

Briefing on amendments to Immigration and Social Security (EU Withdrawal) Bill

Committee stage debates

NC19 - EU Settlement Scheme: physical documented proof

This new clause seeks to provide physical proof of settled and pre-settled status to those who make a successful application through the scheme, providing physical evidence of their migration status.

EU citizens will have no physical proof of status under the EU Settlement Scheme, having to rely instead on a digital-only status to negotiate the 'hostile environment'. This is certain to result in discrimination against EU citizens, not only for employment opportunities but also when looking for accommodation.

Millions of people work in the so-called 'gig economy', characterised by flexibility, short-term contracts and freelance work. Frequently an employment opportunity will be advertised and filled within hours. Faced with competition from British citizens (who can prove their right to work by showing a passport) and non-EEA citizens (who can prove their right to work by showing their physical residence card), EU citizens have to go through the complicated hassle of a 9-step online process, then ask the employer to go through a 10-step process¹.

A digital-only status is being introduced into the UK without trial. One very large group of citizens - those with EU nationalities - will be dependent on this status. They will have no choice but to use it in an environment where digital-only proof of status has never been used before, and they will have no control over how much of their data is shared between institutions via the Home Office². EU citizens, like non-EEA citizens and British citizens, should have the option of providing employers, landlords and other agencies a physical proof of status.

In the largest survey to date of EU citizens' experience of the EU Settlement Scheme, the vast majority (89%) expressed unhappiness about the lack of physical proof³. EU citizens must have the option of using a physical document to prove their status: No-one would propose passports be digital-only, and neither should settled status be.

NC25 - Report on status of EEA and Swiss nationals after the transition - grace period

This new clause would require Government to provide clarity on the rights of EU nationals in the [UK] in the grace period between the end of the transition period, and the closure of the EU Settlement Scheme.

There are two distinct periods for EU citizens' rights: the "grace period" until the deadline (January to June 2021), and the period after the deadline (past July 2021).

Grace period (January to June 2021): The Withdrawal Agreement makes clear that people have until June 2021 to apply for status. The Immigration Bill removes freedom of movement rights as of December 2020. The Government has to ensure that during the grace period those people who are eligible for status, yet have not yet applied for it, will nevertheless have a lawful status. The Government has not made clear how it intends to create the legislation to ensure this.

¹ t3m.org.uk/PhysicalDocuments

² www.openrightsgroup.org/press-releases/controversial-immigration-exemption-used-in-60-of-cases-court-case-reveals/

³ www.t3m.org.uk/SettledStatusSurvey

It is insufficient to simply tell employers and landlords that they should not be checking for status during this grace period, as this in itself does not give people lawful status. Furthermore there is concern that the message of this implied 'suspension' of the hostile environment for six months will not get through to employers and landlords, and we fear there will be widespread discrimination against EU citizens who have not yet been granted status under the EU Settlement Scheme.

Our survey of EU citizens' experience of the settlement scheme in December 2019, the largest of its kind, indicated that discrimination is already beginning to happen: 10.9% of respondents said they have already been asked for proof of settled status, even though this is not yet required⁴.

NC10 Extension of registration for EU Settlement Scheme

This new clause would ensure the EU settlement scheme was not closed to new applications until Parliament has approved its closure.

Closure of the EUSS (past July 2021): People who have not applied for status will have no legal basis to remain in the UK after the grace period (currently ending 30 June 2021), no matter how long they have lived in the UK. They will be liable to removal, and will face the hostile environment.

After the grace period, there is likely to be a large group of people who have still not applied, as no similar scheme anywhere has ever managed to reach 100% of its target audience⁵. Even if the Settlement Scheme were as successful as the UK's Digital TV Switchover, this would affect over 100,000 citizens.

People at risk of not applying by the deadline are often vulnerable – for example, children in care and adults with dementia or mental health issues - but missing the deadline because you are unaware of the need to apply could happen to anyone. Our recent research on young Europeans living in London made some concerning findings: despite being seen as an "easy to reach" group in terms of education and digital literacy, some participants heard about the EUSS for the first time during the focus groups⁶.

The Government must therefore have a clear plan for how to manage a situation where the deadline approaches and many thousands, who face being without a legal basis to be in the UK, have not yet applied. It must be transparent about what assessments are being conducted to establish under what circumstances the grace period should be extended, when and for how long.

Even if people are allowed to register after the deadline, they will have lost their legal status in the time between the Scheme deadline and the (late) grant of their status. Not only will they have been criminalised through no fault of their own, they may also for example face large NHS debts if they had treatment during this period without legal status. We have already seen this happen during the Windrush scandal – one example is Albert Thompson, who faced charges for cancer treatment unless he could prove he was in the UK lawfully⁷.

Until these issues have been debated in Parliament, and imposing a hard deadline approved by a majority, the Settlement Scheme must not be closed to those who lived in the UK before the end of December 2020.

⁴ t3m.org.uk/SettledStatusSurvey

⁵ t3m.org.uk/WAB_EUSS_declaratory

⁶ t3m.org.uk/YoungEuropeansBriefing

⁷ www.theguardian.com/uk-news/2018/apr/19/windrush-albert-thompson-cancer-treatment-theresa-may

NC11 “Application after the EU Settlement Scheme deadline”

This new clause would ensure that late applications to the EU settlement scheme will still be considered, unless reasons of public policy, public security or public health apply.

After the grace period, people who have missed the deadline will have no legal status and will only be able to apply to the EU Settlement Scheme if there are reasonable grounds for not applying on time. These grounds have yet to be defined and we understand will comprise a very narrow list of exemptions such as those with a physical or mental incapacity, or children whose parents fail to apply on their behalf⁸.

The deadline will be missed by many people for good reasons beyond what is understood above – they may not be aware they need to apply, or people with pre-settled status may forget to reapply in time. It is easier to establish who should not be able to apply than who should in these challenging circumstances. The consequences of failing to protect those that have good reasons are too severe.

Beyond those who pose a risk to the public, it is not clear what other grounds there should be to prevent anyone from applying late. This amendment will ensure that those who have to apply after the deadline can do so safely.

NC26 Analysis of exemption from no recourse to public funds conditions

This new clause will require the Government to consider the impact of no recourse to public funds exemption.

Many citizens who have been granted pre-settled status under the EU Settlement Scheme, and who have now lost their jobs due to the Covid-19 pandemic, are struggling to access social security. Prior to July 2019 those with pre-settled status granted under the EU Settlement Scheme were able to satisfy the ‘right to reside’ requirement, then the UK government introduced regulations⁹ which explicitly reversed that.

However, the rights of EU citizens are now protected by the EU/UK Withdrawal Agreement, and the3million has received confirmation from the European Commission that citizens with any status under the EU Settlement Scheme fall within the scope of the Agreement. The3million therefore maintains that pre-settled status should be sufficient to demonstrate a person's right to live in the UK, and access vital services such as Universal Credit on the same basis and eligibility as a British citizen¹⁰. More broadly we support the call by JCWI and other organisations for everyone living in the UK to have access to public funds, whatever their immigration or employment status, to ensure that people can weather the current crisis.

More clarity is needed about the impact of no recourse to public funds on vulnerable EU citizens, family members and other immigrant communities, as is more transparency about whether vulnerable groups have equal access to the EU settlement scheme¹¹. Due to the Covid-19 pandemic, more people will be in danger of being unable to secure their immigration status or access the support they need. Some examples from people who have written to us about their situation are included in the3million’s recent report (April 2020) to the Home Affairs Select Committee on Covid-19¹².

⁸ uk.reuters.com/article/uk-britain-eu-immigration/eu-citizens-warned-over-missing-brexit-residency-deadline-idUKKBN1X00RH

⁹ www.legislation.gov.uk/uksi/2013/376/regulation/9

¹⁰ t3m.org.uk/PreSettledStatus_UniversalCredit

¹¹ www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-06-06/261207/

¹² http://www.t3m.org.uk/HASC_submission_20200420