

PHYSICAL DOCUMENTS TO EVIDENCE (PRE-) SETTLED STATUS

Background

Over 3.5 million EU citizens and their families need to apply and acquire ‘settled status’ or ‘pre-settled status’¹ to continue living and working in the UK.

Whilst non-EU family members will receive a physical credit-card sized document evidencing their settled or pre-settled status, EU citizens will only be able to see their status online by visiting a web link, inputting their passport number and date of birth along with a verification code sent to them by email or text message.

In order to prove their status to organisations such as employers and healthcare and benefit providers, EU citizens will need to go online to obtain a one-off code to give to the organisation which must then input that code into a government website to check the citizen’s status. EU citizens will be the only group of citizens for whom this digital system will be the only option. **Immigration status for several million people will be digital only with no physical proof.**

the3million demand that EU citizens be given a physical document to prove their status:

- lack of physical documents is proven to lead to **discrimination**
- **centralised databases** should be introduced with extreme caution
- physical documents provide **security**
- online systems can be **temporarily offline**
- online systems can be and frequently are **hacked**

The House of Lords European Union Committee in a letter to the Home Secretary dated 27th February 2019² wrote: *“Without physical proof of status, EU/EEA nationals living in the UK could find it hard in some circumstances to access services; and in the worst case they could find it difficult to prove their status in a future dispute with the Home Office. **Given the clear parallels with lack of documents contributing to the Windrush scandal, and the fear that this causes for EU/EEA citizens, the Home Office must provide physical documentation.**”*

Lack of physical documents is proven to lead to discrimination

The government requires private actors such as employers³ and landlords⁴ to act as delegated border officials, with the risk of unlimited fines and imprisonment sentences for employing or renting to someone who they knew or had ‘reasonable cause to believe’ didn’t have the right to work or rent in the UK.

The right to rent scheme has been declared unlawful by the High Court⁵, although the Government is appealing the ruling. The judge said *“It is my view that the Scheme introduced by the Government does not merely provide the occasion or opportunity for private landlords to discriminate but causes them to do so where otherwise they would not”*. The evidence included a mystery shopper exercise which demonstrated *“that non-British tenants who have a permanent right to rent nevertheless face a clear disadvantage in comparison with their British counterparts, and **landlords are unwilling to undertake online checks for those who cannot otherwise provide documentary proof of their right to rent.**”* The same will apply to (especially small) employers, or employers and landlords with low digital skills.

Centralised databases should be introduced with extreme caution

Whilst the Home Office argue that a digital status is the way of the future, forcing one particular group of citizens to be the guinea pigs without any backup in a brand-new system is a completely unacceptable way to introduce such a status. A settlement scheme database should be a simple, single use record of an immigration status, rather than the expanding centralised, multi-access database that is being introduced by the back door without debate or trial. By way of contrast, a Dutch trial to introduce digital identity⁶ acknowledged that after the trial the scheme *“will be subjected to scientific research to explore the social, ethical, technological, legal, economic and consumer aspects. The results will form the basis for determining **whether** and how the idea should be pursued.”* Furthermore this trial, developed in collaboration with Delft University, used far more advanced security technology based on blockchain and was tested in two municipalities by a voluntary test group of citizens and service providers.

¹ <https://www.gov.uk/settled-status-eu-citizens-families>

² <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/CWM/HKtoSJ-SettledStatus-260219.pdf>

³ <https://www.gov.uk/penalties-for-employing-illegal-workers>

⁴ <https://www.gov.uk/penalties-illegal-renting>

⁵ <https://www.jcwi.org.uk/righttoorentwon>

⁶ <https://www.tudelft.nl/en/2018/tu-delft/tu-delft-helps-develop-digital-id-for-use-on-your-phone/>

As it stands, EU citizens will have no choice but to rely on this new digital-only system for their entire legal basis in the UK.

Physical documents provide security

The Home Office is in the process of creating a digital 'Prove your right to work' service⁷. For non-EU citizens, who have a physical BRP or BRC document, this service is a digital **alternative** to simply showing their BRP/BRC to a potential employer. For an EU citizen after 2020 however, this service will be the **only** way of proving their right to work.

The government's own assessment of this service⁸ acknowledged the difficulty of phasing out BRP/BRC cards - stating "*There is a clearly identified user need for the physical card at present, and without strong evidence that this need can be mitigated for vulnerable, low-digital skill users, it should be retained.*" and "*This research raises concerns around BRP cards being retired in favour of digital only services, as the team has very strong evidence that this would cause low digital users a lot of issues. This is something that needs careful consideration with the drive to convert more services to digital and potentially remove their physical counterparts - that digital by default doesn't mean 100% digital.*"

EU citizens will face the same challenges but **will be forced** to be 100% digital. 22% of people⁹ do not have the essential digital skills needed for day-to-day life in the UK. Some citizens are being helped to get status, but are then not able to access that status¹⁰ without further help, whenever they need it to prove their rights.

Online systems can be temporarily offline

It is impossible to guarantee that digital systems are available 24-7. Even O2, a large commercial company whose entire business is technology, suffered a day-long outage of their mobile data network in December 2018¹¹, with far-reaching impacts.

All government public facing transactional services must meet the 18 criteria of the Digital Service Standard¹² to "*check whether a service is good enough for public use*". Criteria 11 states "*Make a plan for the event of the digital service being taken temporarily offline*". The assessment⁸ considered that the 'Prove your right to work' service met this criteria as follows: "*The team have also developed plans for if the service goes offline in terms of continuing to provide a service to users. They have a service unavailable page and during a 'bedding-in period' the service will run in parallel with the existing BRP status check service, giving users a full-back [sic] option. The service team accept that they could do more to flesh out their service continuity plans for these scenarios.*" Clearly EU citizens will **not** have such a fallback option.

These systems being temporarily offline can also lead to numerous other serious consequences for example proving entitlement to healthcare, social security, banking services, property rental and entering the UK. A 'service unavailable page' will not help an EU citizen at the instant in time where they are trying to prove their rights – and their EU passport will no longer suffice post 2020. The entire basis of proving oneself a legal citizen in a country with a stated 'Hostile Environment' delegated border control policy is at risk when these systems are down.

Online systems can be hacked

The Immigration Minister, arguing against physical documents in the Immigration Bill Committee¹³, stated "*The digital status given to EEA nationals will be a secure and permanent record held by the Home Office that is accessible to the holder at any time, but which cannot be lost or stolen.*"

In fact we know that online systems cannot be guaranteed to be secure – even looking just at 2018, notable **data breaches**¹⁴ included household names like British Airways, T-Mobile, Facebook and Google. The largest breach however, and most pertinent to the EU citizens' settled status scheme, was the Indian Aadhar system, affecting **1.1 billion records**, the "*private information on India residents, including names, their 12-digit ID numbers, and information on connected services like bank accounts.*"

The assessment of the 'Prove your right to work' service¹⁵ stated "*The panel are concerned about the security and privacy risks identified in the service, which must be resolved before it goes into public Beta.*"

⁷ <https://www.gov.uk/prove-right-to-work>

⁸ <https://www.gov.uk/service-standard-reports/prove-your-right-to-work-beta>

⁹ UK Consumer Digital Index: <https://www.lloydsbank.com/banking-with-us/whats-happening/consumer-digital-index/key-findings.asp>

¹⁰ blogs.lse.ac.uk/brexit/2019/11/27/long-read-unsettled-status-vulnerable-eu-citizens-may-lose-their-uk-residence-overnight/

¹¹ <https://www.wired.co.uk/article/o2-down-network-problems>

¹² <https://www.gov.uk/service-manual/service-standard>

¹³ [https://hansard.parliament.uk/commons/2019-03-05/debates/2eb2dd65-51c1-4a72-82ad-4de5ec48dc97/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill\(TenthSitting\)](https://hansard.parliament.uk/commons/2019-03-05/debates/2eb2dd65-51c1-4a72-82ad-4de5ec48dc97/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill(TenthSitting))

¹⁴ <https://www.businessinsider.com/data-hacks-breaches-biggest-of-2018-2018-12>

¹⁵ <https://www.gov.uk/service-standard-reports/prove-your-right-to-work-beta>