

UNSETTLED: EU citizens' struggles to access their rights in the UK

At today's event, we will highlight two of the key issues on which change is needed: reform to the digital only immigration status, and a lifting of restrictions preventing those with pre-settled status from accessing benefits.

1 FIXING DIGITAL-ONLY STATUS

6 million EU citizens and their family members have been granted a new immigration status through the EU Settlement Scheme (EUSS), which confers Indefinite Leave to Remain (Settled status) or Limited Leave to Remain (Pre-settled status) granted under Appendix EU of the Immigration Rules.

WHAT IS THE PROBLEM?

For EU citizens, this status is digital-only, with no physical document provided to the individual. British citizens resident in the EU, by contrast, receive a physical residence document. The Home Office has made clear that digital-only status will be rolled out for all migrants by the end of 2024.

There is no denying that 'going digital' is the global trajectory, but the current form of digital-only status is not fit for purpose:

- It remains inaccessible for those who are digitally illiterate or with certain disabilities, requiring a smartphone or computer, access to email or SMS account and a reliable internet connection;
- It depends on the Home Office system running smoothly each time access is needed;
- Status can often be corrupted, where an individual's details are not available, or entangled, where one individual's details are entwined with those of another.

Individuals are required to show their digital status to prospective employers, prospective landlords, DVLA, banks and other stakeholders who need proof of status. When people are traveling back home to the UK and challenged at an overseas check in desk or boarding gate to prove status, this digital status is all they have. To prove their status, they must first obtain a 'share code' from a gov.uk website, which the viewing party must then enter into a different website. Only then can an individual's status be viewed. A successful status check has many moving parts – if any one of these fails, the whole check fails.

HOW TO FIX IT

Solutions are available. A safe, secure, best practice and cost-effective alternative exists. The UK has already pioneered successful models in other areas, such as the NHS Covid vaccine app during the pandemic. A digital immigration status providing a secure QR Code would ensure:

- An encrypted, tamper-proof, and well-tested form of digital status;
- The option of physical back up for those who want it, such as on a passport vignette or as a printable document;
- Access is available to the status holder without the need to obtain share codes or for them to have internet access.

2 RESTRICTIVE WELFARE CONDITIONS FOR THOSE WITH PRE-SETTLED STATUS

Pre-settled status is granted to those who are eligible for status under the EUSS but who do not yet have, or who cannot evidence, five years of continuous residence in the UK.

Although pre-settled status is clearly a right to reside (live, work and study) in the UK, it is not treated as a right to reside for the purposes of claiming benefits. Regulations passed in May 2019 ([The Social Security \(Income-related Benefits\)\(Updating and Amendment\)\(EU Exit\) Regulations 2019](#)) expressly exclude pre-settled status from being a relevant right to reside for the purposes of establishing habitual residence.

WHAT IS THE PROBLEM?

People with pre-settled must demonstrate an alternative right to reside, under the legacy EEA Regulations. This involves a great deal of complexity and a very high evidential burden, especially for vulnerable people with, for example, a work history of working on zero-hour contracts, often not in receipt of sufficient documentation evidencing the work. There is added complexity around establishing whether someone's work is "genuine and effective work".

- Approximately 3500 refusals of Universal Credit applications per month from EU citizens with pre-settled status, many of which are challenged and later overturned by the courts;
- Resource intensive process for DWP;
- Vulnerable people excluded from support despite the Withdrawal Agreement stating that the rights conferred under it include equal treatment and non-discrimination;
- Right to reside test amounts to a 'hidden' form of No Recourse to Public Funds (NRPF), but one which there is no discretion to waive, pushing people into further poverty and away from work.

HOW TO FIX IT

Removing the DWP habitual residence test for pre-settled status holders would be simple enough to do. The test was introduced through an amendment to the Universal Credit Regulations 2013 in 2019, and reversing it would be a straightforward solution. The result would mean far fewer costs and a reduction in the administrative burden on local authorities and DWP caseworkers. It would mean that those with a literal right to reside through the EUSS no longer need to prove a further residence right, and as a result many currently pushed into destitution would instead be able to thrive.



WHAT CAN YOU DO?

1. Make a public statement of support on social media
2. Commit to meeting with the3million again ahead of the next general election
3. Write to the Immigration Minister and Secretary of State for EUSS about these proposals
4. Submit an Early Day Motion
5. Apply for a Westminster Hall debate
6. Write to your party's Policy Director about including these proposals in your Manifesto
7. Organise a roundtable meeting with the Immigration Minister and Secretary of State for EUSS

the3million was formed after the 2016 EU referendum to protect the rights of EU citizens who have made the UK their home. Our work includes monitoring the implementation of the Withdrawal Agreement, and informing people of their rights. For more information see www.the3million.org.uk.