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Dear Ms Hawkins,

Thank you for your letter of 07 December 2022 about the rights of those who make applications to the EU Settlement Scheme (EUSS) from 01 July 2021. Please note you are receiving a response from an official.

The Home Office continues to modernise and digitise the Right to Work and Right to Rent Schemes, working with employers, landlords and their representative bodies to simplify checks and processes where possible. Technology is being harnessed, meeting customer needs and supporting the department's move towards a secure, digital by default immigration system.

As part of this modernisation, changes introduced to the Schemes on 06 April 2022 enable employers and landlords to use Identification Document Validation Technology (IDVT) via the services of an Identity Service Provider (IDSP), to carry out digital checks on British or Irish citizens with a valid passport (or Irish passport card). The introduction of IDVT to carry out digital checks on some British and Irish citizens demonstrates our commitment to support digital and remote pre-employment and private rental on-boarding processes and to improve accessibility, whilst enhancing the security and integrity of checks. Providing an online option for certain British and Irish nationals, also provides a degree of parity with the online checking arrangements that apply to other nationalities.

Legislation and published guidance for the Schemes make clear, that IDSPs are only to be used for checks of British or Irish citizens with a valid passport (or Irish passport card). Other than where an employer or landlord uses an IDSP expressly for this purpose, it is not possible to establish a statutory excuse against liability for a civil penalty if the check is performed by a third party in this manner. This means IDSPs cannot carry out checks via the Home Office online checking services on behalf of an employer or a landlord.

Please find the response to your further questions below.

Q1. Requiring a positive verification notice (PVN) from the ECS or LCS puts an individual at a significant disadvantage to those who do not. Article 18(3) of the Withdrawal Agreement requires that all rights provided for by Part II of the Withdrawal Agreement apply to anyone with a pending application to the EU Settlement Scheme, including therefore the rights to Equal Treatment (Article 23), and the right not to be discriminated against on grounds of nationality as regards employment (Article 24(1)(a).

a. How does the Home Office justify requiring a PVN from the ECS or LCS for those who have a pending application to the EU Settlement Scheme?

b. Will the Home Office review this policy such that anyone with a Certificate of Application can produce a share code which is immediately accepted as granting the right to work and the right to rent without requiring any further interaction between the employer or landlord with the Home Office?

The Schemes require employers and landlords to verify Certificates of Application (CoAs) for those who have applied to the EUSS from 01 July 2021 with the Home Office Employer or Landlord Checking Services (ECS / LCS). This provides the employer or landlord with a statutory excuse against liability for a civil penalty upon receipt of a positive notice, enabling them to hire or grant a tenancy for six or 12 months respectively. This process follows established checking processes that employers and landlords are familiar with.

Using the ECS and LCS also provides a safeguard for employers, landlords and genuine applicants. This ensures those who make spurious applications to the EUSS are not automatically able to secure employment or rent accommodation in the private rental sector. It also ensures employers and landlords can feel confident to provide services to those who are eligible.

We have no current plans to review the right to work or rent checking processes for those individuals who have been issued a CoA on or after 01 July 2021.

Q2. If the Home Office will not review its policy on requiring a PVN for those with pending applications to the EU Settlement Scheme, will the Home Office review the Codes of Practice “Avoiding discrimination while preventing illegal working” for employers and “Avoiding discrimination while conducting right to rent checks” for landlords to make it clear to employers and landlords that not engaging with the ECS or LCS is discriminatory?

The Schemes apply to everyone seeking these services, regardless of nationality. Our codes of practice do not focus on specific cohorts but are there to ensure fair and equitable treatment for all employees or tenants, and to ensure there is consistency in recruitment and letting practices. We are clear that employers and landlords must ensure that they do not discriminate against anyone on the basis of nationality, or any of the other protected characteristics, and are advised to provide every opportunity to enable an individual to prove their right to work or rent.

Ahead of the legislative changes to the Schemes in April 2022, we published updated codes of practice for employers and landlords on 02 March 2022.

Q3. If the Home Office will not review its policy on requiring a PVN for those with pending applications to the EU Settlement Scheme, will the Home Office and DCMS

review the UK Digital Identity & Attributes Trust Framework to ensure that any IDSP that includes checking of share codes handles the rights of those who are referred to the ECS or the LCS appropriately?

The UK digital identity attributes trust framework does not define eligibility requirements for any particular case, such as whether someone is eligible to work or rent in the UK. This is determined by the requirements of the Right to Work and Right to Rent Schemes as set out in legislation and published guidance.

It may be helpful to provide further clarity on the changes to the Schemes. An IDSP is a provider of identity verification services using IDVT. IDSPs act on behalf of the employer or landlord (with the employer/landlord becoming a 'relying party' in that transaction). The changes to the Schemes permit the use of IDSPs for identity verification, enabling employers and landlords to delegate elements of the checking process to IDSPs, but liability for a civil penalty is retained by the employer or landlord.

IDSPs are not permitted to undertake elements of a right to work or right to rent check beyond the use of IDVT to carry out digital checks on British or Irish citizens with a valid passport (or Irish passport card).

Q4. Will the Home Office and DCMS review the certification of TrustID in particular, to examine whether the checking of share codes that require positive verification notices from the ECS or LCS was included in the certification process?

The use of IDVT enables digital checks to be carried out on British or Irish citizens with a valid passport (or Irish passport card). TrustID's certification relates to the service that meets these requirements.

The UK digital identity and attributes trust framework does not define eligibility requirements for any particular use case, such as whether someone is eligible to work or rent in the UK. This is determined by the requirements of the Right to Work and Right to Rent Schemes as set out in legislation and published guidance.

Q5. Will the Home Office and DCMS engage with TrustID as a matter of urgency to require an immediate change to their software such that someone who is referred to the ECS or LCS is not flagged as 'REJECTED' for their Right to Work / Rent Status?

The Home Office engages regularly with a wide range of employers, landlords, IDSPs and their representative bodies either via established Home Office-led fora such as the Home Office consultation groups, as part of engagement with other government departments, or upon invitation to other events including webinars. We will continue to work closely with businesses to ensure processes are secure, accessible and compliant with legislation and Scheme guidance.

Q6. Will the Home Office or DCMS provide compensation to individuals who have been incorrectly denied employment / accommodation specifically on the basis of having a rejected right to work / rent status displayed by TrustID or any other verified IDSP?

The use of an IDSP is a private contractual arrangement between the employer or landlord and their chosen provider.

Up-to-date information is available for employers, landlords and IDSPs on GOV.UK at:

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

<https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks>

<https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination>

<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

<https://www.gov.uk/government/publications/digital-identity-certification-for-right-to-work-right-to-rent-and-criminal-record-checks>

I welcome your escalation of these matters and trust the above update provides reassurance of the Department's ongoing commitment to modernise and digitise the Right to Work and Right to Rent Schemes for the benefit of all.

Thank you again for raising these important issues with us. We are also happy to discuss these further if you would find this helpful.

Elaine Hyder

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