23 November 2021

Kevin Foster MP
Parliamentary Under Secretary of State (Minister for Future Borders and Immigration)

cc
Tom Pursglove MP
Parliamentary Under-Secretary of State for the Home Department

Dear Kevin Foster MP,

Fixing Comprehensive Sickness Insurance - Amendment to Nationality and Borders Bill

Many EU citizens in the UK want to become British or want to see their UK-born children recognised as British citizens. Over 6 million applications have been made to the EU Settlement Scheme. About half resulted in settled status. For many, this form of indefinite leave to remain provides a welcome and clear route to British citizenship. Many others will soon follow.

At the3million, we are regularly contacted by EU citizens seeking information about the British citizenship process and our citizenship Q&A events with immigration advisers are well-attended. We are pleased that many EU citizens see the UK as their home and identify as British.

However, many EU citizens are affected by a specific barrier to British citizenship - that of Comprehensive Sickness Insurance (CSI). Many are ready to apply for citizenship and have been saving for the naturalisation application fees. Removing the CSI barrier would give many the confidence they need to apply.

We have also been contacted by parents who were told that their UK-born child was not British after all, for example when attempting to renew their child's British passport. These were parents who would have been settled but for the lack of CSI during a time of studying or being self-sufficient.

On the 15th sitting of the Nationality and Borders Bill committee, the new clause 3 amendment tabled by Bambos Charalambous MP was debated. Given the Bill's scope to end the historic anomalies in British Nationality Law, we believe it is the perfect opportunity to fix the CSI legacy. Many organisations and lawyers signed our joint statement in favour of fixing the CSI anomaly affecting EU citizens.

Please find more information about CSI and how the tabled amendment could resolve this legacy here.

We are grateful the debate on CSI was carried out respectfully and that Tom Pursglove MP was open to exploring whether the guidance on CSI discretion to case workers could be made firmer and clearer. We return to this issue below.

Firstly, we wish to take this opportunity to respond to some of the points raised during the Committee debate and invite you to consider the comments below and the need to address the CSI legacy.

First part of new clause - registration of children born to parents who would have been settled but for CSI

About the first part of the new clause, Tom Pursglove MP said "*The position of children born in the UK when their parents were not settled is not unique to EEA nationals. There will be families who were not settled in*

the UK at the time of their child's birth for a variety of reasons, and it would not be right to single out the children of non-settled EEA nationals without CSI for a specific and free route."

The proposed amendment would mean that EU citizens' requirement to hold CSI would be met by having access, in practice, to the NHS. Therefore, it is more accurate to say that the new clause is seeking to rectify the status of children of "nationals who would have been settled but for CSI", rather than "non-settled EEA nationals without CSI". These EU nationals were settled in all matters but failed to meet the CSI requirement during times of full-time study or self-sufficiency. It is widely known and reported by EU citizens that virtually none were ever made aware of their need to hold CSI. Even after living in the UK for over 5 years at the time of a child's birth, EU citizens who should have held CSI but did not would unexpectedly be categorised as "non-settled". In all other matters, these EU citizens were settled and, if not for CSI, would have their UK-born children automatically born as British.

The amendment does not seek to single out EEA nationals from non-EEA nationals. Foreign citizens whose status does not derive from EEA legislation do not have to have CSI in order to be considered settled. The requirement most similar for CSI for non-EEA nationals is the NHS Health Surcharge. However, those that need to pay for the Surcharge are notified of that requirement at the time of obtaining their visa.

In contrast, the requirement to hold CSI was not communicated in advance to those depending on EEA legislation, nor was it communicated or required by GP surgeries, the NHS at the point of treatment including secondary healthcare, or by universities accepting students studying on terms based on EEA legislation. It was only ever required and communicated by the Home Office at the point of retrospectively considering whether a citizen was eligible for e.g., permanent residence, naturalisation or a passport.

In the same way that clauses 1 - 3 (and indeed other clauses in the nationality part) of the Bill do not 'single out' British Overseas Territories Citizens ('BOTC') but are there to remedy historic errors in nationality law, New Clause 3 equally addresses those historic anomalies that saw children of EU citizens not becoming British owing to an anomaly in the law.

Therefore, the first part of the new clause seeks to remedy a historical requirement (no longer relevant due to the UK having left the EU) which has unfairly disadvantaged citizens whose status derived from EEA legislation.

Tom Pursglove MP went on to say: "*There are already routes for children who do not become British automatically. For example, parents who did not qualify for permanent residence could still apply for settled status under the EU settlement scheme, and they did not need CSI to do so. Once they were settled in the UK, they could apply to register their child who was born in the UK before 1 July 2021 as a British citizen.*"

While we appreciate that children who are not automatically born a British citizen have alternative routes to become British through registration, this alternative path is costly to many EU families. Registering a child under such a route costs £1,012.

Importantly, as seen above, most EU parents believed they were settled in the UK after having lived here for over five years. Many like Roberto, as in the case illustrated during the debate, only realised for the first time they should have held CSI when they were renewing the British passport of their UK born child. Their son had been granted a British passport at the time of his birth, and it was only at renewal time that the lack of CSI was discovered. This was a distressing experience, effectively having one of their son's nationalities retrospectively removed.

Not only is the cost of the alternative route an issue but for most EU citizens affected by CSI, it is distressing to learn they were not compliant with an obscure requirement. Most, like British citizens, pride themselves

in following the rules of the country they call home. It's unfair to deprive children born in the UK to settled EU parents of the citizenship they expected their children to have.

It is worth noting a precedent for waiving the fee for registering a child, see section on "Children born on or after 1 July 2006" in the Guidance on Registration as a British citizen: children which says "*A fee will not therefore be needed for an application where the child would have become a British citizen, but for the fact that….*". (Regulation 9 in The Immigration and Nationality (Fees) Amendment)(No. 2) Regulations 2020).

Second Part of new clause - naturalisation applications

Tom Pursglove MP said: "*The new clause would amend the naturalisation requirements for EEA nationals who did not have CSI and so had not been in the UK lawfully before they acquired settled status. We cannot accept that, as all applicants are required to meet the same requirements for naturalisation in terms of lawful residence and it would not be right to treat certain nationalities differently.*"

CSI is only of relevance to EEA legislation and affects both EEA and non-EEA nationals whose status is derived from the EEA Regulations. The presence of CSI as a requirement in naturalisation and registration applications already treats EU nationals differently.

The amendment seeks to treat all nationalities equally in terms of requirements for naturalisation, which is that they should not be faced with an effectively retrospective eligibility requirement of which they could not reasonably have been aware.

Third Part of New Clause - future immigration decisions

Tom Pursglove MP: "*The third part of the new clause would amend the European Union (Withdrawal Agreement) Act 2020 such that a person is treated as having had CSI if they had access to the NHS in practice or held a CSI policy. However, there is no mention of CSI in the rest of that Act, nor is there any mention of CSI in residence scheme immigration rules. The EU settlement scheme does not test for CSI and there is no need to have held it in the past, or to hold it now, in order for EEA nationals to obtain settled or pre-settled status. As such, that part of the new clause would have no practical effect.*"

Even when naturalisation is given to an applicant through discretion, CSI continues being a requirement wherever reliance is made on the definition 'relevant naturalised British citizen' within the Appendix EU rules. A 'relevant naturalised British citizen' can be an EUSS sponsor and be joined by a family member in the UK. The definition of such a sponsoring citizen refers back to the EEA regulations and will exclude someone who did not have CSI at a time of being a student or self-sufficient, thus affecting family reunion rights of an EU citizen.

Through this, a family member whose sponsor lacked CSI before naturalisation would be prevented from obtaining pre-settled or settled status.

Consider the case of Lara as described in the debate and assume that Lara had successfully naturalised due the caseworker applying discretion and overlooking the lack of CSI while being at university.

Lara would now no longer fall within the definition of "relevant EEA citizen" because the definition within Appendix EU of an EEA citizen includes "is not also a British citizen".

Lara would also not satisfy the definition of "relevant naturalised British citizen" as explained above, due to historical lack of CSI while studying before naturalisation.

Therefore, any family member of Lara, for example a dependent parent, is no longer able to meet the requirements of the EU Settlement Scheme to obtain settled or pre-settled status.

Would the Government therefore reconsider its response to the proposed amendment and look into addressing the CSI legacy through the Nationality and Borders Bill?

CSI discretion guidance to case workers:

In addition to the comments on the debate, we want to use this opportunity to consider the possibility of making the guidance available to caseworkers clearer and firmer on when and how CSI should be ignored in naturalisation applications.

During the debate, Stuart McDonald MP asked whether caseworkers could be given firmer guidance when assessing naturalisation applications and be instructed to, in a majority of cases, ignore previous absences of CSI.

While discretion can currently be applied to naturalisation applications, the guidance on discretion is not clear enough to give applicants confidence to apply.

Lara, for example, has settled status and wants to apply for naturalisation but fears paying £1330 and having her application rejected due to her lack of CSI in the past. Many EU citizens like Lara do not feel confident spending such a large sum of money on an application when the guidance on discretion is not clear enough in stating that CSI should be ignored.

Will you consider setting our firmer and clearer guidance for Home Office caseworkers assessing naturalisation applications so that the CSI is removed as an obstacle to British citizenship?

Sincerely,

Luke Piper

Head of Policy and Advocacy, the3million