

The UK EU Settlement Scheme (UKEUSS) – on the ground

5th February 2019

- It is important to highlight that the UK's legal framework to guarantee our rights is not at all ready. In the event of the Withdrawal Agreement being approved, the UK will have to adopt a [Withdrawal Agreement Implementation Bill](#). So far the Government has not presented any draft Bill or even policy paper in this regard. It is now extremely unlikely that such a Bill can still pass Parliament prior to 29th March. In the case of the UK leaving the EU without a Withdrawal Agreement being signed, the legal situation is even more problematic. Even though the [EU \(Withdrawal\) Act 2018](#) rolled over our EU free movement rights, the proposed [Immigration Bill 2019](#) wipes out all free movement rights without putting anything in its place. The Immigration Bill does not offer any particular status or protection to EU citizens already residing in the UK, but simply gives an extremely broad mandate to Government to deal with this issue via secondary legislation. The entire Settled Status scheme is set out in secondary legislation.
- In the case of the UK leaving the EU without a Withdrawal Agreement being signed, the [proposed rights of EU citizens will be fundamentally restricted](#):
 - EU citizens will **lose their right of appeal** to challenge a refusal of UK immigration status. We will only have a right of *administrative review* (which is a Home Office internal procedure of review, and restricted to the scope set out in the rules; unless the error is black and white this review is not an effective means of redress) or *judicial review* (JR) (which is a high court remedy which is very expensive, risky and typically cannot make findings on facts, only on the way a decision was made). The existing right of appeal is a far lower cost and lower risk tribunal appeal, made by an independent judge who can make findings on the fact and direct the Home Office to make the correct decision. In addition, a tribunal appeal protects leave to remain in the UK while the appeal is ongoing, whereas JR does not – so citizens applying for JR lose their access to healthcare and their rights to work and right to rent whilst the JR is ongoing.
 - EU citizens with settled status will have their **family reunion rights curtailed**. Whereas the Withdrawal Agreement places no time limit on for example bringing an elderly dependent parent from the EU to the UK in future, in event of no deal the parent can only move to the UK before March 2022. According to the policy paper, this “would bring the rights of EU citizens in line with the rights of UK nationals from 30 March 2022”. The rights of UK nationals are extremely restricted however, as [freemovement writes](#): “Since July 2012 the immigration rules for adult dependent relatives have been, in practice, almost impossible to meet”.
 - EU citizens with **pre-settled status will have no future family reunion rights whatsoever**. This is a serious restriction especially when combined with the fact that many EU citizens who **have** been living in the UK for more than 5 years are nevertheless being granted pre-settled status rather than settled status .

- [ILPA](#) (Immigration Law Practitioners' Association) produced a [research](#) paper around the data checks which UKEUSS makes to automatically provide proof of residence for EU citizens and their families. The automated checks are made to HMRC (Her Majesty's Revenue and Customs) and DWP (Department for Work and Pensions). The paper examined the [Memorandum of Understanding](#) between the Home Office and HMRC. Amongst other questions, it raises the issue that the **business logic of the checks has not been published, that income data is included in the transfer** despite the UK Government promising that checks are not based on evidence of work, and that applicants should be able to see what data HMRC and DWP hold on them.
- In order to use the UKEUSS application process, applicants have no choice but [to click OK to the privacy policy](#) which says **"We may also share your information with other public and private sector organisations in the UK and overseas."** A member of the3million has done a [Freedom of Information request](#) to find out who these 'public and private organisations in the UK and overseas' are. **The FoI was refused** however, on the grounds of public interest, claiming that the disclosure of the information "will make the application system vulnerable to malicious attacks and hamper our ability to effectively operate immigration control".
- The freemovement website [reports](#) that in the second phase of the pilot scheme (which ran from 1st November to 21st December 2018), nearly one in five applicants did not receive sufficient evidence of UK residence from automated checks. They raise a concern that the pilot **monitoring is not sufficient transparent**: "The reported figures from the pilots do not distinguish between those who are granted pre-settled status simply because government systems do not hold sufficient data on their residence, and those who have actually been resident in the UK for less than five years." The3million had [written to the Home Office](#) in November 2018 with the same **concern around monitoring**.
- There is grave concern about vulnerable applicants. The legal advice group Rights of Women supported a group of applicants through the UKEUSS, and [said that they do not recognise their clients' experiences](#) in the [Government's Private Beta 2 report](#). Half of their clients waited 3 weeks or more for a decision, two of them more than 8 weeks. None of their clients received settled status without having to provide additional evidence of residence.
- The Roma Support Group [published a report](#) after they took part in the Private Beta 2 trial to support the applications of 69 members of the Roma community. Many problems are described - the lack of e-mail address, not having a passport, lack of language or IT skills. The report highlights the urgent need for support to made available to community and local organisations, "to avoid producing irregular EU citizens at a massive scale in the near future".
- We saw many reports of bugs in the Beta 1 (Aug-Oct 2018) and Beta 2 (Nov-Dec 2018) trials. However, in the current trial (from 21st Jan 2019) a number of problems remain. In January 2019, applicants are asked to provide [six months evidence for the year 2019](#).
- A member of the3million steering group completed the application (which should have been straightforward as she already had a Permanent Residence document), but did not get a confirmation email. Only because she knew others had received such an email instantly, did she decide to phone the helpline. They informed her that her application had not been submitted. After a lot of investigation it turned out the **'Submit' button was missing** from her application, and her application is now 'in limbo'. They do not know when this will be resolved.

- The government has not issued a list of known makes and models of phone which work with their identity app. As well as the fact that iPhones and Windows phones will not work, the only [recommendation the Home Office has given](#) is that the phone must be 'Android 6.0 or above', and that it has NFC. One of the members of the 3million steering group has recently purchased a **new phone, a Samsung J3 2017, which has Android 8.0 and NFC, yet it did not work** with the Home Office identity app.
- **Many people are being given pre-settled status instead of settled status, due to the automated checks not working.** For example, a German citizen who has lived and worked in the UK for over 16 years, with the same employer since 2005, was told there was [insufficient information](#) on her and was awarded pre-settled status. She disputed it and was later awarded [settled status](#) but had to manually provide further evidence. Her passport was also not returned to her within 48 hours as promised.
- The automated checks do not work for **self-employed people**, because they send in their tax return after the end of the tax year (5th April each year). Therefore the system tells these applicants that there is no evidence of them having been in the country for the last 6 months. This is causing many calls to the helpline, and people then have to manually send in extra evidence of residence. This EU self employed musician [reports of her suffering](#) in being denied settled status.
- The identity app reads the top line of passports. For a Bulgarian citizen this meant that the **online settled status shows her name in Cyrillic**. Her passport shows her name in Cyrillic characters, with her name in Latin characters underneath it. She is very concerned that British landlords and employers will not accept this in the future, once the Hostile Environment mandates those landlords and employers to check that EU citizens have a [right to rent](#) and to work. Landlords and employers in the UK face [heavy penalties](#) for illegal renting, which currently already leads to many [heartbreaking and incorrect decisions](#) for non-EEA citizens.
- The same problem arises for citizens of many EU countries whose passports display their **maiden name on the top line** (and shows their married name underneath), but who just use their married name in the UK. Therefore all employment records and other residence evidence is in their married name. The app allows for entry of other names, to enable case workers to check the evidence. Often this [fails due to the name issue](#), but even if manual evidence is accepted the **final settled status is issued under their maiden name**. Our facebook forums are full of citizens reporting their concerns around name conventions. It is worth noting that the 3million have highlighted this in their (unanswered) [questions to the Home Office](#) since April 2018 – see question 1.21. Also, as this only affects women, this appears to be a clear case of discrimination.
- There is a problem for citizens who have **passports in different names**, due to different name laws in different member states. One citizen has a Spanish and a German passport – the Spanish holds two surnames (of her father and her mother), whereas the German passport holds the family name as agreed by the parents. She used her Spanish passport to get settled status, and has been told that she may in future face a problem if entering the UK on her German passport. This is another reason why EU citizens in the UK should be provided with a **physical proof of settled status**, which the 3million have been campaigning on since early 2018 (see questions 10.10, 10.11 and 10.12 in first edition of their [questions to the Home Office](#)).

- Citizens with **Permanent Residence (PR)** documents were told they would get an easy swap to settled status, but are finding the system is **not as straightforward as promised**.

One citizen with PR was sent an email saying “Having checked our records we can confirm that your application is currently in the ‘**Assess Eligibility**’ phase of the application. [...] there is no need for you to contact us again. Please wait to hear from the caseworker via phone or email in due course”. **No timeline** was provided.

Another EU citizen reported that he and his **non-EEA wife both had Permanent Residence documents**. [Withdrawal Agreement](#) Article 18(1)(h) states that such persons should be able to exchange that PR document after verification of ‘their identity, a criminality and security check [...] and confirmation of their ongoing residence’. His settled status was granted, but for his wife the Home Office demanded more evidence of their relationship, and he had to provide a marriage certificate and translation. His wife should be able to **apply in her own right since she has a Permanent Residence document**. The proof of relationship had already been provided to the Home Office in the process of obtaining his wife’s Permanent Residence document.

Citizens with Permanent Residence documents are being asked to provide their National Insurance number, despite [Withdrawal Agreement](#) Article 18(1)(h) and the [Caseworker Guidance](#) which states on page 43/44 that the applicant must provide “confirmation, via self-declaration within the application process, that they have not been absent from the UK for a period of more than 5 consecutive years at any point since they last acquired the right of permanent residence”. The citizens in question had a PR document dated less than 5 years ago, so obviously did not need to self-declare their absence. However, their **National Insurance number should not be required**.