Questions to the Home Office on 'Settled Status'

Many questions remain about the UK Government's proposed settled status scheme, which aims to document the 3.6 million EU citizens in the UK and give them a new legal status when their EU rights end after the transition period.

the3million has listed some of these questions and will continue to work collaboratively with the Home Office to publish answers so that EU citizens can gain certainty and feel confident about their future.

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1 Criteria for settled status applications

		the3million Question	Home Office Reply	the3million comment
1.1	Application criteria	What criteria does the government intend to test for?	ID, nationality, residence, criminality, security (undefined), absences Also family members=relationship	More details on criminality and security are required.
1.2	Application questions	What will be the "6-8" questions which will be asked of applicants when they apply?		The 6-8 questions have not been provided. In case of criminality there may be a whole list of further questions, also in respect of absence checks
1.3	HMRC/DWP	The government has suggested that information will be acquired from HMRC/DWP records, is this correct? Exactly what and how much information is required from HMRC/DWP in order to satisfy residence criteria for settled status?	The SOI confirms that information will be acquired from HMRC, and in due course from DWP.	The DWP link has not yet been established. It has not been confirmed how much information is required from HMRC/DWP in order to satisfy residence criteria for settled status.
1.4	Missing HMRC/DWP records	What will happen if HMRC/DWP does not show data for recent years, but does show data for earlier years?	SOI 5.2: Where possible, the application process will help the applicant to establish their continuous residence and whether it amounts to five years, on an automated basis using data held by HMRC and in due course also the DWP.	Although it sounds like HMRC/DWP may show data for earlier years to establish residence, it is not clear whether this would mean settled status would be granted, or whether the applicant would be contacted for further evidence of residence during later years.

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1.5	Acceptable documents	Please provide us with a full list of documents that will be acceptable to prove residence in the case that there are no, or insufficient, HMRC/DWP records. Please indicate whether these documents can be copies, or have to be certified copies or originals.	There are 2 lists provided in the Annex of the SOI, preferred evidence and alternative evidence.	The lists are too restrictive, and out of touch with modern digital life. A very large number of people will struggle to evidence their residence. In particular Table 2, in considering a piece of evidence to only cover the applicable month, makes a presumption that an applicant may be lying about their residence status. The recent report produced by the Joint Committee on Human Rights[1] made the same point about Windrush cases.
1.6	Other agencies	Will the government contact other agencies? If so, which ones, requiring what type of information and for what purpose?		No information other than the understanding that HMRC information will be utilised and the DWP link is not available yet. We also have concern about data protection and GDPR immigration exemption issues.
1.7	Residence - Lacking evidence	How will someone who has no evidential footprint prove residence, for example a household where all bills are in one person's name, and the partner has no documentary evidence?	SOI Annex A: "We recognise that some applicants may lack documentary evidence in their own name for various reasons, and we work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them".	More details of this flexibility are required.

[1] https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/windrush-report-publication17-19/

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1.8	Residence - Children	There have been growing concerns raised about the rights of EU Citizen children being protected, particularly those who may not be able to rely on their parents to prove a right to reside (for example children in care, in foster placements, or where their parents neglect their own immigration status). What measures will the UK put in place to ensure that the rights of children are protected?	SOI 4.4 states: "...We will also confirm the scope, beyond a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child, for the application process to be completed on behalf of a person without the capacity to complete it themselves." SOI 6.6 states: " It does not currently include a child cared for by the EU citizen (or by their spouse or civil partner) solely by virtue of a legal guardianship order or a formal or informal fostering arrangement, but we are looking further at those and other aspects of the definition. "	There are no substantive details about extra measures for children, beyond being family members of EU citizens. Children need particular measures to ensure that they are not the undocumented Windrush 2.0 in the future. They are dependent on their parents applying on their behalf. Coram Children's Legal Centre has produced a briefing[2] which states "Any new system for EU nationals must avoid an increase in children finding themselves undocumented as a result of practical barriers or policy decisions."
1.9	Residence - Corporate parents	How will the government register children with corporate parents such as children's care homes? (Corporate parenting refers to organisations or persons in power, for instance a council, who have special responsibilities to care for children and young people.)	SOI 4.4 states: "...We will also confirm the scope, beyond a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child, for the application process to be completed on behalf of a person without the capacity to complete it themselves." SOI 4.6 states: "There will be no requirement for an application fee where a child is being 'looked after' by a local authority".	Apart from the fee waiver, no details have been provided of how the government will register these children.

[2] https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/
https://www.childrenslegalcentre.com/wp-content/uploads/2018/03/European-national-children-in-care_March2018Final.pdf

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1.10	Residence - Parents	Can parents prove their residence through their children? For example, can a single stay at home parent who has no paperwork, use evidence of their children attending school to prove their own residence?		This was asked in Home Office user group meeting in addition to this document. No written or verbal response has been provided.
1.11	Residence - Retained Rights	How will people who have "retained rights of residence" and do not need 5 years' residence be identified? Will they be able to apply with less than 5 years?	EU11, part 6, states: a) The applicant is a family member of a relevant EU citizen who has died and the relevant EU citizen was resident in the UK as a worker or self-employed person at the time of their death; and (b) The relevant EU citizen was resident in the UK for a continuous qualifying period of at least two years before dying, or the death was the result of an accident at work or an occupational disease; and (c) The applicant was resident in the UK with the relevant EU citizen immediately before their death and since then no supervening event has occurred	They will be able to apply with less than 5 years as set out in SOI. Will the Home Office recognise that this group of people needs to given clear advice, and therefore request that the Ministry of Justice provide sufficient funds and resources for the large scale legal advice and outreach that will be required?
1.12	Residence - evidence gaps	If applicants dispute Home Office evidence that they have been in the UK for less than 5 years, how can they fill in the gaps in evidence?	SOI 1.15/5.15/Annex A: The government will require them to provide further evidence and give them a 'reasonable opportunity' to do so.	

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1.13 Past absence	How will an applicant's absence from the UK in the past affect an application?	SOI 3.4: There is no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period. There are some exceptions: • A single period of absence of more than six months but which does not exceed 12 months is permitted, where this is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. • Any period of absence on compulsory military service is permitted. Continuity of residence is broken (and restarts from scratch on release, where this is before the end of the implementation period on 31 December 2020) where the person served or is serving a sentence of imprisonment of any length in the UK, unless: • The person has resided in the UK continuously for at least 10 years (and has the right of permanent residence in the UK under the EEA Regulations) and the Home Office considers that they had forged integrating links with the UK which were not broken by imprisonment and that, overall, it would not be appropriate to treat	The requirement for the exception to this breaking of continuity of absence relies on having the right of Permanent Residence, which is difficult for many not least due to the UK infringement [3] of the Comprehensive Sickness Insurance requirement: "The United Kingdom, however, does not consider entitlement to treatment by the UK public healthcare scheme (NHS) as sufficient. This breaches EU law." This is incompatible with the proposed settlement scheme being residence based, and is not in the spirit of the Withdrawal Agreement.

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		imprisonment as breaking continuity of residence. Continuity of residence is likewise broken if for example a deportation order, exclusion order or exclusion decision is made, or the person is removed from the UK under the EEA Regulations, unless this has been set aside or no longer has effect.	
1.14 Length of absence	Will the government check whether people have been in the UK continuously for 5 years without a subsequent break of 2 years, or 5 years?	SOI 3.4 states "Once the person has been continuously resident in the UK for five years, this means that they will be eligible for settled status where, since completing that period, they have not been absent from the UK **for more than five consecutive years** (as set out in the draft Withdrawal Agreement, rather than for more than two consecutive years as set out in the Free Movement Directive) when they apply under the scheme."	It appears that the government will check for a subsequent break of 5 years. However, there is an apparent contradiction with 2.2 – see question 16.1 Length of absence
1.15 Absent at the point of application	Will EU citizens, who have been resident in the UK for 5 qualifying years, but who are currently resident outside the UK for an absence of less than 5 years, be able to apply for settled status?	As above, SOI 2.2 states "So, for example, those who are continuously resident in the UK but who happen to be abroad on business or holiday or living overseas temporarily on 31 December 2020 will still be protected". However, 4.4 states that the application "will need to be made, initially at least, in the UK."	As above, the different treatment between persons who can demonstrate PR and those who cannot. No ability to apply from abroad and no timescale given as to when it will be possible to apply from abroad.

[3] http://europa.eu/rapid/press-release_IP-12-417_en.htm

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1.16	Absence – standard of proof	What proof of continuity of residence are citizens required to provide?	At least 6 months proof of residence for every one of the 5 years, according to Tables 1 and 2 in SOI Annex A.	Evidential burden too high for many.
1.17	ID - expired	Some EU countries tell their citizens that their ID is still valid despite being beyond its expiry date. What are the consequences for a settled status application for an applicant whose passport or ID has expired?	SOI 4.8: "a valid passport or a valid national identity card", where valid means "genuine and has not expired or been cancelled or invalidated"	An expired passport should be considered valid evidence of ID. Citizens who do not currently have a need for an in-date passport will be forced to incur trouble and expenditure to renew their passports (with their consulates) in addition to the settled status application.
1.18	ID – cannot scan and cannot send	What happens if an applicant cannot submit proof of their ID (for example they are not able to scan their ID)?	SOI 1.14 / 4.9: "By a secure postal route in the UK, by which we will aim to return the document to them as soon as we can, to minimise delays if other aspects of the application need further consideration."	No details have been provided of the secure postal route, and “as soon as we can” does not commit to a timeline. The return should be by return of post, as indicated in the draft WA. There will be great concern about loss of identity documents (which happens even with current Royal Mail Special Delivery).
1.19	ID – sent to Home Office	Under what circumstances would EU citizens be obligated to send their original ID documents to the Home Office?	SOI 4.9 If the applicant does not have a biometric document, or is not able to use the smartphone app on either their personal device or at a location established to enable the applicant to use the app.	It is not desirable to have to send ID documents by post, both for being without one's ID document, and due to the risk of loss. An alternative should be available.

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1.20 ID – timeline for return	If an applicant must hand in their ID, will there be a time limit by which it will be returned to them? Will applicants need to provide pre-paid envelopes?	It is not clear if the ID documents sent by post will be returned immediately and earlier than other documentation sent to the Home Office: SOI 1.14 / 4.9 "Those who do not wish to or cannot use the app, or whose identity document is not compatible with it, will need to send us the document by post. We are establishing a dedicated team to check these documents and we will aim to return them to the applicant as soon as we can, to avoid delays if other aspects of the application need further consideration."	No details have been provided on time limits, cost or, if applicable, the need for pre-paid envelopes.

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1.21 ID – name does not match	What provisions will be made for applicants whose names do not match the name on their passport? Some examples: - married women **must** have their maiden name in their passport, with optional "spouse of ..." (e.g. Netherlands) - it is customary for married women to use a hyphenated "married surname-maiden surname" in everyday life (e.g. Netherlands) - citizens may have a formal name in their passport, but use a different given name all their lives – including on all UK documentation (e.g. Netherlands) - the order of first names and middle names on the passport may not match the name in use in everyday life (e.g. Sweden)		No information provided.

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1.22 ID – name cannot be input correctly	How will the application system deal with characters that cannot be input into a digital system, or a name that exceeds the maximum length expected by the system? E.g. German citizens entering "ue" as an alternative to "ü" or "ss" as an alternative to ß; or citizens of countries that use accents and other special characters?		No information provided.

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1.23	Criminality checks – historic	Given that the EU and the UK have agreed that the application of criminality checks will be in line with the exclusion/expulsion criteria of the Citizens Directive 2004/38: a) How will the government treat applicants who have historic criminal convictions and who have not been subject to removal orders? b) Will there be a distinction between spent and unspent convictions? c) Should people with spent convictions be obliged to declare? d) What about people with conditional discharge who have not reoffended? (Conditional discharge is where an offender will not be sentenced for an offence unless a further offence is committed within a stated period). e) Will offences such as fines, cautions, tickets and other fixed penalty notices, that do not appear on a criminal record, be required to be declared? f) Under what circumstances will prison sentences shorter than 12 months be accumulated and be regarded as genuine, present and sufficiently serious threat?		No information provided, despite many requests for details from user groups including embassy user groups

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	g) How would convictions in other countries be compared where are there are concerns for trials in absentia, issues concerning double criminality, or possible lack of transparency relating to convictions committed outside the EU? h) Will you give the applicant clear information about which types of offences need to be declared, including information relevant to the applicant's nationality (for example what constitutes 'spent' for a historic conviction in that applicant's member state)? i) Will you give the applicant advice/warning in the relevant part of the application form to take legal advice before declaring criminal offences?		
1.24 Criminality checks – shared data	How will the UK be able to acquire data from outside the UK in relation to foreign criminals given that the existing sharing arrangements will no longer be in place?		There have been recent discussions in Brussels, where no deal has yet been reached on data sharing.
1.25 Criminality checks – exclusion / expulsion	Will the UK be relying on such shared data when making decisions around exclusion (preventing a person from entering the UK) and expulsion (requiring a person to leave the UK)?		There have been recent discussions in Brussels, where no deal has yet been reached on data sharing.

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1.26 Security checks - definition	What is the definition of a 'security check'?		No information provided.
1.27 Security checks - application	How will a 'security check' be applied?		No information provided.
1.28 Security checks - failed	What are the consequences of a failed 'security check'?		No information provided.
1.29 Applicants serving sentences	Will an EU citizen, who is currently serving a sentence that will not be completed until after the end of the transition period and subsequent grace period, be able to apply for temporary or settled status during their sentence?	SOI 3.4 states that continuity of residence is broken by a prison sentence (with some exceptions).	It therefore appears unlikely that they will be able to apply for temporary or settled status during their sentence.
1.30 Suitability Check – misuse of rights under Directive 2004/38/EC	SOI E15 states: "An application [...] will be refused where [...] (c) The applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights under Directive 2004/38/EC". This clause appears to undermine the entire premise of the EU Settlement Scheme in not testing for Comprehensive Sickness Insurance[4] or 'genuine and effective work'. Please provide details and justification of this clause.		New question in 1.2 arising from Statement of Intent being published.

[4] It is in any case considered against EU law to not accept access to the NHS as fulfilling the CSI requirement: http://europa.eu/rapid/press-release_IP-12-417_en.htm

2 Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.1 ILR holder checks	In the event that current holders of Indefinite Leave to Remain (ILR) will need to apply for settled status under the Withdrawal Agreement, what checks (absence, criminality, security, HMRC/DWP) are required for an applicant with existing Indefinite Leave to Remain (ILR)?	SOI foreword states "The process will be particularly straightforward for those who already hold a valid permanent residence or indefinite leave to remain document, which they will be able to swap for settled status free of charge" SOI EU 11.2, definition of "valid evidence of their indefinite leave to enter or remain" makes clear that the ILR must not have lapsed, been revoked or invalidated.	An EU citizen who is a holder of ILR will typically have received that ILR several decades ago. They will therefore have the burden of proving ongoing residence (with no more than 2 years' absence) since the issue of that ILR document. This will be an extremely challenging evidential burden.
2.2 ILR holder application time limit	For an application with ILR, will the government commit to a time limit between applying for, and receiving proof of, settled status?		No details provided.
2.3 ILR holder application	Some EU citizens have been granted with Indefinite Leave to Remain. Most of these citizens were granted this status many years ago. a) Will these citizens be able to rely on their previous grants of ILR in order to apply for settled status?	Yes. SOI EU 11 condition 2: The applicant is a relevant EU citizen, or a family member of a relevant EU citizen, and there is valid evidence of their indefinite leave to remain.	

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	b) If so, what checks will be performed?	Criminality and security checks, and that ILR has not lapsed, been revoked or invalidated.	As above, we consider the evidential burden too challenging.
	c) In instances where these citizens have lost their ILR BRP cards what will the implications be?	Definition of "valid evidence of their indefinite leave to remain" includes "(b) the decision-maker is otherwise satisfied from the information available to them that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated"	"Otherwise satisfied" is not explained.
	d) In other instances, the vignette/stamp confirming grant of ILR is in an expired passport which has been retained by their embassy. The Home Office have stated they do not have a record of ILR holders. What will the implications be?	Definition of "valid evidence of their indefinite leave to remain" includes "(a) a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated; or"	No details provided for this situation.

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2.4	PR holder exchange	Will holders of PR be able to exchange their document for a new residence document or will they have to make an application for a new status with absence, criminality, security and ID checks to obtain a 'certificate of application' and a settled status document? Given they have already proven five years' residence, do they need to prove additional time of residence, and if so, does that require an element of continuity or is it sufficient to prove residence on the single date of their new application?	SOI 5.3: "The process will be particularly straightforward for those EU citizens and their family members who have previously been issued a permanent residence document (that is a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations). They will be able to exchange this free of charge for settled status (indefinite leave to remain) under the scheme, subject only to criminality and security checks and to confirming that this status has not lapsed or has done so through absence from the UK for more than two consecutive years (as set out in the Free Movement Directive) but not more than five consecutive years (as set out in the draft Withdrawal Agreement: see paragraph 3.4, above). The assessment of their previous UK residence which we will have done before issuing their permanent residence document will not be repeated" SOI Glossary: "Documented right of permanent residence" includes that the document was issued under regulation 19 of the EEA Regulations, and issued or renewed within the last 10 years.	Although free of charge, a 'swap' is not possible as the scheme is constitutive, in other words the applicant still has to make a fresh application for status without guarantee of success. Many people still have their old residence permit issued in the late 1980s which was issued under EEC regulation. Will this document therefore not be valid? The five years of PR residence assessment will not be repeated, however, the applicant will need to prove no absence of more than 5 years since PR. Depending on when the PR was issued, the evidential burden may be higher than for settled status, meaning that the applicant might be effectively forced to pay for settled status anyway. Renewed criminality checks will also apply.
2.5	PR holder timeline	For an application with PR, will the government commit to a time limit between applying for, and receiving proof of, settled status?		No details provided.
2.6	PR holder lost document	What happens if an applicant has lost their PR document?		No details provided. The government should have a record of PR holders.

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2.7	Family members: application	How will non-EU family members of EU citizens be able to apply for settled status?	SOI 5.8 and 5.9 explains that the non-EU citizen must provide evidence of their relationship to the relevant EU citizen, and their valid passport of national identity card. "We will accept alternative evidence of the EU citizen's identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons".	More details need to be provided of the acceptable alternative evidence, since this is currently an existing problem for many applicants.
2.8	Family members genuine relationship	What tests will be applied to establish a 'genuine relationship' for non-EU family members of EU citizens?	SOI 6.6 mentions "it is not a marriage of convenience", "it is not a civil partnership of convenience" and " it is not a durable partnership of convenience". Defined in glossary as "entered into as a means to circumvent: (a) any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations; or (b) any other provision of UK immigration law or any requirement of the Immigration Rules; or (c) any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law"	No details are provided of how it will be established that the relationship is not one "of convenience". If a genuine relationship does in fact also result in one party gaining a right to enter or reside in the UK, this definition can be abused to accuse almost any such relationship of being one of convenience. The SOI's interpretation of a durable partnership for the purpose of settled status is inconsistent with EU law, for example, the requirement of two-year cohabitation. The acknowledgement that 'other significant evidence' can be submitted does not clarify relationships qualifying under the proposed rules.

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2.9	Children: application	The Withdrawal Agreement Article 17 (1)(l)(iii) states that "direct descendants who are under the age of 21 or are dependants and dependent direct relatives in the ascending line" may apply for settled status as a family member by providing documentary evidence of their relationship. Is it possible for an EU citizen under the age of 21 to apply for settled status in their own right instead? If so is there a minimum age at which they can do so?	There appear to be different rules and regulations for children depending on their age and location: SOI 1.18. …For children under the age of 16 the fee will be £32.50. SOI 4.4: 'a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child….. Within the meaning of section 22(1) of the Children Act 1989, section 17(6) of the Children (Scotland) Act 1995, section 74(1) of the Social Services and Well-being (Wales) Act 2014 or article 25(1) of the Children (Northern Ireland) Order 1995. '	We need confirmation that children can apply in their own right, and if so under what circumstances and from what age.
2.10	Dual Nationals application	Will those British-EEA dual nationals who have rights to family reunion under the Withdrawal Agreement need to make an application for settled status in order to evidence their right?	http://www.legislation.gov.uk/uksi/2018/801/made Shows that "a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national" is to be considered an EEA national within the Immigration Rules. SOI 6.5: 'Otherwise, the following family members of an EU citizen who is continuously resident here by 31 December 2020 (as described in section 3, above) will be eligible to apply for status under the scheme,….This includes a dual British-EU citizen in line with the CJEU judgment in Lounes….further details in due course'.	Further details to be provided – not clear whether the dual national citizen needs to make an application for settled status in order for their family members to be able to apply.

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2.11 Dual Nationals evidence	If it is not intended that they make an application for settled status, how will they evidence this in the future at the point of wishing to bring a family member into the UK? It has been suggested by the Home Office that they will need to show a Permanent Residence (PR) certificate. EU citizens who became dual nationals before November 2015 will not necessarily have a PR certificate, and people who became dual nationals after November 2015 may have discarded their PR certificate once they acquired British citizenship.		See 2.10.
2.12 Dual Nationals checks	Will dual nationals be subject to any checks (such as absences, criminality, security, HMRC/DWP) in order to be covered by the Withdrawal Agreement?		See 2.10.
2.13 Groups not covered – identified	Has the government identified any groups who will not be covered by the Withdrawal Agreement?		No information provided.
2.14 Groups not covered – reasons	If so, what are these groups and why will they not be covered by the Withdrawal Agreement?		See 2.13.

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2.15 Surinder Singh	Will Surinder Singh cases (non-EU family members of British citizens who have exercised EU freedom of movement before returning to the UK) be covered by the Withdrawal Agreement? If not, how does the UK intend to protect those who are currently benefiting from these rights? Will there be measures in place to allow citizens to benefit from this right in the future?	SOI 6.12: "In addition, in respect of the following categories involving a British citizen in circumstances which are not protected by the Withdrawal Agreement, we have decided, as a matter of domestic policy, that: • A non-EU citizen family member of a British citizen who is lawfully resident in the UK by the end of the implementation period on 31 December 2020, by virtue of regulation 9 of the EEA Regulations (the 'Surinder Singh' route, which leads to a right of permanent residence under EU law), will be eligible to apply for status under the EU Settlement Scheme."	Our interpretation of the SOI is that Surinder Singh family members will not be able to move to the UK after the end of the transition period, even if their British citizen family member is in the UK before the end of the transition period. Furthermore, we are concerned that British citizens returning after the end of the transition period will not benefit from Surinder Singh at all.
2.16 Zambrano	How does the UK intend to protect those who are currently benefiting from Zambrano rights? (A Zambrano carer is the non-EEA citizen primary carer of a British citizen who is residing in the UK.)	SOI 6.12. In addition, in respect of the following categories involving a British citizen in circumstances which are not protected by the Withdrawal Agreement, we have decided, as a matter of domestic policy, that: • A non-EU citizen who is the primary carer of a British citizen in the UK and also currently derives a right of residence from wider EU law (a Zambrano carer) will be provided for in the Immigration Rules. Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them.	Details of the eventual status are not yet available.

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	the3million Question	Home Office Reply	the3million comment
2.17 Irish citizens - rights	We understand Irish citizens living in the UK will not need to apply for settled status. Taking family reunion rights as an example, will Irish citizens living in the UK have: a) the same family reunion rights as British citizens? or b) the enhanced family reunion rights as granted by the Withdrawal Agreement? or c) the full EU citizenship family reunion rights as granted by Directive 2004/38/EC?	SOI 2.6: "Irish citizens enjoy a right of residence in the UK that is not reliant on the UK's membership of the EU. They will not be required to apply for status under the scheme (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) will be able to obtain status under the scheme without the Irish citizen doing so. "	It is not made clear what the advantages are of the Irish citizen applying for settled status. It appears that the answer would be b) but this is not made clear.
2.18 Irish citizens – distinctions	Will there be a distinction, and if so what are the distinctions, between the following groups of Irish citizens: a) an Irish citizen not born in Northern Ireland, but resident in Northern Ireland b) an Irish citizen not born in Northern Ireland, and resident in Great Britain c) an Irish citizen born in Northern Ireland, and resident in Northern Ireland d) an Irish citizen born in Northern Ireland, but resident in Great Britain		No information given.

2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.19 Good Friday Agreement	What specific measures, mechanisms or procedures does the UK propose to ensure the "right of the people of Northern Ireland to hold British or Irish citizenship or both ... with no detriment or differential treatment of any kind" as guaranteed by the Belfast/Good Friday Agreement?		No information given.

2 - Eligibility of Different Groups for Settled Status

2.20	British children of EU parents	Will a British child, whose EU parents have settled status, be covered by the Withdrawal Agreement? If such a child is covered, will they have to make an application for settled status in order to evidence their right in the future? If not, how will they evidence their right in the future? If such a child is not covered, what would happen in the following scenario: - In the future, when the British child (X) is an adult, X's parents leave the UK for longer than 5 years to retire/look after their own elderly parents, resulting in X's parents losing their settled status - Once X's parents are old themselves, they would like to return to the UK to be looked after by their British child X, but X is not covered by the Withdrawal Agreement and therefore cannot claim their family reunion rights. Again, if such a child is not covered, what would happen in the following scenario: - if the British child (X) is an adult, and is in a durable relationship (before the end of the transition period) with a foreign national living abroad, will X be able to bring their partner to the UK (after the end of the transition period) without having to fulfil UK immigration law requirements including minimum earnings thresholds?		The Home Office has not responded to this question/scenario in writing, or at all, to date. It had given verbal assurances that all questions would be answered in writing. Beyond talking about applications of children under 21 in the SOI, no details are given on children and their specific rights and obligations, or on facilities to identify them and to provide them with specialist advice and assistance.

2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.21 EU children living abroad	Will an EU child, living outside the UK before the end of the transition period, be covered by the Withdrawal Agreement, if that child has an EU parent in the UK who naturalised as a British citizen after the child's birth? If so, will that child be able to apply for Temporary Status and subsequent Settled Status if they move to the UK after the end of the transition period?	SOI 2.5: "The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme."	No details given of these "certain circumstances".

2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.22 Difference between ILR and settled status	Will the government make clear to ILR holders that, although they do not need to apply for settled status in order to maintain their rights of residence, not doing so has the following implications: - they will lose their ILR after a 2-year absence from the UK, whereas holders of settled status lose their rights after a 5-year absence from the UK - family reunion rules as defined in the Withdrawal Agreement will not apply to them - they will not have the same rights of appeal against any Home Office decisions (to revoke ILR on grounds of criminality, or on those applying as returning residents) as holders of settled status - they will not benefit from European Court of Justice rulings or protection during the proposed 8-year period - without also holding a Biometric Residence Permit, under current rules they will not be able to gain employment past the end of the transition period		Despite many discussions these issues have not been addressed, beyond setting out in the SOI that a 5 year absence rule applies to the "EU-ILR" instead of the 2 year absence rule under "non-EU ILR" that is not covered by the scheme. The Home Office have not explained how the two forms of ILR will be distinguished.

2 - Eligibility of Different Groups for Settled Status

2.23	Recognition of ILR	The government have stated: "Indefinite leave to remain status will not be affected by the UK leaving the EU. Once the application scheme for settled status opens there will be a simple process for you to exchange your old indefinite leave to remain document for a settled status document free of charge, should you wish to prove you benefit from the withdrawal agreement. We won't repeat any assessment of residence." There is a large group of older EU citizens and their families who believe that they do not need to obtain settled status, because they have a variety of forms of documentation obtained many decades ago, including for example a stamp in an old passport, a police booklet, or letters. Some of these documents may be considered to not constitute ILR. a) What will be the consequences for these citizens and their families if they do not apply for settled status? Will they be treated as illegal citizens, will they face penalties, loss of access to services, or deportation? b) What specific proposals are there to reach out to this particular group of citizens? c) These citizens may need legal advice to see what their options are. What funding is being made available for this advice and at what stage will this funding be available?	SOI Glossary definition of "valid evidence of their indefinite leave to enter or remain" contradicts this Government statement, since the SOI insists that the applicant must prove that the ILR has not lapsed, whereas the Government statement says "we won't repeat any assessment of residence". SOI 1.16 proves that the Home Office is still in the initial consultation stages of devising an application scheme for vulnerable groups when it talks about 'our new group which particularly focuses on the needs of vulnerable users'	The Home Office has given verbal indications that EU citizens with existing ILR can simply hold on to their documentation and do nothing. But without specialist face to face advice on the validity of their documentation and of the consequences of doing nothing this would be a risky strategy to pursue. Alternatively, the government appears to be contemplating secondary legislation to transform ILR documents into status under the Withdrawal Agreement. However, the difficulty with that would be that the settled status scheme under the WA is an application or 'constitutive' scheme, with applications having no guarantee of success. Also, how would the 'exchange' occur in practice? How would the government find and identify all these older citizens and their family members, examine their documents and issue them with valid digital proof of the new status? Would the Home Office have to provide a Certificate of Application to the applicant meanwhile? a) not known b) none beyond vague, unspecific promises c) despite many requests, the government does not seem prepared to make funds available for legal advice. It keeps up the mantra that nobody should need legal advice despite the many fundamental issues about this and other vulnerable groups of EU citizens

2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.24 Exchange of ILR for settled status	The government have stated: "Indefinite leave to remain status will not be affected by the UK leaving the EU. Once the application scheme for settled status opens there will be a simple process for you to exchange your old indefinite leave to remain document for a settled status document free of charge, should you wish to prove you benefit from the withdrawal agreement. We won't repeat any assessment of residence." a) Can the government provide a comprehensive list of acceptable documents that prove an EU citizen has Indefinite Leave to Remain status? b) Can the government confirm that the phrase "We won't repeat any assessment of residence" means that applicants only need to confirm UK residence at the time of document exchange, and does not mean they need to provide 5 years' proof of residence, or proof of residence since the date of ILR? c) If a citizen's ILR document is exchanged for a settled status document, will the settled status document show the date that ILR was originally granted?	a) SOI Glossary definition of "valid evidence of their indefinite leave to enter or remain" states "a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated." b) from a) – "which has not lapsed" c) no document will be granted to EU citizens SOI 1.13…' applicants will be able to upload additional evidence to fill in gaps in residence or where there is no government data. ..The application process we are designing will be particularly straightforward for applicants for settled status who already hold a valid permanent residence or indefinite leave to remain document. '	There is no 'exchange' or swap'. Holders of ILR will have to make a fresh application for settled status under the Withdrawal Agreement if they want to benefit from the scheme in terms of family reunion. There will be no guarantee of success and no document given to them as evidence of their status. Holders of ILR face various difficulties: First they would have to obtain specialist advice on whether their ILR is still valid. There is no indication that the Home Office would provide such individual face-to-face advice on applicants' documentation. a) This is not a comprehensive list of acceptable documents, e.g. many people have asked us about stamps in a police booklet, or an old letter. b) No clear information has been provided on this point. On the contrary, there is every indication that absence checks will be carried out and that ILR holder will therefore have to satisfy a very challenging evidential burden of proving that no 5 year gap in their residence has occurred throughout decades. c) There will be no document issued to EU citizens, despite many requests for physical evidence of status to avoid discrimination and difficulties.

2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.25 Future children	SOI Summary, and again in 1.6 states: "Future children are also protected (see paragraph 2.5, below)". SOI 2.5 states: "The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme". What are the "certain circumstances", and why does the summary state future children ARE protected while 2.5 states "in certain circumstances"?		We urgently need clarity about the rights of future children.

3 Details of Application Process

		the3million Question	Home Office Reply	the3million comment
3.1	Joint family applications	Will families (including both dependent descendants and direct ascendants) be able submit one application for the whole family, or should they submit one application per family member?	SOI 6.1. "Family members who are living with, or join, an EU citizen resident in the UK by the end of the implementation period on 31 December 2020 will be eligible to apply for status under the EU Settlement Scheme. They will be able to apply under the scheme on their own account, but non-EU citizen family members may prefer, where possible, to apply once the relevant EU citizen has done so and been granted status as this is likely to make it easier and quicker for the family member to demonstrate their eligibility (see paragraph 5.9, above). Applications made by families at the same time will be considered together."	Families will not be able to submit one application per family. Where their applications are going to be 'considered together' there are no details given on how this will be carried out.
3.2	Procedure for missing or incorrect evidence	What procedure will be put in place to give applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions in their application? In particular, what will protect EU citizens from errors being interpreted by the Home Office as fraud, with resulting loss of protection by the Withdrawal Agreement?	SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. SOI 5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision.	These statements are welcomed, however, more details are needed as to how this can and will be done in practice.

3 - Details of Application Process

		the3million Question	Home Office Reply	the3million comment
3.3	Application Charges	Article 17(1)(g) of the draft Withdrawal Agreement states that the residence document shall be issued free of charge or for a charge not exceeding that imposed on citizens or nationals for the issuing of similar documents. How do charges for obtaining settled status comply with the Withdrawal Agreement, given that no 'similar documents' currently exist in the UK?	1.18. An application under the scheme will cost £65 (the same as the current fee for a permanent residence document), which will part-fund the cost of the scheme. For children under the age of 16 the fee will be £32.50.	It is strongly felt that there should be no fee for the continuing right to live in the UK, especially as the SOI claims that EU citizens will 'continue their lives here much as before, with the same entitlements to work, study and access public services and benefits, determined according to the same rules as now'. The government has taken no note of our express wishes, and we hope that Parliament will be able to resolve this issue of free applications. This is particularly important as application fees for immigration applications have sometimes increased by 450%, and that this may well hit all those citizens who make late applications for status in years to come, when the status of EU citizens may well have been assimilated completely into UK immigration law through changes in secondary legislation.
3.4	Timeline	What will be the timeline for applications?		No details provided.
3.5	Timeline – corrected application	What will be the timeline for an application that will need the correction of errors?	1.15 SOI: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place.	No timeline for this has been indicated by the Home Office in writing, or in the user groups. In contrast, there are indications that applicants will be held to firm timelines to submit further documentation where required, leading to double standards in the application process:

3 - Details of Application Process

		the3million Question	Home Office Reply	the3million comment
3.6	Timeline – appeal of refused application	What will be the timeline for the appeal of an application which is refused / rejected?		The Home Office has not set out timelines for the resolution of refused or rejected applications, despite the well-known maxim 'justice delayed is justice denied'.
3.7	Timeline exceeded	Will the Home Office have a compensation scheme for Home Office delays over the time limit, both in applications and returning ID evidence?		The Home Office has set no time limits or compensation schemes for delays. It appears to discount all previous evidence of shortcoming and errors in their department, from the 10% error rate found by the independent Chief Inspector of Immigration and the Windrush scandal, by indicating that any new scheme will function perfectly and will be 'straightforward' or even be 'particularly straightforward' (this word appears 7 times in the SOI).
3.8	Use of digital app – biometric chip	Given that the proposed App requires access to the biometric chip, how will the App work for young children who are not issued with biometric passports, or applicants with older passports without biometric chips?		There is no information in the SOI about applications from young children. This is particularly worrying as the Home Secretary Sajid Javid indicated orally to a House of Lords Select Committee that children as young as 10 years will be checked for 'criminality' and 'security'. [5]
3.9	Use of digital app – technical failure	Many existing software applications fail from time to time when scanning passports (for example flight check in – resulting in the passenger needing to check in in person). What will happen if the settled status App experiences such a technical problem?		This possibility is not addressed in the SOI or elsewhere, despite the fact that the new system has not been beta tested to date.

[5] http://www.legalvoice.org.uk/british-citizenship-for-young-migrants-and-bad-character-provisions/

4 Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

	the3million Question	Home Office Reply	the3million comment
4.1 Pre-WA voluntary scheme legal basis	What will be the legal basis for a scheme which is based on a pre-Withdrawal Agreement that has not yet been fully ratified?		No written response has been provided to this question even though it was submitted to the Home Office, DExEU and other government departments some considerable time ago.
4.2 Pre-WA voluntary scheme status	If a voluntary scheme becomes active before the Withdrawal Agreement is fully ratified, what will be the status acquired under such a voluntary scheme?	https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm section i) states: "Successful applicants will be granted indefinite leave to remain (ILR) with the same rights and access to benefits, education and healthcare as those who have acquired it under current UK Immigration Rules, except insofar as the agreement makes special arrangements."	How will this ILR be translated into a status under the Withdrawal Agreement?
4.3 Pre-WA voluntary scheme failed application	What are the consequences of a failed application under such a pre-WA voluntary scheme?	SOI 5.18: "Where a valid application made is refused under the scheme, we will provide for the right to request an administrative review of the decision. A person refused status under the scheme before 31 December 2020 may also make a further application under the scheme at any point before 30 June 2021."	The SOI, whilst confirming that a person can re-apply, does not set out clearly the consequences of those who face deportation or removal and how they can exercise their rights in this context.

4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

		the3million Question	Home Office Reply	the3million comment
4.4	Pre-WA voluntary scheme diverging status	What will happen if there is a divergence between the status acquired pre-WA ratification and that acquired post-WA ratification? If an applicant makes a pre-WA voluntary application, how will this be reconciled with the post-WA status?		This scenario is not covered in the SOI.
4.5	Pre-WA voluntary scheme vs EU status	How would a status acquired under the pre-WA voluntary scheme fit with the existing EU status of the applicant until the WA comes into force?	SOI 5.21 "Consistent with the draft text of the Withdrawal Agreement, the draft Immigration Rules for the scheme confirm that, where a person granted status under it also has a right to reside here under the EEA Regulations, their status under the scheme does not have effect to their detriment in so far as it is incompatible with that right."	
4.6	Legality of pre-WA voluntary scheme	The SOI states that the EU Settlement Scheme will be opening later this year [i.e. before 29 March 2019]		According to section 9 of the European Union (Withdrawal) Act 2018, implementation of the Withdrawal Agreement (WA) via secondary legislation is only possible after the adoption of the Withdrawal Agreement and Implementation Bill. It is hard to see how the proposed Settlement Scheme is not an implementation of the WA. It is therefore questionable that the introduction of the Settlement Scheme via Immigration Rules complies with the EU Withdrawal Act. Furthermore, since the scheme pre- and post- March 2019 appear to be a single scheme, we would argue that the commencement of the scheme before March 2019 is not legally possible.

4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

		the3million Question	Home Office Reply	the3million comment
4.7	Right of appeal during pre-WA voluntary scheme	SOI 5.19 states that a statutory right of appeal will be established from 30 March 2019. Why will there not be a right of appeal for those applying under the pre-WA voluntary scheme?	https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm states "Any applicant refused status under the scheme will still be able to assert their free movement rights and will retain their right of appeal against any restriction of those rights under the Immigration (EEA) Regulations 2016 before and during the implementation period."	This means that if an applicant is refused status during the pre-WA voluntary scheme, they have no right of appeal under the scheme. However, if they were facing deportation or removal they would be able to use statutory rights of appeal under EEA legislation. In all other cases, they will have no choice but to apply again for another fee.

5 Transition Period - Withdrawal Agreement ratified (30 March 2019 – 31 Dec 2020)

		the3million Question	Home Office Reply	the3million comment
5.1	Transition application rejected	If an application during the transition period is rejected on grounds of fraud, will measures then be taken against the applicant on grounds of public policy or public security, or will the applicant be protected by Article 17 of the Withdrawal Agreement until the end of the transition period?	SOI EU.16 states that applicants will be refused (amongst others) where "whether or not to the applicant's knowledge, false, or misleading information, representations or documents have been submitted".	There is lack of detail on the rules relating to fraud allegations. The EU and UK have not agreed this test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.
5.2	Transition period re-application	If the applicant is protected by Art. 17 of the Withdrawal Agreement until the end of the transition period, will they be able to make a fresh application in every case of refusal, even if accused of fraud?	SOI 5.18: "A valid application for status under the EU Settlement Scheme will only be refused under the Immigration Rules for the scheme on the basis of criteria which reflect the Withdrawal Agreement or the more favourable UK approach. Where a valid application made is refused under the scheme, we will provide for the right to request an administrative review of the decision. A person refused status under the scheme before 31 December 2020 may also make a further application under the scheme at any point before 30 June 2021." SOI EU.16 states that applicants will be refused (amongst others) where "whether or not to the applicant's knowledge, false, or misleading information, representations or documents have been submitted".	There is a contradiction between SOI 5.18, and SOI EU.16. The EU and UK have not agreed this EU.16 suitability test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.

6 - Grace Period for Settled Status Applications (Jan – Jun 2021)

	the3million Question	Home Office Reply	the3million comment
5.3 Transition period discrimination	How will the government ensure that people entitled to settled status, but not yet in possession of evidence of settled status, will not be discriminated against by landlords, employers, banks, healthcare providers or other agencies?		The full EU acquis including freedom of movement holds during the transition period, so landlords, employers etc. should continue to accept EU passports as sufficient evidence.

6 Grace Period for Settled Status Applications (Jan – Jun 2021)

	the3million Question	Home Office Reply	the3million comment
6.1 Grace Period discrimination	a) During the 6 month grace period after the end of the transition period, how will the government ensure that people entitled to settled status, but not yet in possession of evidence of settled status, will not be discriminated against by landlords, employers, banks, healthcare providers or other agencies? b) If there is any extension of this grace period, how will EU citizens be similarly protected? Will such an extension be published widely to service providers including landlords, universities, schools, DVLA and many others to ensure there is no discrimination?		This situation is not addressed. During this grace period, landlords, employers etc. are potentially expected to distinguish between EU citizens entitled to settled status and those not entitled to settled status. Even if landlords, employers etc. are not expected to distinguish between these two groups of EU citizens (requiring a temporary suspension of the Hostile Environment), the government is unlikely to go beyond warning landlords etc. in information materials that discrimination against EU citizens is unlawful.

6 - Grace Period for Settled Status Applications (Jan – Jun 2021)

	the3million Question	Home Office Reply	the3million comment
6.2 Late Applicants	Will an applicant who applies after the end of the grace period be considered to have committed an immigration offence? The Withdrawal Agreement talks of documents 'evidencing the status' rather than 'conferring status', implying that a person should not be considered an overstayer if they acquired the right of permanent residence in the past.	SOI 1.12: "the deadline for applications to the scheme by those resident here by the end of 2020 will be 30 June 2021." 1.19. "There will be plenty of time – until 30 June 2021, six months after the implementation period ends on 31 December 2020 – for all those resident here by 31 December 2020 to apply for status under the EU Settlement Scheme, and they will remain protected by the Withdrawal Agreement pending the outcome of such an application made by 30 June 2021. Close family members joining an EU citizen here after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021). We have agreed with the EU that, where someone misses the deadline for their application for a good reason, they will be given a reasonable further period in which to apply"	No response is set out in the SOI. The Home Office stated in a recent user group meeting that it is making this issue 'dependent on the future relationship' with the EU. In other words, it is using EU citizens as bargaining chips rather than offering unilateral assurances that they will not be criminalised if applying late for ANY reason, or if they do not apply. This raises public policy issues as this will potentially create hundreds of thousands of illegal overstayers and a Windrush type situation.

7 Temporary / Settled status and Citizenship

	the3million Question	Home Office Reply	the3million comment
7.1 Pre-WA voluntary scheme citizenship	Would a status acquired under a pre-WA voluntary scheme entitle the person to apply for citizenship?	https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm section i) states that the status acquired under a pre-WA voluntary scheme is Indefinite Leave to Remain under UK Immigration Rules.	We assume that since this status is ILR, the person will be entitled to apply for citizenship. However, the introduction of the Settlement Scheme via secondary legislation prior to the Withdrawal Agreement and Implementation Bill is likely to be in breach of section 9 of the European Union (Withdrawal) Act 2018. Therefore we are concerned about the legality of a status acquired under a pre-WA voluntary scheme.

7 - Temporary / Settled status and Citizenship

	the3million Question	Home Office Reply	the3million comment
7.2 British citizenship conditions	Can citizens who have obtained settled status apply for British citizenships on the same conditions as applicable to those with Permanent Residence now?	SOI 7.7: " Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for British citizenship if they wish and otherwise meet the requirements for this: • Immediately, if they are the spouse or civil partner of a British citizen (and they have been lawfully resident here for at least three years), or if they were granted indefinite leave to remain in another capacity more than 12 months previously (and this has not lapsed or been revoked or invalidated); or • 12 months after the date on which they acquired the right of permanent residence under the Free Movement Directive, as evidenced by a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations; or • Otherwise, 12 months after the date on which they were granted indefinite leave to remain under the scheme.	There is no reason to assume that this will change.
7.3 British citizenship timing	Will EU citizens who obtain settled status after 6 years of UK residence be able to apply for citizenship directly thereafter or will they have to wait for a further year?	SOI 7.7: "12 months after the date on which they acquired the right of permanent residence under the Free Movement Directive, as evidenced by a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations."	They will have to wait for a further year. User groups have confirmed that settled status will not currently be backdated.

7 - Temporary / Settled status and Citizenship

		the3million Question	Home Office Reply	the3million comment
7.4	British citizenship married / civil partners	Will EU citizens who are married to, or the civil partner of, a British citizen be able to apply for citizenship directly after obtaining settled status or will they have to wait for a further year?	SOI 7.7: "Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for British citizenship if they wish and otherwise meet the requirements for this: • Immediately, if they are the spouse or civil partner of a British citizen (and they have been lawfully resident here for at least three years), or if they were granted indefinite leave to remain in another capacity more than 12 months previously (and this has not lapsed or been revoked or invalidated);"	They will be able to apply immediately after obtaining settled status.
7.5	EU children entitled to British citizenship	There will be instances where EU citizen children living in the UK cannot access paperwork (of parents) to support an application confirming their right to citizenship. What measures will be put in place to deal with such cases?		This is not answered by the SOI.

8 Support, Legal Assistance and Legal Aid

		the3million Question	Home Office Reply	the3million comment
8.1	Available assistance	What form and level of support contact will applicants for settled status have access to? Currently, when applying for Permanent Residence, it is not possible to speak to anyone (caseworker or general help) about an individual application.	SOI Foreword / 1.15 / 5.15: 'We will work with applicants to help them avoid any errors or omissions, and we will work with longer-term residents without official documentation to establish their eligibility under the scheme from the material they have.'	There are no details of the form or level of support contact.
8.2	Assistance - face to face contact	Will there be any face to face contact available in the local authority, and also as an in-depth European passport return service, offering ID or passport checks together with support with the application process?	SOI 4.9: "The means by which the applicant will be able to provide the required proof of their identity and nationality will include: As part of the digital application process (through a smartphone app which facilitates the reading of the chip in a biometric document), either using a personal device or at a location established to enable the applicant to use the app or be helped to do so;" https://www.gov.uk/government/publications/assisted-digital-uk-visas-and-immigration/assisted-digital-uk-visas-and-immigration provides details of the Digital Assist Service.	Despite repeated and persistent requests verbally and in writing, the Home Office has to date refused to contemplate this possibility. It has indicated that it has spoken to LGAs but the content and scope of any such discussions remains un-transparent and inaccessible. The details of the scope and location of the digital assist service are not provided. Regarding the Digital Assist Services, we feel the number of these are insufficient, for example there are only two for the whole of Yorkshire.

8 - Support, Legal Assistance and Legal Aid

		the3million Question	Home Office Reply	the3million comment
8.3	Assistance – email / telephone	Will there be any telephone or email contact available about an individual application?	SOI 1.14: Our services will also include an assisted digital service for those who need support to make an online application. 1.15 Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. 4.6 Failing to submit a valid application may lead to being contacted by the Home Office and given a reasonable opportunity to provide what is needed for the application to be valid and avoid it being rejected as invalid.	There will be some telephone and online assistance but the scope of this is as yet undefined and vague, and it is most probably confined to administrative details.
8.4	Individual application help charges	Will there be charges for any telephone or email contact about an individual application?		No details provided and verbal indications point to potential charges for telephone helplines.
8.5	Helpline / review staffing	What will be the staffing level for the telephone helpline and the administrative review service?		No details provided.
8.6	Helpline / review staff training	How much training will telephone helpline and administrative review service staff receive?		No details provided.

8 - Support, Legal Assistance and Legal Aid

		the3million Question	Home Office Reply	the3million comment
8.7	Helpline / review charges	Will there be charges for the use of the helpline and administrative review process?		There is no indication of charges in the SOI but there have been some verbal indications in Home Office user groups that charges may be applied for use of the helpline. This would present applicants with an additional financial burden and may also be in breach of the terms of the Withdrawal Agreement (Aft 17 Applications should be free of charge or in line with similar national documents).
8.8	Legal advice vulnerable groups	Will the government provide access and funding for independent legal advice and assistance to vulnerable groups? In particular the following example groups: - elderly - persons with a long-term illness - computer illiterate - persons without access to IT facilities - persons with disabilities - non-English speakers - children in care - young people just out of care - persons with literacy issues		There has been a refusal to recognise the potential need for advice including legal assistance in respect of vulnerable groups in the settled status scheme, despite these issues having been raised repeatedly in user group meetings with the Home Office, and in writing in this questions document.
8.9	Legal advice funding	If so, how will the government ensure that these services will be adequately funded?		See above.
8.10	Legal advice for rejected applications	Will the government provide access and funding for independent legal advice and assistance to anyone whose application is refused or rejected?		Despite verbal requests in user groups and this questions document, no offer of independent legal advice and assistance has been made.

8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.11 Assistance for digital application	The government has stated that the Home Office will help applicants prove their eligibility and avoid any errors or omissions in the applications. How will this help be provided in practice with a digital application?	SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. User friendly guidance will be available online to guide applicants through each stage of the application process. 5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. 4.9 (Evidence of ID and nationality) By a secure postal route in the UK, by which we will aim to return the document to them as soon as we can, to minimise delays if other aspects of the application need further consideration.	Although there is some talk of help in the SOI, there is no clarity on where this would involve the caseworker contacting the applicant, and where the assistance from a telephone helpline may be required (for which there may be a charge) . There is no indication that there will be any face to face assistance. It is difficult to see how this would work in case of postal submissions.

8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.12 Categories requiring legal advice	How will the government make specific provision for categories of EU citizens who would need legal advice before and after application, including: - those who have historic criminal convictions? - those without documentation? - those who fail 'security' checks?		In all three cases, there has been no clear provision given in the SOI.
8.13 Legal aid eligibility	Please set out precisely for which type of legal issue legal aid will not be available.		No answer provided in the SOI or in the HO FAQ.

9 Loss of Settled Status

		the3million Question	Home Office Reply	the3million comment
9.1	Loss of status due to absence	How will the Home Office determine that settled status is lost due to absence of longer than 5 years: a) In the case of EU citizens and their family members? b) in the case of dual nationals who fall under the terms of the Withdrawal Agreement?		a) no information provided as to the mechanism for determining absence or the loss of settled status b) No information provided in respect of dual nationals
9.2	Loss of status due to convictions	Will the UK seek to combine future convictions with historic convictions to determine whether to revoke settled status, exclude or expel EU citizens?		No written answer has been provided.

9 - Loss of Settled Status

		the3million Question	Home Office Reply	the3million comment
9.3	Definition of allowable absence	How is the 5 years' absence defined? For example, if someone with settled status leaves the UK for 3 years, comes back, then leaves again for another 3 years? Is the 5 year absence period a once-in-a lifetime permissible absence or can it be repeated? If the latter, how long would one need to be back in the UK before leaving again? Will this be clearly defined? Or will it depend on assessing 'proportionality' in court proceedings - e.g. how long have you lived in the UK prior to your repeated absence, etc.?	SOI 4.6: "has not lapsed ….through absence from the UK for a period of ….more than five consecutive years (as set out in the draft Withdrawal Agreement);" 7.4 for those already holding settled status: "Holders of settled status (indefinite leave to remain) under the scheme will be able to be absent from the UK for any reason for a period of five consecutive years before their status lapses and they cannot use it to return to the UK."	The SOI indicates that a person who has already acquired the right to claim settled status (generally through continuous residence for 5 years, see Table at SOI 3.4) can have been absent from the UK for less than 5 years retrospectively without losing status. As this is also a right confirmed in the WA this is unlikely to change, at least as long the Withdrawal Agreement is governed by supervision of the CJEU and supervised by a properly constituted Independent Monitoring Authority.

10 Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.1 Home Office capacity	It has been estimated that in order to register all EU citizens currently living in the UK, the Home Office will need to process about 6,000 applications per day. This is only an average. As many applicants may wait to first see how the scheme works out for others, there will be fluctuation and the daily rate may be significantly more. Given the high number of applications and identified concerns for the capacity of the Home Office to process over 3 million applications, and given that the Withdrawal Agreement only commits the UK Government to immediately issuing Certificates of Application, will the Home Office commit to a time frame in which to make decisions on applications?	Foreword to SOI: "processing applications on the scale required is feasible, providing we get the scheme design and the communications right." "I do not underestimate the scale of the challenge, but the Home Office already issues around seven million passports and three million visas each year and so processing applications on the scale required is not new to us."	There is no written commitment in the SOI as to the timeframe for resolving applications (despite constant requests to the Home Office through user groups to do so). It must also be pointed out that the EU settlement scheme will be on top of the existing seven million passports and three million visas – both of which have suffered periods of delay in the past.
10.2 Home Office staff training	What level of training will the new staff be given to process applications to a high standard, and to what level of responsibility?		This has not been answered, which creates a lack of transparency in the process that is not reassuring.
10.3 Home Office hubs	How many Home Office hubs in the whole of the UK will be used to process the applications?		No details provided.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.4 Home Office – difficult to reach groups	Has the government identified groups of EU citizens who may be more difficult to reach?		Although evidence has been given on several occasions to the Home Office (through the user group that meets once per month) that many EU citizens are living in areas or circumstances that make them difficult to reach, this has to date not led to any government proposals on how to identify and reach out to these EU citizens and their family members. There is no mention of difficult to reach groups in the SOI.
10.5 Identifying vulnerable groups	For instance: how will the government identify vulnerable groups of citizens to inform them of their need to apply for settled status?	SOI 1.16: "The Home Office is designing the EU Settlement Scheme with input from …our new group which particularly focuses on the needs of vulnerable users."	No proposals to date. The Home Office only started recently to consult vulnerable groups for 1-2 hours per month, but has not presented these groups with proposals on how to identify vulnerable citizens, or how to advise them appropriately.
10.6 Information translations	Will information about the application scheme, including an explanation about the difference between Permanent Residence and settled status, be translated into all community languages and be available in other forms of support (e.g. Braille, audio etc.)?	1.17 SOI : "We will also use feedback to inform what we publish online, including the scheme application guidance which we plan to publish in English and also in the other 23 official languages of the EU."	Date of publication of the settled status scheme is uncertain but there is a promise to cover "all community languages". The information is unlikely to explain the difference between PR and settled status No information regarding Braille and other forms of support.
10.7 Information reach	Where will the information about the registration/application scheme be placed to ensure maximum reach?	SOI 1.20: "There will be more information shortly on when the EU Settlement Scheme will be open and how to apply… The scheme will be open fully by 30 March 2019."	

10 - Home Office Infrastructure for settled Status

		the3million Question	Home Office Reply	the3million comment
10.8	Certificate of having made application	Article 17(1)(b) of the draft Withdrawal Agreement states that a certificate of application for the residence status shall be issued 'immediately'. What form will this certificate take?	SOI 5.17: "The draft text of the Withdrawal Agreement makes provision for an applicant for residence status to be issued with a certificate of application to confirm they have made an application which is under consideration by the Home Office. We will provide further information in due course about arrangements for this under the scheme."	No mention of 'immediately', and difficult to see how this will be possible in the case of applications by post.
10.9	Legal certificate - reference Withdrawal Agreement	Will the proof of settled status include a statement that it has been issued in accordance with the Withdrawal Agreement?		No physical document will be given.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.10 Physical proof	Will applicants be issued with a physical copy of their certified settled status?	SOI 7.2: Evidence of this status will be given to EU citizens in **digital form**; no physical document will be issued to them.	The refusal of the government to issue physical proof of status, coupled with the hostile environment, is deeply concerning. In addition, there are concerns about Home Office record-keeping of similar status holders in the past. The consequences of loss of data on settled status would be potentially very serious in light of individuals not having a physical document.
		SOI 7.3: As well as this digital means of evidencing their status, non-EU citizen family members in the UK granted status under the EU Settlement Scheme will also be issued with a biometric residence document, where they do not already hold a biometric residence card issued under the EEA Regulations. This will provide them with a convenient way of evidencing their status to those who may need to see confirmation of it, such as an employer, landlord or service provider.	non-EU citizen family members will be given physical proof, in acknowledgement of its use in the Hostile Environment.
10.11 Physical proof – lack of	If there is no physical proof of their status, how will applicants be able to prove their status and therefore their entitlements?	SOI 7.2: 'evidence of status' of EU citizens 'in digital form' and of 'control who they wish to share it with'.	There is no detail as to how this 'control' would be carried out.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.12 Physical proof – access to UK services	The Home Office have stated that landlords and other agencies will be able to access an electronic register using a reference number that the person will give them. If no physical proof exists of an applicant's status, then: a) how will the reliability of such a register be ensured? b) will there be any costs related to consulting the register and can such costs be passed on to the applicant? c) how will non IT literate landlords or other agencies be able to consult such a register? d) how will an IT failure affect such an applicant?		No details provided despite persistent questions in the user groups, and this questions document.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.13 Temporary status charge	What will be the charge for applying for temporary status, and will there be a further charge when someone with temporary status applies for settled status?	1.18. An application under the scheme will cost £65 (the same as the current fee for a permanent residence document), which will part-fund the cost of the scheme. For children under the age of 16 the fee will be £32.50. Where an applicant is granted pre-settled status under the scheme, there will, from April 2019, be no fee when they apply for settled status, generally once they have accumulated five years' continuous residence.	There will not be a further charge when someone with pre-settled status applies for settled status. There are some categories of people who face no charge.
10.14 Temporary status – physical proof	Will an applicant who has successfully applied for temporary status receive physical proof of their temporary status?		It is not clear whether there is any physical proof of temporary status, but this appears unlikely given the lack of physical proof on settled status.
10.15 Temporary status – validity length	How long will the document evidencing temporary status be valid?	SOI 1.18: "We will send a reminder to people to do so before their pre-settled status (five years' limited leave to remain) expires."	It does not appear likely that there will be such a document, however the status will be valid for 5 years. (Hopefully slightly longer than 5 years to allow time to actually apply for settled status once eligible to do so).
10.16 Temporary status – reference Withdrawal Agreement	Will the document evidencing temporary status include a statement that it has been issued in accordance with the Withdrawal Agreement?		It does not appear likely that there will be such a document.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.17 Temporary status – settled status eligibility date	Will the document indicate the date by which the person becomes entitled to apply for settled status?	SOI 1.18: "We will send a reminder to people to do so before their pre-settled status (five years' limited leave to remain) expires."	It does not appear likely that there will be such a document, however the status will be valid for 5 years. (Hopefully slightly longer than 5 years to allow time to actually apply for settled status once eligible to do so). Citizens would prefer to have a physical proof containing the date, such a reminder may get lost especially when people move house.
10.18 Temporary status – evidence for settled status	Once a person who is already holder of temporary status achieves the five years of residence, what will be the evidence required to apply for settled status?	5.12: Where the non-EU citizen family member is granted five years' pre-settled status (limited leave to remain) under the scheme, they will need to demonstrate, if they later apply for settled status (indefinite leave to remain) under the scheme, that they have been continuously resident in the UK for five years as the family member of that EU citizen (or of another EU citizen continuously resident here by 31 December 2020) or as a family member who has retained the right of residence. SOI 7.5: Holders of pre-settled status (limited leave to remain for five years) under the scheme will need to maintain their continuous residence in the UK (as set out in paragraph 3.4, above) and, where relevant, their family relationship, in order to qualify for settled status, generally after five years here.	It appears that continuous residence needs to be demonstrated on application for settled status. It is also suggested that criminality / security checks will be performed again.

10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.19 Temporary status – access to health and benefits	Would a citizen with temporary status qualify for healthcare, housing, and social benefits? What criteria will be applied?	SOI 7.5: "In the meantime, as reflected in the Withdrawal Agreement, they [holders of pre-settled status] will continue to have the same entitlements as now to work, study and access public services and benefits, determined according to the same rules as now. With footnote: They will continue to have to provide evidence that they meet the relevant eligibility requirements e.g. in any benefit claim or application for social housing, supported housing or homelessness assistance."	This is the same as current status. It must be noted however that these rules, being Immigration Rules, can change frequently. Assurances are needed.
10.20 Temporary status - discrimination	How will the government ensure that people with temporary status are not discriminated against by landlords, employers, banks, healthcare providers or other agencies?		No details provided.
10.21 Temporary status – criminality checks	Will an application for registration (i.e. those who arrive in the UK during the transition period) be required to answer criminality checks?	SOI 1.13 status criminality checks will be conducted against all applicants who apply, including those who arrive during the transition period.	
10.22 Loss of physical proof	What are the consequences of losing one's physical proof of settled status?		There will not be any physical proof of settled status. There are no details yet on how to access one's digital proof of settled status, but it must be made clear what the consequences are of losing access to one's digital proof of settled status (e.g. if passport number is the key to accessing the digital status, what happens in case of loss of passport number or renewal of passport?)

11 Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.1 Errors – Home Office	What measures will be put in place to ensure that if errors are made by the Home Office when assessing applications, this will be addressed swiftly and that applicants receive full support in case of any adverse effect?	SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. 5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision.	Despite the comprehensive evidence of errors made by the Home Office, the SOI does not address the Home Office making any errors. The SOI mentions 7 times how 'straightforward' their application process will be – this is in stark contrast to the promise of further information on the scheme 'in due course' which appears 12 times in the document. The Home Office is only anticipating that the *applicants* will make 'errors or omissions'.
11.2 Hostile environment - banks	Banks are under obligation to refuse new accounts or close existing accounts of citizens who are deemed unlawfully present in the UK. Will a rejection of settled status or temporary status result in their accounts being closed or new accounts being refused?		This obligation by banks is currently suspended, but it is not clear whether this will be resumed.[6]

[6] https://www.theguardian.com/uk-news/2018/may/17/home-office-suspends-immigration-checks-on-uk-bank-accounts

11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.3 Hostile environment – employers	The Home Office can inform employers that employees no longer have a right to work in the UK. Will a rejection of settled status or temporary status lead to the Home Office contacting the applicant's employer resulting in the employee losing their job?		No information given.
11.4 Hostile environment – landlords	Will a rejection of settled status or temporary status lead to the Home Office contacting the applicant's landlord to terminate a rental agreement?		No information given.
11.5 Hostile environment – healthcare	Will a rejection of settled status or temporary status have a negative effect on an applicant's access to health and social care?		There is no clear written guarantee, however free movement rights will apply until the end of the transition period (end 2020) No written explanation as to status during rejection/re-application, of if an application is rejected for alleged ID fraud
11.6 Question moved	Question moved to 15.1 Comprehensive sickness insurance		
11.7 Hostile environment – immigration law	Will the Home Office consider a landlord, bank, or employer to be in breach of immigration law when they have provided accommodation, accounts or employment to someone whose application for settled status or temporary status has been rejected?		No information given.

11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.8 Conduct	What type of conduct could result in revocation of settled status?		No information given.
11.9 Reasonable grounds for late submissions	Article 17(1)(d) of the draft Withdrawal Agreement states that only where there are reasonable grounds will an application submitted after the deadline be permitted. What are these 'reasonable grounds'?		No information given.
11.10 Late submissions consequences	What will be the consequences for a person who does not meet the 'reasonable grounds' test in submitting an application after the deadline?		No written answer has been provided. However, there has been an oral answer by Home Office stating that the UK will make this dependent on the future relationship with the EU. This continues to make EU citizens bargaining chips in future trade negotiations. It means that EU citizens potentially face the risk of being criminalised as an illegal overstayer and falling into the hostile environment.
11.11 Deportations of mixed nationality families	What will be the consequence for a family where one parent has one nationality, another has a second, and the children have a third? What would be the impact on such a family, and where would they go, if one of its members were deported?		No information given.
11.12 Appeals in-country	Will there be an in-country right of appeal in case of all refusals of applications?		No information given.

11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.13 Hostile environment during appeals and review	How will those exercising a right of appeal / judicial review be able to navigate the Hostile Environment whilst their litigation is proceeding?		No information given.
11.14 Deportations: young people	Will the Home Office deport young people to their 'country of origin' who did not grow up there and do not speak the language?		No information given. This is especially concerning in light of recent reports of children being denied British Citizenship on the basis of a past police caution.[7]
11.15 Penalties for undeclared crime	What penalties will be faced by those who did not declare a previous conviction because they wrongly thought it was irrelevant or spent, or because they were afraid?		No information given.
11.16 Reporting requirements	Will a rejection of settled status or temporary status mean that the applicant has to attend regular meetings at an immigration reporting centre?		No information given.

[7] http://www.legalvoice.org.uk/british-citizenship-for-young-migrants-and-bad-character-provisions/

12 EU Citizens' Rights and Data Protection Legislation

	the3million Question	Home Office Reply	the3million comment
12.1 Data Protection – immigration exemption	The UK government wishes to deny people access to their data on the grounds of immigration control, through the proposed exemption set out in Schedule 2 Clause 4 in the Data Protection bill. Considering the above, how will an EU citizen whose application is refused be able to access data held about them in order to argue their case?		No written satisfactory response.
12.2 Data Protection – transparent procedure	Article 17 (1)(e) of the Withdrawal Agreement commits the UK to a 'transparent administrative procedure'. How will citizens be guaranteed a 'transparent' procedure given the proposed data protection exemption?		This is awaiting legal challenge and/or EU Commission infringement proceedings.
12.3 GDPR compliance	What measures will the government put in place to ensure that the settled status application process will be fully compliant with the General Data Protection Regulation (GDPR)?		No written response. The immigration exemption in the Data Protection Bill interferes with the automatic right of access to one's own data.

12 - EU Citizens' Rights and Data Protection Legislation

	the3million Question	Home Office Reply	the3million comment
12.4 Biometric data	In September 2017, the Home Office confirmed that they would not be collecting fingerprints from EU citizens. It has now become clear that the Settled Status App will read a passport's biometric chip, which includes fingerprint information.	Verbal confirmation in user group meeting that fingerprints would not be collected by the app. SOI 4.10: "A non-EU citizen family member who has not already done so for the purposes of being issued a biometric residence card under the EEA Regulations will need to attend one of our application centres in the UK to enrol their fingerprints"	No written confirmation.
	a) what data will be read from the chip? b) will this data be stored? c) where will this data be stored? d) how long will this data be retained? e) who will have access to this data? for those who apply without passports, will the government re-confirm that they will not take fingerprints?		a-f) No written response
12.5 Settled status app – access to phone data	When an applicant wants to install the settled status app on their device, what permissions will they need to agree to in order to enable them to install and use the app? What data, other than the answers to the app's explicit questions, can the app gain from the device? Will the app have access to the location of the device and enable tracking of the mobile device's user?		No information given

13 Withdrawal Agreement – UK Legislation

	the3million Question	Home Office Reply	the3million comment
13.1 Withdrawal Agreement implementation	a) How will the citizens' rights provisions of the Withdrawal Agreement be implemented into national law?	Para 1.8 of the SOI speaks about the Withdrawal Agreement and Implementation Bill	No details are given as to what will be included in the WAIB.
	b) Will they be set out in primary legislation?	See above. Some of it will be set out in primary legislation.	
	c) Will all provisions be set out in the Withdrawal Agreement Implementation Act?	No	We strongly feel they should be.
	d) Will all provisions be set out in one single legislative act?	No. Para 1.11 SOI talks about immigration regulations which indicates secondary legislation	No information given

13 - Withdrawal Agreement – UK Legislation

	the3million Question	Home Office Reply	the3million comment
13.2 Inconsistent or incompatible legislation	We understand that citizens' rights under the Withdrawal Agreement should have direct effect and that any inconsistent or incompatible rules will be disapplied. a) How will the UK translate the principle of direct effect into national law? b) Will the principle of direct effect for citizens' rights be set out in the Withdrawal Bill, or in the Withdrawal Agreement Implementation Act?		No response in SOI. Indeed, the proposed mixture of primary and secondary legislation, mostly set out in ever-changing immigration regulations but also in statutory instruments, Rules or Codes of Practice will make it exceedingly difficult to identify inconsistent or incompatible rules, and to apply direct effect.
13.3 Withdrawal Agreement registration process – Protocol	Would the UK be willing to set out the detailed conditions of the registration process in the UK, such as Compulsory Sickness Insurance being covered by the NHS, into a Protocol to the Withdrawal Agreement, or in a Memorandum of Understanding?		No written answer. No verbal indication of willingness to write the CSI commitment into a legally binding Protocol, or even a Memorandum of Understanding.
13.4 Withdrawal Agreement registration process - commitment	If not, how will the UK ensure that it will commit to the unilateral promises it has made in respect of tests under the Withdrawal Agreement, such as Compulsory Sickness Insurance being covered by the NHS?	The SOI indicates, but does not spell out, that the promises will only be set out in secondary legislation. Notably, secondary immigration regulations are undergoing constant changes. It is difficult to understand why the UK makes no effort to secure these unilateral promises in the WA.	The HO has indicated verbally that the relaxation of CSI rules will not be evidenced in the primary legislation that incorporates the WA into UK law. Will it lay out the CSI guarantees in secondary legislation – immigration regulations? We will then have primary legislation (EU Withdrawal Bill) stating that EU nationals will have to have exercised treaty rights conflicting with secondary legislation. How will this conflict be resolved in practice?

14 The Independent Authority

	the3million Question	Home Office Reply	the3million comment
14.1 Independent authority – UK or UK-EU	Para. 152 of the draft Withdrawal Agreement states that 'In the United Kingdom, the implementation and application of Part Two shall be monitored by an independent authority'. Will this be a UK authority or a joint UK-EU authority?		No information given
14.2 Independence of authority	How will the independence of this authority be ensured?		No information given
14.3 Independent authority composition	How will the Independent Authority be composed?		No information given
14.4 Independent authority powers	Will it have decision-making power vis-à-vis an administrative authority that is not complying with the Withdrawal Agreement?		No information given
14.5 Independent authority resourcing	How will the Independent Authority be resourced?		No information given
14.6 Direct access to court	Will citizens be able to invoke their rights, as defined by the Withdrawal Agreement, before UK courts? What will be the procedure?		No information given

14 - The Independent Authority

	the3million Question	Home Office Reply	the3million comment
14.7 Information Commissioner - notification of SARs refusals	Does the Home Office propose a mechanism whereby the Information Commissioner will be automatically informed every time a Subject Access Request (SAR) will be refused on the basis of the immigration exemption?		New question in version 1.2 of this document.
14.8 Information Commissioner – review SARs refusals	What powers will be given to the Information Commissioner to review such refusals that are specific to the immigration exemption?		New question in version 1.2 of this document.
14.9 Information Commissioner – review time limits	What time limits, if any, will be given to carry out reviews and interventions from the Information Commissioner?		New question in version 1.2 of this document.
14.10 Information Commissioner - budget	Will the Information Commissioner receive additional financial assistance to cope with the necessary budget/staff increases for the additional responsibilities arising from these refusals? How will this be calculated - how many refusals are anticipated?		New question in version 1.2 of this document.

15 Rights of EU citizens with Settled Status

		the3million Question	Home Office Reply	the3million comment
15.1	Comprehensive sickness insurance	The Home Office website (https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know) states "In some circumstances, comprehensive sickness insurance is still required for the purposes of accessing the healthcare system in the UK, but will no longer be considered as a requirement for acquiring settled status." Under what circumstances will comprehensive sickness insurance be required by EU citizens for the purposes of accessing the healthcare system in the UK?		This question has not been answered. We are concerned in the House of Lords EU Justice Select Committee, Mr Glynn Williams (Direct General, Border Immigration and Citizenship System) and Sajid Javid (Home Secretary) would not confirm whether family members who joined holders of settled status after the end of the transition period, would be entitled to treatment by the National Health Service without requiring Private Insurance. Mr Williams confirmed those family members would be able to obtain residence in the UK, but when pressed by the Chair, Baroness Kennedy of the Shaws as to whether this included access to the National Health Service, Mr Williams said "We're not saying anything today about those sorts of things because they go beyond our immediate remit".[8] The lack of legal protection in respect of CSI rules means that the promises on CSI as made on the HO website can be changed at any time.
15.2	Voting Rights	Will EU citizens with settled status retain their right to vote in UK local elections?		No information given

[8] https://www.parliamentlive.tv/Event/Index/7499d843-c474-4015-ae10-8370aaecdf27 12:03-12:06

15 - Rights of EU citizens with Settled Status

	the3million Question	Home Office Reply	the3million comment
15.3 Right to stand for election	Will EU citizens with settled status retain their right to stand for election in UK local elections?		No information given
15.4 Maintenance of settled status database	How will the Settled Status database be maintained? For example, how will name changes due to marriage/divorce be reflected in the data used by landlords, banks, employers and the NHS to verify the new immigration status? What procedures will be put in place to ensure that holders of settled status can notify the Home Office of any changes to their personal details?		No information given
15.5 University tuition fees	Will holders of settled status be treated equally with British citizens for the purposes of university fees throughout the UK including Scotland?		No information given

16 Ambiguities in the SOI

	the3million Question	Home Office Reply	the3million comment
16.1 Length of absence	SOI 3.4 states "Once the person has been continuously resident in the UK for five years, this means that they will be eligible for settled status where, since completing that period, they have not been absent from the UK **for more than five consecutive years** (as set out in the draft Withdrawal Agreement, rather than for more than two consecutive years as set out in the Free Movement Directive) when they apply under the scheme." However, SOI 2.2 states "People considered to be 'resident in the UK' will include those here before midnight on 31 December 2020. It will also include those previously resident in the UK who are outside the UK on that date but who have maintained continuity of residence here, **generally as set out in current free movement rules for those who have not already acquired EU permanent residence rights, and up to five years' absence for those who have.**" There is a contradiction between these two paragraphs.		SOI 3.4 states that anyone who has been continuously resident in the UK for 5 years, is entitled to settled status, and an absence of up to 5 years since completing the initial 5 years residence period. However, SOI 2.2 appears to suggest that only those who acquired EU Permanent Residence rights are able to be absent for up to 5 years since acquiring those rights. The right of Permanent Residence is difficult for many not least due to the UK infringement [9] of the Comprehensive Sickness Insurance requirement: "The United Kingdom, however, does not consider entitlement to treatment by the UK public healthcare scheme (NHS) as sufficient. This breaches EU law." We urgently require clarification of this apparent contradiction.

[9] http://europa.eu/rapid/press-release_IP-12-417_en.htm

16 - Ambiguities in the SOI

	the3million Question	Home Office Reply	the3million comment
16.2 Prison sentence breaking continuity of residence	SOI 3.4 explains that a prison sentence breaks continuity of residence, unless "the person has resided in the UK continuously for at least 10 years (and has the right of permanent residence in the UK under the EEA regulations)" and can prove 'integrating links'. However, SOI 3.4 also states that once a person has been continuously resident in the UK for five years, they will be eligible for settled status, and mentions that since completing that 5-year period, a deportation order has not been made against them.. SOI 5.16 states that deportation thresholds after the end of the transition period involve "a prison sentence of 12 months or more, unless one of a number of exceptions apply". Before the end of the transition period, EEA Regulations apply to deportation, namely a person must be a genuine, present and sufficiently serious threat. This creates a serious contradiction.		X, an EU citizen, was continuously resident in the UK from 2007 to 2015, exercising treaty rights. X served a prison sentence for 6 months in 2016, for failing to pay some debts. According to the 3.4 box on page 13 (Once the person has been continuously resident in the UK for five years), X should have been entitled to settled status in 2015, and should therefore only be liable to lose this status by being a genuine, present and sufficiently serious threat up to December 2020, or by serving a prison sentence of 12 months or more after January 2021. However, according to the 3.4 box on page 12, X's continuous residence was broken by his 6 month prison sentence, and he was not eligible for the exception to this rule because he had only been continuously resident for 9 years, not the required 10. These paragraphs, as stated in the SOI, are clearly completely incompatible.
16.3 Suitability Criteria	SOI EU.16 states that applicants will be refused (amongst others) where "whether or not to the applicant's knowledge, false, or misleading information, representations or documents have been submitted".		The EU and UK have not agreed this test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.

16 - Ambiguities in the SOI

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16.4 Relatives of non-EU spouse or partner	SOI 6.6 “Dependent Relative” does not include relatives of the spouse or civil partner of an EU citizen as extended family members. Those who had already been issued with an EEA family permit, registration certificate or residence card as an extended family member and have been continuously resident in the UK since its issue are protected but other extended family members are not.		This is contrary to the approach of the Court of Justice in *Rahman* (C83/11) to the EU law requirement to ‘facilitate’ the entry of extended family members.

Version History:

1.0	9th April 2018	First version
1.1	11th May 2018	- correction of 12.1 Data Protection – immigration exemption – Schedule 2 Clause 4 - updated question: 1.23 Criminality checks – historic - added items e) – i) - new question: 1.29 Applicants serving sentences - new question: 2.17 Irish citizens - new question: 2.18 Irish citizens – distinctions - new question: 2.19 Good Friday Agreement - new question: 2.20 British children of EU parents - new question: 2.21 EU children living abroad - new question: 2.22 Difference between ILR and settled status - new question: 2.23 Recognition of ILR - new question: 2.24 Exchange of ILR for settled status - new question: 3.8 Use of digital app – biometric chip - new question: 3.9 Use of digital app – technical failure - new question: 6.2 Late Applicants - new question: 9.3 Definition of allowable absence - new question: 10.21 Temporary status – criminality checks - new question: 10.22 Loss of physical proof - new question: 11.16 Reporting requirements - new question: 12.4 Biometric data - new question: 12.5 Settled status app – access to phone data - new section: 15 Rights of EU citizens with Settled Status - question moved: 15.1 Comprehensive sickness insurance – moved from 11.6 - new question: 15.2 Voting Rights - new question: 15.3 Right to stand for election - new question: 15.4 Maintenance of settled status database - new question: 15.5 University tuition fees
1.2	01 July 2018	- updated all questions to have traffic-light red/amber/green coding, after the Statement of Intent (SOI) was published on 21st June 2018. - new question: 1.30 Suitability Check – misuse of rights under Directive 2004/38/EC - new question: 4.6 Legality of pre-WA voluntary scheme - new question: 4.7 Right of appeal during pre-WA voluntary scheme - new question: 14.7 Information Commissioner - notification of SARs refusals - new question: 14.8 Information Commissioner – review SARs refusals - new question: 14.9 Information Commissioner – review time limits

		- new question: 14.10 Information Commissioner - budget - new section: 16 Ambiguities in the SOI - new question: 16.1 Length of absence - new question: 16.2 Prison sentence breaking continuity of residence - new question: 16.3 Suitability Criteria - new question: 16.4 Relatives of non-EU spouse or partner

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