 25.</p>	<p>This gives no specific details of potential refusals and is particularly vague about the proposed criminality or 'security' grounds of refusal. Neither criminality nor 'security' is clearly defined. However, it is clear from this paragraph that the criminality and 'security' checks would constitute another barrier to accessing a registration certificate that would enable EU citizens in the UK to continue with their lives without disruption. Moreover, systematic criminality checks are both unrealistic for registering over 3 million citizens, and are not a legal criterion as applied to registration, under EU law.</p>
<p>15. The UK authorities will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will give applicants the opportunity to furnish supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to avoid unnecessary administrative burdens.</p>	<p>This talks about the 'discretion' of 'caseworkers' to deal with errors or omissions in the application process. Again, no detail is provided about the training that caseworkers would receive in respect of exercising their 'discretion', but it is clear that this would be a highly subjective process. Set against the current Home Office's decision-making style³ to 'refuse first and ask questions later', this point lacks credibility.</p> <p>There is also no definition of the terms 'evidential flexibility' or 'where appropriate'. In view of the fact that the consequences of rejection would be very severe in this 'settled status' scenario, the lack of clarity suggests that these concepts are ill thought out. No impact study appears to have been carried out in respect of the proposed 'settled status scheme'.</p> <p>By contrast, our Alternative Proposal sets out a light-touch, local registration procedure. Based on simple proof of residence and identity, this system avoids discretionary interpretation of complex rules.</p>

³ <https://legalthackette.com/2017/11/08/immigration-judge-slams-worse-than-useless-home-office-officials>

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<p>16. We will establish an administrative review mechanism to quickly resolve any caseworking errors. Beyond this, applicants will have recourse to an independent judicial authority, as now. This will mean that EU citizens and their direct family members will have recourse to a statutory right of appeal, allowing the UK courts to examine the legality of the UK authorities' decision to refuse or revoke status, as well as the facts or circumstances on which the decision is based. They will be able to remain in the UK pending conclusion of the appeals process, unless a deportation decision is made, or the individual is in the UK in breach of a deportation or exclusion order. In the latter cases, the decision may be certified by the UK authorities, such that an appeal can be made but will not prevent removal. The individual may, however, be able to return to the UK to attend the appeal hearing.</p>	<p>This attempts to strip EU nationals in the UK of their existing rights under EU law, and can be broken down into 3 components:</p> <ol style="list-style-type: none"> a. It provides no details of the proposed 'administrative review mechanism to quickly resolve any caseworking errors'. There is no indication of how caseworkers would be supervised and trained, who would be in charge of noticing and 'resolving' caseworking errors, how accessible this system would be to the applicants etc. As the Home Office has clearly not yet found a quick and effective review mechanism in respect of current applications, this proposal appears to be wishful thinking rather than a realistic proposal in respect of resolving the current 10% HO error rate. b. The 'statutory right of appeal' is restricted to EU citizens and their 'direct' family members. This suggests that extended family members will not have rights of appeal. c. The final part the paragraph hides a vast array of in-country refusals to those EU citizens who would be refused. This raises very big concerns about how the certification will be used en masse for decisions preventing in-country rights of appeal. It also makes no mention of the powers available to the tribunal to issue interim orders suspending removal that allows a person to remain in the UK to undertake the appeal in specific, compassionate circumstances. <p>Crucially there is no mention of CJEU. This is still a significant point of divergence in the negotiations.</p> <p>The Alternative Proposal makes clear that it is crucial to have oversight from the CJEU. In addition, it specifies that EU citizens will retain all their rights while an (in country) appeal is in progress.</p>

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<p>17. Individuals covered by the Withdrawal Agreement will be required to hold a UK immigration status to lawfully stay in the UK after the period of time specified by the UK authorities. However, understanding that there may be good reasons why some people may not have applied in that period, the UK will take a proportionate approach to those who miss the deadline for application. The UK's intention is that:</p> <ul style="list-style-type: none"> • where applications are submitted but a decision has not been made before the deadline, the applicant may continue to reside in the UK until the decision is made; and • where individuals without status are encountered after the deadline, a proportionate consideration will be made of their circumstances at that time and any reason why they did not apply for status before the deadline. Where there were good reasons for an individual not to have made an application, the UK authorities will consider exercising discretion to allow an 'out of time' application for status under the Withdrawal Agreement. 	<p>The ramifications of being without settled status are considerable. One will be victim to the hostile environment, presumed to be committing a criminal offence and facing removal. Given these consequences of being without settled status, the protective measures for EU citizens who either have not applied or are awaiting a decision need to be substantial. We are concerned that promises of a proportionate approach will be inadequate to protect those who are particularly vulnerable. We ask what assessments have been conducted to ensure that EU citizens who are entitled under the settled status proposal do not fall between the cracks. The TN merely provides insight into broad concepts of 'proportionality' and discretion which are not reassuring in light of the consequences associated with unresolved settled status.</p> <p>Under the Alternative Proposal, EU citizens without residence documentation will, after a grace period, be unable to access employment and services. However, the documentation is merely evidence of the status and loss of the document will not have potentially severe consequences. The mere absence of a registration document as such can never be a reason for expulsion from the UK. This is in keeping with the current rights of EU citizens.</p>
<p>18. Those EU citizens who apply for status but do not fall within the scope of the Withdrawal Agreement, and are refused status on that basis, will, after the specified period has elapsed, be in the UK unlawfully unless they hold or secure another status (for example, leave to remain under the Immigration Rules or any post-exit successor arrangements for EU nationals). As such they will not be entitled to access work or other services and may be asked to leave.</p>	<p>This clearly envisages 'EU citizens who.....are refused status '. In terms of what happens to 'those EU citizens', the language is definite and committed in respect of refusal of work and benefits: they 'will not be entitled', whereas the language becomes ambiguous when it comes to talking about removal from the UK: they 'may be asked to leave'. This ambiguity in language hides the fact that the government will be very unlikely to cope with the number of detentions and removals it would have to instigate in respect of their settled status scheme.</p> <p>The paragraph illustrates the ramifications of not acquiring settled status. It neglects to set out the criminal offence ramifications of being in the 'UK unlawfully'.</p>
Criminality	
<p>19. As regards checks, the intention is to ask applicants to self-declare criminal convictions (either UK or overseas), as we do for all other applications made to the UK immigration authorities. We will check appropriate UK biographic criminal records databases. In specified cases, where we have good cause, we may seek to verify international declared convictions or identify any international criminality.</p>	<p>The UK intends to do an automatic criminality check, via a self-declaration included in the registration process itself. It is not clear what the consequences are of an automatic criminality check, via a self-declaration of such a check, or what the consequences are of failing to indicate a previous criminal record.</p> <p>To be in keeping with EU law and the status quo, by no means can failing such a check lead to the rejection of settled status. Bearing in mind that there are already international systems in place to deal with criminals why is introducing a checking element in the registration process needed?</p>

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<p>20. Concerning expulsions, we already seek to expel EU citizens who are foreign national offenders, in conformity with the public policy criteria in the Directive 2004/38 and the relevant expulsion provisions. Those who fall within the scope of the Withdrawal Agreement may be denied their rights if they are considered a threat to public order or security. The approach that we take will vary depending on when the most recent conduct took place.</p>	<p>Whilst this paragraph confirms that the UK already seeks to expel EU foreign offenders in line with the Directive, this expansion on the settled status proposal reiterates that a criminality check will be a precondition to the granting of settled status. Again this is not in the spirit of EU law as set out above, and is superfluous.</p> <p>What is completely missing in this paragraph is a clear comparison of when and how the UK will seek to deviate from existing rules and practices in respect of criminality.</p> <p>The issue is not simply one of registration. It is clear the Government intends to deprive EU citizens of the protection they currently hold even when they have already obtained Permanent Residence.</p> <p>In our Alternative Proposal people will not be deprived of their rights and retain for life all the rights EU Permanent Residence status offers.</p>
<p>21. Consideration of deportation on grounds of public policy or public security as set out in Directive 2004/38 will continue to apply to any pre-exit criminal conduct. This means that the UK authorities will consider whether, based on their conduct, the individual poses a genuine, present and sufficiently serious threat to the fundamental interests of UK society (a threshold which rises with longer residence periods), as balanced against a proportionate consideration of the individual's personal circumstances. In most cases, EU citizens who have already committed a criminal act will already have come to the attention of the Home Office. We will not re-run public policy assessments where they have already been carried out and removal action was judged inappropriate, without good reason, such as new information coming to light.</p>	<p>This paragraph exposes the impracticality and futility of systematic criminal checks at registration stage. As is acknowledged:</p> <ul style="list-style-type: none"> • EU citizens may only be deported on the grounds of genuine, present and sufficiently serious threat, and • in most cases, EU citizens who have already committed a criminal act will already have come to the attention of the Home Office <p>If the purpose is to identify foreign criminals, yet the Home Office already know who these criminals are, what purpose does this check serve?</p> <p>We suggest therefore that such systematic checks would be wholly ineffective, and would be an affront to all innocent EU citizens who wish to carry on living their lives as they did before.</p>

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<p>22. The UK's criteria for considering deportation of non-EEA foreign national offenders, as set out in relevant legislation and published guidance on GOV.UK, will apply to EU citizens whose <i>post-exit conduct</i> falls within the scope of that guidance, including those convicted of criminal offences. This means, for example, that deportation will be considered for those who, post-exit, commit a serious crime and receive a custodial sentence which is at least 12 months. In such cases, a person's previous, pre-exit criminality may also be taken into account in order to make a holistic assessment of whether deportation is appropriate.</p>	<p>The Government intends to give EU citizens the status of third country nationals regarding grounds for deportation on criminal offences. EU citizens will thus be deprived of current EU rights; even those already holding Permanent Residence. Based on this premise, this paragraph sets out how the rights of EU nationals are reduced to criminality rules in UK immigration law - even including 'pre-exit criminality' checks into the 'assessment of whether deportation is appropriate'.</p> <p>Under our Alternative Proposal, EU citizens covered by the Withdrawal Agreement retain all their rights as set out by that Withdrawal Agreement, for their lifetime. Therefore criminality should not be treated differently post- to pre-exit. An EU citizen with permanent residence rights in the UK, who commits a crime, should be able to serve their sentence in the UK and resume their life in the UK – unless, as provided for by EU law, they present a "genuine, present and sufficiently serious threat to the fundamental interests of UK society".</p>
<p>23. Whether or not an individual is deported will be subject to considerations such as the right to respect for private and family life under Article 8 of ECHR. Factors to be weighed when considering the Article 8 rights of the individual compared with the public interest in deportation are set out in the UK's Immigration Rules, underpinned by Part 5A of the Nationality, Immigration and Asylum Act 2002. These factors include whether the individual has lived in the UK for most of their life, how socially and culturally integrated they are in the United Kingdom, and the obstacles they might face in integrating into the country to which they would be deported. The impact of an individual's deportation on their partner and children is also considered.</p>	
<p>24. In addition, the current procedures and safeguards applicable to expulsions of EU citizens will still apply, including the requirement for notification in writing, the right to appeal to an independent judicial authority and a delay of one month before removal is enforced</p>	<p>It is not clear how the UK Government wants to respect EU law as it promises in this paragraph, given its intention clearly not to do so in the previous paragraphs 22 and 23.</p>
<p>25. The UK accepts that on a reciprocal basis EU Member States may apply measures which depart from Directive 2004/38 in respect of expulsions from their territory of UK criminals otherwise protected by the Agreement.</p>	<p>This makes a mockery of the rhetoric since the referendum, that the rights of EU citizens in the UK can only be protected if the rights of British citizens in the EU are reciprocally protected.</p> <p>The Government is so strongly intent on having more potential scope for expulsion on grounds of criminality that it proposes to the EU27 a race to the bottom to treat UK citizens in Europe equally badly.</p>