

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

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In this edition, we continue to highlight our concerns with the implementation of the UK's 'EU Settlement Scheme', the imminent threats to our legal status especially in the case of a no-deal scenario, and the long-term implications for EU citizens in the UK and their families. In addition, we give you details of several events in UK Parliament that took place last week involving [the3million](#) and [British in Europe](#).

Evidence sessions in UK Parliament

On Monday 11th February, the3million, JCWI (Joint Council for the Welfare of Immigrants) and British Future hosted a panel discussion for MPs and citizens on the EU Settled Status Scheme.

- [JCWI spoke about](#) the need for **monitoring** and changing the scheme to a **declaratory** approach, and protection from the hostile environment, detention and deportation. This is essential as the UK has never required any EU citizens to register in the past, therefore the government does not know how many EU citizens are in the UK.
- [The3million reiterated](#) the need to change to a declaratory system, and concerns over monitoring. In addition, concerns about a **digital-only status** and **transparency on data** were highlighted.
- [British Future raised the fact](#) that, from just under 30,000 applications during the second trial run (Nov-Dec 2018), **over 15,000 calls and emails to the resolution centre** were needed. There is a need for a **systematic information campaign** on the settlement scheme, at **local authority** level.
- Various MPs agreed about our call for a [declaratory system](#), the fact that large numbers of citizens [will not know about the scheme](#) or find it simple, and that more clarity is needed on the [appeal system](#).

On Tuesday 12th February, one of the lawyers working for the3million gave [evidence on the EU Settlement Scheme](#) at the House of Commons 'Home Affairs Committee'. The chair summarised that effectively the current settlement scheme is like ['Windrush on Steroids'](#). This is, once again, due to the unique combination of:

- the UK having never registered EU citizens
- settled status being a constitutive rather than declaratory system (which means that failing to apply for, or being refused, settled status results in becoming an illegal immigrant)
- the 'hostile environment' in the UK which turns employers, [landlords](#), [hospitals](#), banks and social security into [delegated border guards](#)

Finally, on Thursday 14th February, both the3million and British in Europe gave [oral evidence on the 'Immigration and Social Security Co-Ordination \(EU Withdrawal\) Bill'](#). In addition, [written evidence](#) was provided by many organisations including the3million and British in Europe.

- Professor Steve Peers [highlighted the loss of rights in a no-deal situation](#) (no right of appeal, greatly reduced family reunion rights, no transition period). He explains how easily our rights can be **changed in the future** without involving parliament, especially because the bill gives **ministers far too much power**

to change social security rights. He reiterates the concern that many EU citizens will fail to obtain the new status in time.

- Professor Stijn Smismans explains how the [Immigration Bill removes the current legal status](#) of EU citizens, who instead will need to **apply** for a new, lesser legally protected status – turning those who miss the deadline or are rejected into illegal immigrants. He raises concern again over the **extreme consequences for citizens in the UK’s hostile environment**, and also makes a strong case for **physical documentation**. He points out that in the case of a no-deal Brexit, the citizens’ rights part of the Withdrawal Agreement must be **ring-fenced** under Article 50 – to protect the future rights of EU citizens in the UK, and is a much better solution for protecting the rights of British citizens in the EU than relying on 28 unilateral guarantees.
- Finally, Jeremy Morgan QC and Kalba Meadows for British in Europe [lay out the consequences of 28 unilateral citizens’ rights guarantees](#). They point out that there are international citizens’ rights treaties in place between the UK and Switzerland, and between the UK and EFTA, which are guaranteed even in the event of no deal.

Settled Status – Informing and engaging with those that need to apply

- [JCWI has produced a report](#) accusing “the government of trying to pass on its Brexit problems to civil society”. “The government is making a tiny amount of funds available and basically saying **it’s now civil society’s problem**. It’s completely inadequate to deal with the scale of the problem we are facing.”
- [New Philanthropy Capital raised the same concern](#) last year when it said “If just 5% of the estimated 3.4 million EU citizens living in the UK do not register by the deadline, this would be a population of **170,000 left without status**”.
- There are reports of [fraudsters targeting EU citizens](#), which the3million says is inevitable because the government is refusing to fund and operate the scheme through the UK’s [418 Local Authorities](#) (as we campaigned for).
- The BBC [broadcast a report](#) highlighting that, during the last trial, over **50% of applicants had to contact the Home Office for help**. As well as showing the scheme is not as simple and straightforward as stated, the report highlights the need for advice especially for vulnerable citizens.
- Another [critical analysis of the Settled Status programme](#) highlights for example that EU citizens who have previously been granted **Permanent Residence** may reasonably assume they have no need to register. Yet the consequences if they do not do so by the deadline will be disastrous.
- Yvette Cooper, the [chair of the Commons Home Affairs Committee said](#) “You could have quite a lot of **children who could pass the deadline** for the settlement scheme, be completely unaware of their rights – and to lose their rights”.

Settled Status – the application process

- We continue to be worried about **data sharing** – as the3million have now had another Freedom of Information request refused, where they asked to see [what data is shared between the Home Office and the Department for Work & Pensions](#). The Home Office confirms that they hold the information, but that they refuse to release it on public interest grounds. One of our colleagues [wrote an article](#) explaining

how uncomfortable she felt being **forced to give permission** to share data with unknown 'public and private sector organisations in the UK and abroad'.

- [Dual nationals](#) (EU citizens who have also naturalised as British) **are not able to apply for settled status**. They would like to apply in order to prove their rights under the Withdrawal Agreement in future. The fact that they cannot apply only becomes apparent when they are half way through the process. No explanation is given as to why they can't continue, and at this stage all identity information and face scan & photograph have already been sent to the Home Office.
- In our last newsletter, we highlighted the problem of people whose passports are in their maiden name yet whose residence evidence is in their married name. [One elderly Dutch citizen reports](#) she is "pulling my hair out. Tears of frustration. Been phoning the helpline several times". She is trying to get the **settled status to be amended into her married name** but has not been successful.

Settled Status – the outcome

- We remain really concerned about EU citizens not being issued with a **physical document**. The Government's own 'Digital Service Standard' includes a requirement to '[make a plan for being offline](#)'. We have submitted a [Freedom of Information request](#) to find out what this plan will be 'regarding the EU Settlement Status system portal for employers, landlords, other service providers as well as all portals for status holders'.

It is important to remember firstly that EU citizens will be the only non-British group without a physical document proving their status, and secondly that in the context of the UK's 'hostile environment' policy the consequences of not being able to prove one's status at any single point in time can be severe. We therefore reject the [Immigration Minister's comparison with an ESTA/ETIAS visa](#).

One citizen reports having applied to the Settlement Scheme in December 2018 but never receiving a result. When she rang the helpline she was told she had in fact been granted settled status, but she was unable to receive a new copy of the confirmation email. She has spent 2 months trying to sort this out, even involving her MP who has not replied to her. This was eventually sorted out through help by other citizens on a Facebook forum – pointing her to a website where she could input her identity details to see her status – but it shows how anxious citizens are without a proper proof of their status.

- An issue that was repeatedly raised at the Parliamentary evidence sessions was the number of people being **granted pre-settled status rather than settled status**. As well as highlighting many other practical issues surrounding the application process, this [politics.co.uk blog](#) explains that the Home Office "has done two private beta testing phases. The first one, which involved public sector staff, saw 100% of people get the status they were expecting. But in the second phase, which included vulnerable people, this metric was no longer reported. **We just do not know how many people who were expecting settled status were given pre-settled status.**" A [BBC reporter](#) highlights the same concern. The reason this is so important is that it creates a second cliff-edge (the first cliff-edge being the deadline for applying for status): "Pre-settled status gives you five years limited right to remain. It means you can't leave the country for more than six months at a time. Crucially, it does not automatically upgrade to settled status when you've been here five years. It just cancels out. It's likely that sometime during 2021 and 2026 many people will forget to apply, or fail to understand the system, and **suddenly find themselves without legal status.**"

- There are new worries about the [need to keep settled status valid](#). Every time an EU citizen gets a new passport, due to renewal, or replacing a lost passport, they will have to update their settled status – which involves having to **send the new passport to the Home Office through the post**. There are many important questions surrounding this, namely what happens to settled status checks while the new passport is being verified? How will this work for citizens who renew their passport while abroad, and need to re-enter the UK on their new passport before it is digitally linked to their settled status? How can citizens be assured that this does not effectively become a re-application process? The BBC reported on more than [1,000 children refused](#) British passport **renewals**, due to a Home Office error – so this fear is very real.

Others are also very worried about having to remember to inform the Government [every time they change their mobile phone number and email address](#).

Monitoring and Oversight

- A reply from the Home Office to several MPs states *“In a ‘no deal’ scenario, there would be **no requirement for the Independent Monitoring Authority** to be established as its purpose is to monitor the citizens’ rights part of the agreement, which would not be in force [...] The Independent Chief Inspector of Borders and Immigration [ICIBI] will also, through his existing statutory functions in respect of the UK immigration system, provide oversight of the operation of the EU Settlement Scheme”*. Although the [ICIBI is independent](#) from government, a recent report by FreeMovement showed the [Home Office fails to carry out nearly half the immigration inspector’s recommendations](#).
- JCWI has launched a legal challenge as they are concerned that the government’s EU Settlement Scheme *“does not have the simple rules that ministers promised it would”*. They estimate that “hundreds of thousands of EU citizens living in the UK are vulnerable to being issued with removal orders [...] It also argued the scheme would result in people being refused settled status who had committed relatively minor, non-criminal breaches of EU treaties”.
- Although the Home Office has publicly stated it has learnt lessons from the Windrush scandal, it has now been revealed that the *“[Home Office is selling the services of its immigration officials](#) to private companies in a move attacked as **an escalation of the ‘hostile environment’ strategy**.”*
- Harriet Harman MP (Labour) wants to ensure [EU citizens are not treated like the Windrush Generation](#), highlighting ‘unaccountable, arbitrary, indefinite detention’. She writes:

“If you are suspected of a crime you can’t be detained by government – only by the police – who are independent of government. If the police need to detain you beyond 36 hours they have to bring you to court – also independent of government.

*But if the Home Office suspects you of being in breach of immigration laws, **there is a complete absence of independence in the decision-making**. A civil servant – nameless and faceless behind closed doors – ticks a box to detain you. The first you’ll know about it is there’ll be a banging on your door in the early hours of the morning, you’re bundled into a van and taken to a detention centre.”*

- A [BBC report](#) asks the same question – “when the deadline expires, several hundred thousand people who lawfully live in the UK may become **illegal immigrants overnight**. Could Britain be heading for a **new Windrush moment?**”