

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

4th Edition: 17 September 2019

Previous edition: 2 May 2019: https://bit.ly/t3m_OnTheGround_3

The [policy goals](#)¹ of **the3million** remain the same as they have been for the last two years.

This newsletter presents the worries and concerns of EU citizens in the UK under the headings of three of these goals:

- **Ringfencing - [our rights should be future-proofed](#) by an international treaty.**
From the moment Article 50 was triggered, we have argued that citizens' rights should be decoupled from the negotiations and guaranteed in all events. It has been completely wrong to shackle the rights of 5 million citizens to the runaway 'deal or no deal' roller coaster that has taken over UK politics.
- **Our rights [should be granted automatically](#) in law.**
EU citizens have been told by the Government that they must apply for settled status or pre-settled status to be able to stay in the UK. We have been campaigning for over two years to have our legal status guaranteed automatically, to avoid a 'Windrush on steroids'.
- **We need a [physical document](#) to prove our rights.**
EU citizens don't get any physical proof of their (pre-)settled status. Instead they have to rely on a digital status controlled by the Home Office. No-one would suggest that passports were digital-only, and neither should settled status be.

We conclude with a section on the ongoing practical problems with **applying to the EU Settlement Scheme**, divided into the following:

- Pre-settled status vs settled status
- Problems with the identity check
- Problems with the automated checks and residence evidence
- Data concerns

¹ <https://www.the3million.org.uk/goals>

Ringfencing – our rights should be future-proofed by an international treaty²

From the moment Article 50 was triggered, we have argued that citizens' rights should be decoupled from the negotiations and guaranteed in all events. It has been completely wrong to shackle the rights of 5 million citizens to the runaway 'deal or no deal' roller coaster that has taken over UK politics.

The primary reason that EU citizens in the UK need the protection of an international treaty, is to **protect us from future governments downgrading our rights.**

In the UK this is particularly a concern – both because of the toxification of immigration debates over many years, and because changes to our rights can be made by statutory instruments (in this case the so-called Henry VIII powers). Such legislation is published sometimes by the so-called '[negative procedure](#)' which means it "*becomes law on the day the Minister signs it and automatically remains law unless a motion – or 'prayer' – to reject it is agreed by either House within 40 sitting days.*"

Some recent examples of secondary legislation affecting our rights:

- The fact that EU citizens can be [absent from the UK for 5 years](#)³ without losing settled status was defined in secondary legislation, effective 26th March this year. As easily as this was granted, it can be removed again.
- [Pre-settled status ceased to be a 'right-to-reside'](#)⁴ for benefits purposes, effective 7th May 2019. This means that currently, as soon as free movement legislation is repealed, citizens with pre-settled status will not have access to benefits such as universal credit or housing benefit.
- A [statutory instrument to remove treaty rights](#) from EU, EFTA, Swiss and Turkish citizens. The instrument "seeks to ensure that people and businesses benefitting from directly effective rights of establishment and free movement of services [...] **do not continue to have these rights in the UK in a 'no deal' scenario.**"
- [EU citizens could have their settled status revoked under new rules](#) – "the new power comes as part of a 99-page document detailing changes to immigration rules that the government published just before Parliament was prorogued".

It has already been stated that **in no-deal, certain rights will be removed** from EU citizens and their families:

- **Appeal rights** under the Settlement Scheme will be removed
- **Family reunion rights** will be removed after March 2022

We also need the protection of an international treaty, complete with independent monitoring and oversight provisions, to protect us from increasing evidence of discrimination, for example:

- A student has shown us a copy of an email which was sent by the University of Edinburgh advertising a job to students, which states "and you will need to provide a **UK passport in order to be paid**". The student has several times tried to point out to the University that this is legally incorrect but has not received a reply.
- An EU citizen with a 7-month old baby being **evicted from a private house rental**, due to the landlord being "concerned about Brexit".

² <https://www.the3million.org.uk/international-treaty>

³ <https://www.legislation.gov.uk/ukxi/2019/686/made> – Chapter 2. Section 8, 3 (a) (ii)

⁴ <https://www.legislation.gov.uk/ukxi/2019/872/made> – e.g. 2(2)(d)

Our rights should be granted automatically

the3million have argued for a long time that the UK has a unique combination of:

- having never registered EU citizens in the past
- having to now register a very large, unknown number of citizens in a very short time
- having a 'hostile environment' immigration policy

As such, a constitutive application system (where citizens must apply before they are granted a status) must be changed to a declaratory registration system. The Government argues that such a declaratory scheme would *cause* another Windrush, but on [our website we clearly explain why this is incorrect](#)⁵. While considerable effort would be required to get EU citizens to registered under our proposed declaratory scheme, these citizens would automatically retain their rights. Under the current constitutive scheme, however, any citizen who does not apply in time is likely to lose their rights altogether, hence creating a 'Windrush on steroids' disaster.

On 27 June [Channel 4 News revealed that the Home Office were 'reckless' on Windrush](#). A review into the Windrush scandal showed that "the culture in the Home Office as deaf, defensive, ignoring warnings and unwilling to learn from past mistakes".

It is a fact that no registration or application system anywhere in the world has ever managed to reach 100% of its target audience, so there will be people who do not apply to the EU settlement scheme through no fault of their own. With the current EU Settlement scheme, such citizens **will lose their legal status** in the UK.

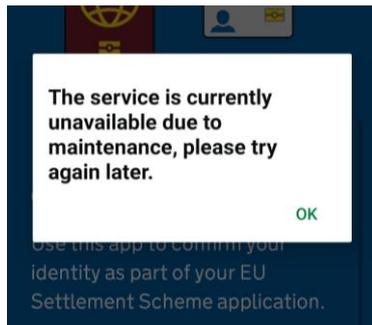
- Campaigners warn that [thousands of domestic abuse victims](#) who are European nationals could be rejected from refuges in future because they do not know they have to apply for settled status.
- We hear many accounts of people **refusing to believe that the scheme applies to them**. For example, a Dutch citizen who had been proactive and obtained **EU Permanent Residence** in the UK straight after the referendum – it was difficult to persuade him that this status would be worthless and that he would need to apply again for new status.
- This also applies to many elderly citizens, especially if they had to engage with British immigration authorities in the past.
- As a typical example, one of our the3million colleagues reported "My colleague's mother is a Dutch national living in the UK for over 50 years, her Dutch passport expired a while ago and she is not planning to even get a new one as she doesn't travel anymore. She is not aware of any issue or need to do anything, but what's worse, neither is her family. I spoke to my colleague about the need to get settled status for her mother (she is perfectly aware of the scheme as they divulge it between their workers anyway), but after she discussed it with the rest of her family, **they all feel there is no need to do anything for their mother**, since she's been here most of her life and never had problems. She has her pension etc so they can't see the point."

⁵ <https://www.the3million.org.uk/automatic-rights>

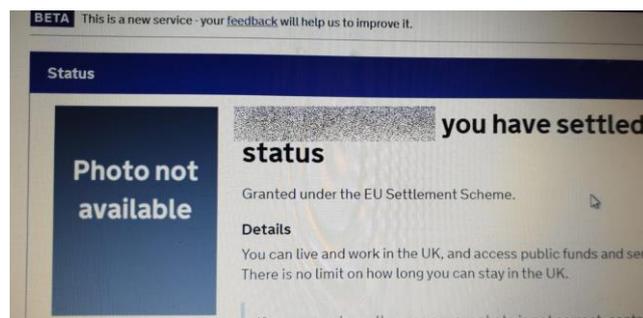
We need a physical document to prove our rights⁶

EU citizens in the UK are demanding physical proof of their pre-settled / settled status, as they think a digital status feels vulnerable, and 'on loan' from the Government. A petition was launched, and the Government [replied](#), stating "The EU Settlement Scheme protects the rights of EU citizens in UK law and gives them a secure digital status, which unlike a physical document, **cannot be lost, stolen, damaged or tampered with**". (the3million has published a [full rebuttal](#)).

- The system has had several outages already, where it was unavailable for a length of time. EU citizens fear many adverse consequences post-Brexit, where their digital-only status may be unavailable at critical times.



- A Dutch citizen logged into the online system to check her settled status and found that her photograph had been swapped to a different photograph without her knowledge or consent. We consider this status **tampered with**.
- Another EU citizen found that her photograph had been removed from her digital settled status. Furthermore, when she tried to use the 'right to work' scheme, the computer displayed a message: "We can't show your record" and she was not able to proceed. After Brexit this would be highly likely to result in losing an employment opportunity which the status was sorted out by the Home Office. We consider this status **damaged or lost**.



- 'Settled status' is a digital status linked to a particular passport. When passports expire and are renewed, people have to send in their new passport in order to get their settled status updated. We have heard reports of people finding that even **months after sending in their new passport, the Home Office has not updated their details** and they still need their old passport numbers to log in to their digital Settled Status.
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⁶ <https://www.the3million.org.uk/physical-proof>

Issues with applying for settled status

Finally, we list some of the practical problems EU citizens are still facing while applying for settled and pre-settled status.

1. Pre-settled vs Settled status

the3million has published a [table](#)⁷ showing the main differences between settled and pre-settled status in a simplified format. It is very important that citizens who are entitled to the settled status should receive that full status, because **pre-settled status is clearly an inferior status**:

- A new application for settled status will have to be made
- An absence from the UK of more than five months could block someone from ever being able to achieve settled status
- Pre-settled status does not count as 'right to reside' for the purposes of welfare benefits

The Home Office now publish [monthly statistics](#)⁸ about the EU Settlement Scheme. After the publication of August's statistics, [two main concerns](#)⁹ have emerged:

- The **backlog of unprocessed cases grew from 89,000 to 189,000** in one month. There is a worry that difficult cases and potential refusals are being parked in the backlog for political reasons.
- Each month, a higher and **higher percentage of decisions are resulting in pre-settled status**. Citizens who have not yet been in the UK for 5 years are only entitled to pre-settled status. However, there appear to be many who are entitled to settled status but are accepting pre-settled status either due to misunderstanding of the system, inability to find sufficient acceptable evidence of their residence, or fear and anxiety over receiving a status at all.
- [Non-EU family members of EU citizens are waiting months](#)¹⁰ for their settlement scheme applications, despite the Government saying it should take 1-4 days, leaving some unable to visit dying relatives. Both citizens named in the article received a decision very shortly after the journalist called the Home Office, which seems to be an increasingly regular tactic to avoid negative publicity. the3million speaks to many citizens who are anxious and worried by the delay to their status but who do not feel able to speak to the press about it.
- An Italian citizen had **absences from the UK due to her British husband's military postings abroad**. The Home Office states that '[time abroad on posting counts towards UK residence](#)¹¹ under the scheme'. Despite more than two months of frustrating waits, telephone calls and uploading extra evidence, she was only granted pre-settled status rather than the settled status she is entitled to.

⁷ <https://www.the3million.org.uk/presetled-vs-settled>

⁸ <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

⁹ <https://twitter.com/jablonow/status/1172077846040330241>

¹⁰ <https://www.independent.co.uk/news/uk/home-news/eu-nationals-brexit-non-eu-spouse-partner-settlement-scheme-home-office-a9104781.html>

¹¹ <https://aff.org.uk/advice/foreign-commonwealth/brexit/>

2. Problems with the identity check

The first stage of the EU Settlement Scheme application is verifying identity. There is an [app available on Android phones](#)¹² to scan biometric passports for EU/EFTA/Swiss citizens, or UK residence cards with biometric chips for non-EU family members. If citizens cannot use the app, they have to send their identity document to the Home Office by post.

- It is still not possible to use an **iPhone**.
- On some Android phones, it was not possible to find the app in the Google Play Store.
- We have seen many reports of people having to **send in their ID** despite having appropriate biometric ID and a suitable phone (and seen reports of their ID being subsequently **lost in the post** upon return to the citizen).
- The app frequently **misreads passports by changing foreign characters** – for example reading the French **é** as the letter **c**.
- One French citizen reported not receiving the required verification code by SMS. After proceeding with verification code by email instead, he then **continually faced an error page** “Sorry, there is a problem with the service.”
- A lawyer reported an **elderly lady born in 1913** was not able to use the app because it registered her date of birth as **2013**.
- A Greek citizen who came to the UK as a child, was in care as a teenager and has spent most of his life in the UK. He **does not have a passport and is unable to obtain one from the Greek authorities** unless he spends a lot of money to delay his army obligations.

3. Problems with the ‘automated checks’ and residence evidence

The Home Office claims that the system is working well. Citizens are given the option to input their National Insurance number, after which the system does an automated check against HMRC (HM Revenue & Customs) and DWP (Department of Work and Pensions). However, there are many reports of long-term residents failing the automated checks, and having to find five years’ residence:

- [A teacher in the UK for 27 years](#), 20 years at the same address, was nevertheless offered pre-settled status unless she uploaded further evidence.
- 80-year-old Italian lady who did not have a National Insurance number. She was helped by someone from the3million, who **uploaded 7 years of bank statements and council tax records** on her behalf. She received an email from the Home Office several days later informing her that there was **not sufficient evidence**, and that she needed to provide evidence for the last 5 years. This caused her severe anxiety. After our colleague phoned the EU Settlement Resolution Centre on her behalf it eventually turned out that the case worker only looked at the first page of the uploaded PDF document. She may not have known how to challenge the Home Office if it had not been for our colleague helping her.
- [A Dutch citizen who has lived in the UK for over 40 years](#), most of them working in the NHS, now receiving an NHS pension was told the Home Office needs more evidence.
- A famous [Polish chef who has lived in the UK for 15 years](#), continuously employed without gaps was offered pre-settled status. A prominent [French chef who has lived in the UK for 31 years](#) faced the same issue.

¹² <https://www.gov.uk/guidance/using-the-eu-exit-id-document-check-app#check-if-you-can-use-the-app-on-your-phone>

- Many citizens are being asked to provide [evidence of residence going back to 2013](#), even though only 5 years of evidence is required. The Home Office [has not made clear](#) why this is happening.
- There are numerous reports of women struggling with the automated checks, and providing evidence, due to a difference between passport maiden names and working married names, despite the fact that this issue was raised with the Home Office by Embassies.
- This [video of a Spanish mum](#) explains how the scheme is discriminatory towards stay-at-home mothers. Many women in this situation struggle to find proof of residence, for example if the utility bills and bank statements were in the name of their husband.
- [Automated checks failed for a Bulgarian citizen](#)¹³ who was elected to South Oxfordshire District Council in May. She can still apply for the full settled status by providing manual evidence, “but she said the fact that that people like her were not granted it automatically showed problems with the Home Office’s system”. She points out that “Settled status can work – if you came here five years ago and worked for an employer and they paid tax on your behalf. Many people will not be in that position [...] a lot are on zero-hour contracts or in the construction sector and some might be casually employed.”
- This [Financial Times article](#) highlights **how difficult it is for some citizens to prove their residence**. It includes the example of a 63-year old Romanian who has lived in the UK for 12 years, mostly caring for her British husband. With the help of her daughter, “*she followed up a request to provide more documents by uploading her residency permit, GP letters and flight tickets. This still was not enough. Instead Ms Vasilica was offered pre-settled status – a temporary residence meant for EU citizens in the UK for less than five years. So far, she has been unable to provide documentation to secure the permanent residence she says she should be entitled to.*”

The article summarises the problem – the Home Office insists that the system is easy, emphasising that 75% of applicants were completed using automated checks. This sounds like a clear example of an [80/20 rule](#), and the3million has always been campaigning on behalf of those EU citizens and their family who will face stress and obstacles in obtaining a legal status after Brexit. One of our long-standing proposals which has been ignored has been for citizens to have the option of making **face-to-face appointments at their local council**. This would allow them to present their case in person and obtain help with proving their residence.

4. Data concerns

We continue to have major concerns about **data protection** (especially remembering that an [immigration exemption](#)¹⁴ was passed into law in May 2018 as part of the Data Protection Act).

- Applicants to the EU Settlement Scheme have no choice but to [consent to a privacy policy](#)¹⁵ which includes a wide range of unspecified private and public organisations both in the UK and abroad.

¹³ <https://www.oxfordmail.co.uk/news/17889425.councillor-maggie-filipova-rivers-lived-uk-19-years-denied-settled-status-home-office/>

¹⁴ <https://www.leighday.co.uk/News/2019/July-2019/High-Court-to-hear-judicial-review-of-the-immigrat>

¹⁵ <https://www.gov.uk/guidance/eu-settlement-scheme-how-we-use-your-personal-information>

- In July, the European Commission indirectly confirmed that the [UK made illegal copies of classified personal information](#) from a database reserved for members of Schengen.
- One non-EU citizen who applied as a family member waited four months and, after telephoning, was finally promised that her pre-settled status card (non-EU citizens *do* get physical proof of status) was in the post. However, several days later she received the card for a different citizen entirely. After another telephone call with the Home Office, an investigation had to be started relating to the GDPR issue around sending the wrong card, and the citizen was informed that her status was in fact still not decided, and no timeline could be given.