The Rt Hon Sajid Javid MP

Secretary of State for the Home Department

Direct Communications Unit
2 Marsham Street
London
SW1P 4DF

26 November 2018

Dear Minister

**EU Settlement Scheme**

I am writing in my capacity as the convener of the Immigration and Asylum Committee of the Law Society of Scotland.

During the course of the committee’s work, we have reviewed the EU settlement scheme, and wanted to bring a matter to your attention.

There appears to be a group of family members excluded from protection under the settled status scheme. Currently an EEA national can be joined in the UK by a relative who “is dependent upon the EEA national or is a member of the EEA national’s household” (see regulation 8(2)(b) of the Immigration (EEA) Regulations 2016). These “extended family members” do not have an automatic right of entry to the UK. However, the Home Office must “facilitate entry and residence” in accordance with Article 3(2) of the Citizens’ Rights Directive 2004/38/EC. This is achieved through a discretionary power to grant EEA family permits to such people where, in all the circumstances, it appears appropriate (see regulation 12(4) of the 2016 Regulations).

Those who have already been through this process and are residing in the UK as extended family members on the basis of their membership of the EEA national’s household do not appear to have any right to pre-settled or settled status under Appendix EU. They will need to either become dependant on the EEA national or leave the UK. The definition of family member within Appendix 1 of Appendix EU does not include members of the EEA national’s household. It includes other extended family members, such as durable partners and dependant relatives, however not household members. The definition of ‘dependant’ does not include membership of the household, so it does not appear that the two categories have been merged. Rather household membership appears to have been completely excluded.

There therefore appears to be a group of people, currently residing in the UK on the basis of EU free movement law, who will be unable to transition to the new settled status scheme. This does not accord with the government’s suggestion that EEA nationals and

their family members (as currently defined, i.e. including all extended family members) would be able to remain in the UK after its withdrawal from the EU.

We would be grateful for clarification of this position and would be happy to discuss this further if it would be of assistance.

Yours sincerely

Stuart McWilliams

Convener

Immigration and Asylum Committee

Law Society of Scotland

0131 476 8136