THE EU SETTLEMENT SCHEME AND THE HOSTILE ENVIRONMENT

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EXECUTIVE SUMMARY

The government has committed to protecting the rights of EU citizens already living in the UK by the end of the Brexit transition period. The EU settlement scheme (EUSS) implements this commitment by allowing EU, EEA and Swiss citizens who were residing in the UK by the end of December 2020, along with their family members, to apply to maintain their rights to live, work and study in the UK. The scheme offers settled status (indefinite leave to remain) for individuals who have lived in the UK for a continuous period of at least five years and pre-settled status (five years' limited leave to remain) for individuals who have lived in the UK for a continuous period of under five years. So far, more than 5 million applications have been submitted and concluded under the EUSS.

Eligible individuals who do not apply to the EU settlement scheme in time risk facing a range of 'hostile environment' measures. Where EU citizens do not apply by the deadline of 30 June (and do not have an alternative type of leave to fall back on), they will no longer have legal permission to stay in the UK. This means they risk facing a range of 'hostile environment' measures. They could face barriers to starting a new job, renting a new property, accessing free secondary healthcare, making a benefit claim, opening a bank account, and obtaining a driving licence. They may also be subject to removal.

There are concerns that a number of vulnerable cohorts will not apply to the EU settlement scheme on time. For instance, a Home Office study of local government bodies in late 2020 found that around half of their eligible looked-after children and care leavers had yet to apply for the scheme. Recent reporting

from the Times suggests that one sixth of EU, EEA and Swiss citizens claiming benefits have not yet put in an application.

The government has offered guidance for when late applications are admissible, but it risks being interpreted inconsistently. Applications to the EUSS after the 30 June deadline can be accepted where there are 'reasonable grounds' for delay. The Home Office has illustrated a number of circumstances which would normally be considered 'reasonable grounds', including where the applicant is a child, has physical or mental health barriers, or is a victim of modern slavery. However, it is not clear how this guidance will be interpreted in practice and what evidence will be deemed sufficient.

Thousands of applications for the EU settlement scheme have taken more than a year to process. Typically, an EUSS application takes approximately five days to be processed. However, some applications take considerably longer: an FOI submitted by IPPR has found that, as of early May, there were approximately 102,000 applications that were outstanding for at least three months and around 8,000 that were outstanding for at least a year. Around a quarter of applications outstanding for more than three months were for children. When individuals apply after the deadline, they will not be fully protected from the hostile environment while they wait. This means that they will, for instance, face barriers finding new work, entering into new tenancy agreements, and making new benefit claims in the intervening period – which in some cases could last for months.

People with pre-settled status could also become subject to the hostile environment if they do not get settled status in time. Pre-settled status offers temporary leave for only five years and individuals must apply for settled status within this period if they want to stay. In order to apply, they need to show they have been living in the UK continuously for five years (ie in general no absences of more than six months in any 12 month period). Some people may therefore not get settled status and so, unless they can transfer on to another type of leave, will have to either depart the UK or stay on without permission.

There are concerns that the end of the EU settlement scheme could lead to a repeat of the situation which led to the Windrush scandal. The loss of status could have devastating impacts for EU citizens and their families. In order to address the risks posed by the upcoming deadline, we propose a number of practical recommendations for the Home Office.

- **The Home Office should make changes to its 'reasonable grounds' guidance to address gaps and ensure consistency from decision makers**. In particular, the guidance should be extended to include a wider set of individuals who would normally be expected to have 'reasonable grounds', including all those considered by the Home Office to be 'vulnerable citizens' (eg people with significant language or literacy problems), as well as people who have suffered bereavement and people who have experienced destitution.
- **EUSS applicants who are waiting for their application to be approved should have their rights fully protected.** This should include individuals who apply after the EUSS deadline. This will ensure that they are not left in a period of legal limbo in the interim period while they wait for the outcome of their application.
- **The government should require employers, landlords and public officials to signpost EU citizens and their family members to the EUSS if they have reason to believe that they may be eligible**. This strategy would help to counter the risks of discrimination among frontline professionals and encourage a culture of positive duty by making it a statutory obligation for organisations to support EU citizens after 30 June.
- **The Home Office should ease the process for people with pre-settled status to transfer on to settled status as their limited leave to remain runs out.** Individuals should be able to apply for settled status as their pre-settled status runs out if they are currently living in the UK, without the need to demonstrate five years of continuous residence. This would make it easier to apply, reducing the risk of individuals being trapped in a 'dead-end' pre-settled status which cannot be extended.

INTRODUCTION

In his first speech as prime minister, Boris Johnson pledged to EU citizens living in the UK that under his government "you will get the absolute certainty of the rights to live and remain" as the country exited the EU (Prime Minister's Office 2019). The Home Office's EU settlement scheme (EUSS) puts the government's commitment to protect these rights into practice. EU citizens already residing in the UK and their family members can apply to the scheme to protect their rights to live, work, and study. On 30 June, after just over two years of operation, the official deadline for applying to the EU settlement scheme arrives.

In many respects, the scheme has been a great success. There have been more than 5 million applications submitted and concluded, far exceeding the number of people who were expected to be eligible. The vast majority of applicants have received a new immigration status and only a small number have been refused.

Yet despite the high take-up, campaigners have highlighted a range of concerns over the functioning of the EUSS. They have pointed towards delays in the processing of applications, barriers to applying for more vulnerable groups, and the risk of discrimination posed by the 'digital-only' nature of the scheme (the3million 2020, Bulat 2020, Tomlinson and Welsh 2020).

These concerns have become more pertinent as the deadline for the EU settlement scheme nears. It is widely accepted that no government-led programme of this type has ever achieved 100 per cent uptake, even if participation is in the interest of individuals. While there are no directly comparable schemes, a study by the charity New Philanthropy Capital compiled a range of relevant examples. For instance, a regularisation scheme carried out in Spain in 2005 only received applications from around 77 per cent of the estimated eligible population, while the United States Deferred Action for Childhood Arrivals (DACA) scheme in 2012 had 63 per cent uptake in the first four years (Clay et al 2019).

The consequences of missing the deadline could be devastating. On 1 July, EU citizens residing in the UK who have not applied for status and who have no other leave to remain will feel the effects of the 'hostile environment'. This means their rights to work, rent, access benefits, open a bank account, obtain a driving licence, and use free healthcare will all be at risk. In extreme cases, they may be subject to removal. For others, the repercussions of not applying may be realised after years – for example, when children who are unaware they need to secure their status apply to university or a job further down the line. In these cases, immigration barrister Colin Yeo has described their lives as being 'quietly ruined' (McClelland 2021).

Some campaigners have drawn a parallel between the end of the EU settlement scheme and the Windrush scandal. This scandal emerged in 2018, when successive media reports highlighted the impacts of the hostile environment on people from the Windrush generation. This policy – which was designed to encourage individuals without immigration status to leave the UK by barring access to work, private rental accommodation, welfare benefits, free healthcare, and financial services – had mistakenly affected thousands of people who had lived in the UK for decades and who had every right to be here (Qureshi et al 2020). Campaigners are now concerned that EU citizens who miss the deadline could face a similar experience. A key difference, however, is that those affected by the Windrush scandal had been granted a legal immigration status but struggled to document it; while many EU citizens who miss the deadline will simply have no legal status to document.

The Home Office has said it is learning the lessons of the Windrush scandal and has introduced a 'comprehensive improvement plan' to implement the necessary

reforms (Home Office 2020a). The end of the EU settlement scheme will be the next big test to demonstrate whether lessons have been learnt from Windrush. If this is mismanaged, then the Home Office risks another blow to its credibility. The stakes for the government are therefore very high.

In this briefing paper, we will explore the implications of the end of the EU settlement scheme and outline which cohorts are at most risk as the deadline passes. Based on this analysis, we will set out a series of urgent policy recommendations for addressing the risks to EU citizens and their family members. Our proposals will focus on measures to protect the rights of people who miss the deadline, tackle the discrimination that may occur because of the scheme, and support those with pre-settled status to transition on to permanent residence.

POLICY CONTEXT: THE EU SETTLEMENT SCHEME AND THE HOSTILE ENVIRONMENT

This section sets out the policy context for the upcoming deadline for the EU settlement scheme. We explain the EU settlement scheme, how many people have applied so far, and the risks for EU citizens and their family members after the deadline for the scheme is passed.

What is the EU settlement scheme?

After voting to leave the EU in 2016, the UK committed to ending the free movement of people and placing controls on future EU migration. At the same time, the government made clear that it wanted to ensure these new restrictions would not affect EU citizens already here. As part of the Withdrawal Agreement signed in 2019, the UK and the EU made a series of binding commitments to protect the free movement rights of EU citizens living in the UK and UK citizens living in the EU. While the UK has now ended the free movement of people, the government is clear that EU citizens who were living in the UK by the end of the transition period (31 December 2020) should be exempt from the new immigration rules.[1]

The UK has sought to implement this commitment through the introduction of the EU settlement scheme. This scheme aims to protect the rights of EU citizens who were living in the UK by the end of December 2020. The main groups of people who can apply to the scheme include:

[1] Irish citizens do not need to apply for the EUSS as their rights are protected through the Common Travel Area.

- EU, EEA and Swiss citizens who were resident in the UK by 31 December 2020.
- The family members of EU, EEA and Swiss citizens living in the UK by this date.
- People living in the UK with a derivative or Zambrano right to reside by this date.[2]

Those who apply must show proof of their identity and nationality and must in general provide evidence that they have lived in the UK for a continuous period starting before the end of December 2020 (unless they are a joining family member). Applicants are also assessed on their suitability, taking into account their personal conduct and any prior criminal convictions (Home Office 2021a).

In return, those who can demonstrate proof of continuous residence of five years or more are granted 'settled status'.[3] This equates to indefinite leave to remain (or indefinite leave to enter for applications from outside the UK) – it allows individuals to continue to be able to live, work, and study in the UK. It also provides for a 'right to reside' for the purpose of accessing benefits such as Universal Credit.

Those who can only demonstrate proof of continuous residence for less than five years are instead typically granted 'pre-settled status'. Those with pre-settled status have only five years' limited leave to remain (or limited leave to enter for applications from outside the UK). Individuals with pre-settled status can apply for settled status where they are able to demonstrate five years of continuous residence.

The EU settlement scheme has been running since March 2019 and for most people the deadline for applying is on 30 June 2021. This is the date of the end of the 'grace period' for EU citizens. The 'grace period' has extended EU free movement rights for a further six months beyond the end of the Brexit transition period in December 2020. All those who were exercising EU treaty rights at the end of December 2020 are protected for this six-month period, allowing for more time for individuals to apply to the EU settlement scheme.

Beyond this point, EU citizens living in the UK without pre-settled or settled status – or without some other form of valid leave – will no longer have a lawful right to live in the UK. They will not be able to start a new job or enter into a

[2] The Zambrano right to reside applies to non-EEA citizens who are the primary carers of British citizens who are living in the UK and would be unable to stay in the EEA if their carer were to leave for an indefinite period.
[3] This includes those who previously lived in the UK for a continuous five-year period and have not had an absence of more than five continuous years since then.

new private tenancy agreement. They will not be able to open a bank account or obtain a driving licence. They will not be able to make a new benefit claim and may be charged for hospital treatment. In sum, they will be subject to the government's hostile environment (or 'compliant environment') measures, designed to make life difficult for those living in the UK without permission (Qureshi et al 2020).[4]

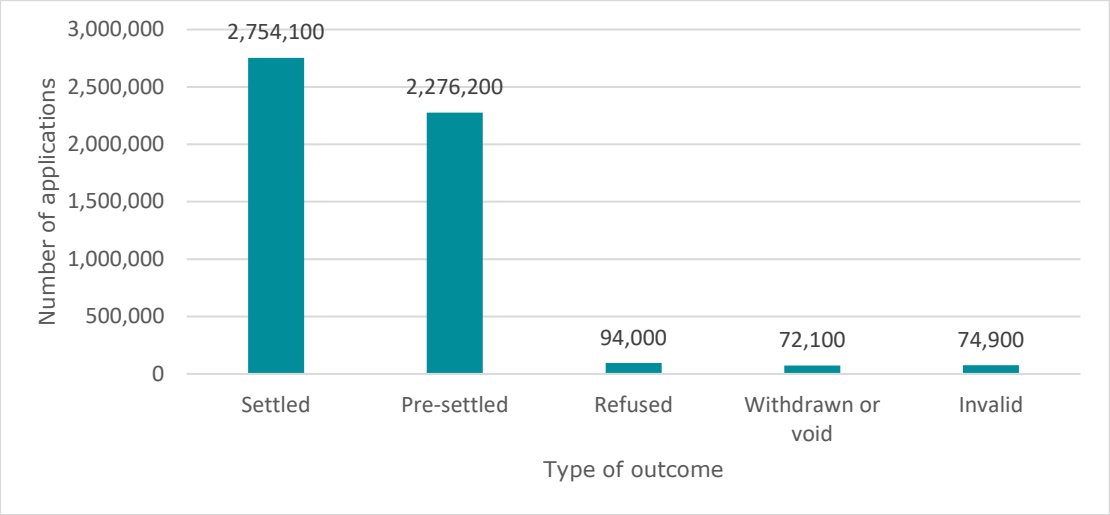
How many people have applied to the EU settlement scheme?

According to the latest figures from the Home Office's internal management information, as of 31 May 2021 there were around 5.6 million applications to the EU settlement scheme (Home Office 2021b).[5] Out of these applications, around 5.3 million were concluded and around 300,000 were still in process. A small majority (around 52 per cent) of concluded applications were for settled status, while a large minority (around 43 per cent) were for pre-settled status. Around 2 per cent (just under 100,000 applications) were refused (see figure 1).

Figure 1

Just over half of all EUSS applications resulted in the awarding of settled status

Concluded applications by outcome type (as of 31 May 2021)



Source: Home Office 2021b

While these statistics highlight that large numbers have applied for the EUSS, it is hard to determine how many have not yet put in an application. There are no

[4] Some hostile environment measures vary between the four nations of the UK. For instance, in Scotland, Wales and Northern Ireland 'right to rent' checks do not apply.
[5] Some of these were repeat applications from the same individuals. An estimated 6 per cent of EUSS applications are from repeat applicants (based on data from 31 March 2021).

reliable data on the total number of people who are eligible for the EUSS. Indeed, previous estimates of the number of EU citizens in the UK – which is one of the most straightforward proxies available for the number of eligible applicants – suggest a much lower figure: the latest ONS estimates, based on the Annual Population Survey (APS), indicate that only around 3.2 million EU citizens (excluding Irish citizens) are resident, considerably lower than the number of grants of pre-settled and settled status (ONS 2021). Household surveys such as the APS are therefore generally not appropriate for measuring the efficacy of the EUSS – for instance, because they do not include people who do not live in the UK but may nevertheless be eligible and they are likely to undercount the resident EU population (Sumption 2020). Ultimately, while it is broadly expected that at least some people will miss the deadline, there is no reliable way of knowing how many.

Who is at most risk of facing the hostile environment after the EUSS deadline passes?

At the point of 30 June – the deadline for the EU settlement scheme – we can break down people eligible for the EUSS into five main cohorts: (i) people who have an outstanding application (ii) people who have not yet applied (iii) people who have applied and have been refused (though they may in principle be eligible) (iv) people who have applied and have received pre-settled status, and (v) people who have applied and have received settled status. For each of these cohorts, we consider their risk of facing the hostile environment after 30 June.

i. People who have an outstanding application

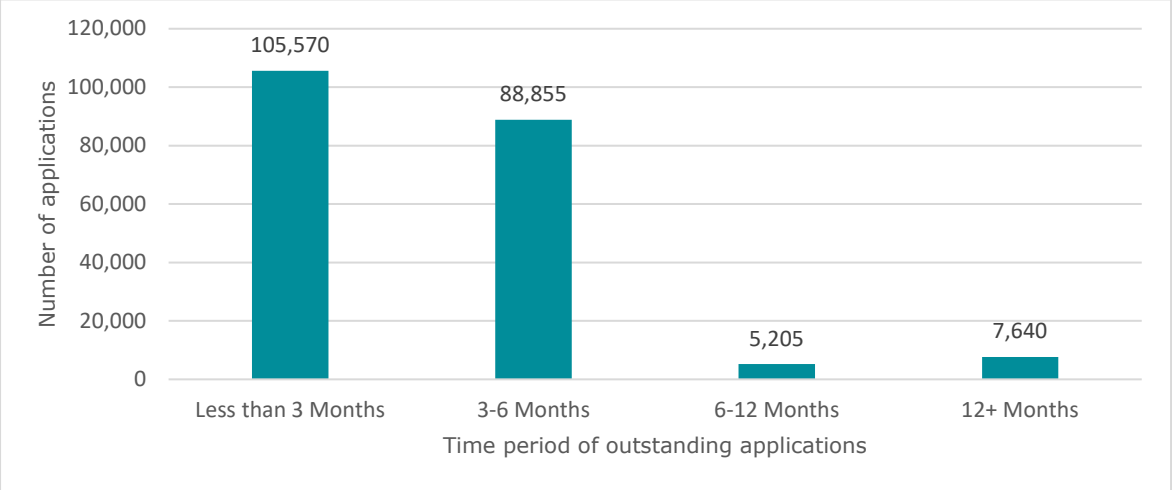
The EU settlement scheme is in general a quick Home Office service: it typically takes around five working days for an application to be concluded (provided the Home Office does not need to follow up to ask for more information) (Home Office 2020b).

However, some applications take considerably longer: a freedom of information (FOI) request submitted by IPPR has found that, as of 7 May 2021, there were approximately 102,000 applications that were outstanding for at least three months and around 8,000 that were outstanding for at least a year (see figure 2). The current backlog of cases (and the expected surge ahead of the deadline) suggests that many individuals will still be awaiting their outcome after 30 June.

Figure 2

In early May, more than 100,000 EUSS applications were outstanding for at least three months and around 8,000 were outstanding for at least a year

Outstanding EUSS applications by length of time (as of May 2021)



Source: IPPR analysis of Home Office 2021c.

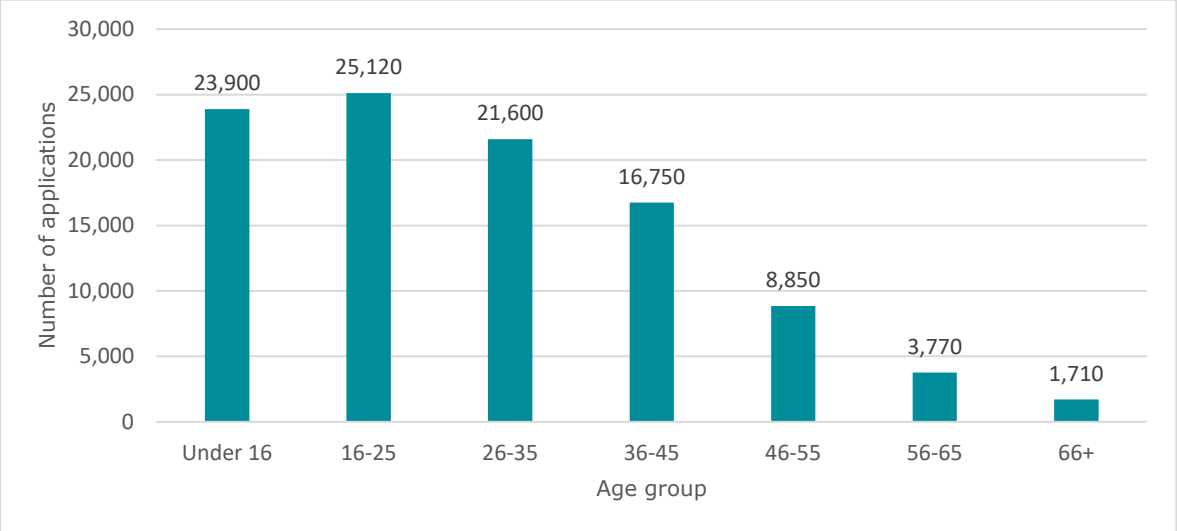
Note: data extracted on 7 May 2021. Only includes EUSS applications received before 1 April 2021 so first column should be treated with caution.

The FOI response highlights that delays in applications are particularly concentrated among children and young people. Around a quarter (approximately 24,000) of applications outstanding for more than three months were for children aged under 16 (see figure 3).

Figure 3

Around a quarter of applications outstanding for more than three months in early May were for children

EUSS applications outstanding by over three months by age group (as of May 2021)



Source: IPPR analysis of Home Office 2021c.

Note: data extracted on 7 May 2021.

What do these delays mean for individuals with outstanding EUSS applications after 30 June? According to legislation, only those who have made an in-time application and who were exercising treaty rights immediately before the end of the transition period will have their rights extended beyond the EUSS deadline if they are still waiting for their application to be processed.

In practice, the latest guidance from the Home Office is more generous. It indicates that where someone has applied before the deadline they can use their certificate of application – the document issued to confirm receipt of a valid application – as proof of their right to work or right to rent while they wait for their application to be concluded (Home Office 2021d, Home Office 2021e). There are, however, concerns about lengthy delays to individuals receiving their certificate of application, which could make it difficult for applicants to evidence their rights while they wait (the3million 2021a).

ii. People who have not yet applied by the deadline

There are a number of reasons why eligible people might miss the deadline for the EU settlement scheme. A study by the Migration Observatory has set out some of the potential factors: they may not be aware of the need to apply for the scheme (for instance, very long-term residents or UK-born children of EU citizens without UK citizenship or permanent settlement); they may face social or economic barriers that reduce their ability to apply (for instance, children in care, rough sleepers or other vulnerable groups); or they may find it harder to complete the application process (for instance, people with low digital literacy or health problems) (Sumption and Fernández-Reino 2020). Whatever the reason, it is likely that some EU citizens will not meet the deadline to apply.

Indeed, there is emerging evidence that certain cohorts have not yet applied for the EUSS, despite the closeness of the deadline. A Home Office study of 207 local government bodies in the UK conducted in late 2020 found that, of the 3,300 looked after children and care leavers identified as eligible for the EUSS, around half had not yet applied (Home Office 2021f). A recent report by the Times also revealed government estimates suggesting that around one in six of EU, EEA and Swiss citizens claiming benefits had not yet made an application (Zeffman 2021).

The government has introduced legislation to help deal with situations where individuals miss the deadline. This allows EU citizens and their family members to apply to the EUSS after the deadline where they can demonstrate 'reasonable grounds' for not submitting an application in time. As part of its guidance on the EUSS, the Home Office has included examples of where it will normally be satisfied that an individual has 'reasonable grounds' (Home Office 2021a). These include:

- Children, including children in care or care leavers – in particular, where the responsible parent, guardian or local authority has not applied on their behalf.
- People with mental or physical health barriers which inhibited them from applying.
- People with serious medical conditions or people undergoing significant medical treatment in the lead-up to the deadline.
- People prevented from applying because they were victims of modern slavery or in abusive and controlling relationships.
- People who did not apply for other compelling practical or compassionate reasons may also be eligible – for instance, people who were unaware of the EUSS because they were living abroad, people who were unable to access a computer to apply because they had no fixed address, or people who faced difficulties getting support to apply due to Covid-19 restrictions.

It is not yet clear how this guidance will operate in practice. If interpreted broadly, then it suggests that nearly all late applications will be admitted; but if, for instance, considerable evidence is needed to demonstrate 'other compelling practical or compassionate reasons' then many could still be found ineligible. Without greater clarity over the guidance, there is a risk of inconsistent interpretations by Home Office decision-makers and some late applicants may fall through the cracks. Moreover, it is to be expected that some people without status may not make a late application at all, given they could continue to face barriers or be unaware of the possibility of applying after the 30 June deadline.

What does this mean in practice for individuals after 30 June? According to the law, those who miss the deadline will not be lawfully present in the UK until they have been awarded status after making a late application. They are therefore vulnerable to the effects of the hostile environment. One partial exception, however, is the right to free secondary healthcare: this will be granted once those who miss the deadline submit a late application (the3million 2021b).

To address concerns about this cohort, the Home Office has issued last-minute guidance to employers. This guidance makes it clear that retrospective right to work checks on existing employees are not required. Moreover, under new transitional measures lasting until the end of 2021 employers are allowed to keep on existing employees who they discover have missed the deadline, provided they make a late application to the EUSS within 28 days of the employer advising them to do so. Employers can then avoid terminating employment while the employee awaits their decision (Home Office 2021d). Similar guidance has been issued for landlords in England (Home Office 2021e).

Finally, the government has said that existing benefit claimants will not have their benefits cut off if they fail to apply in time; the expectation is that they will be given a 28-day notice to apply without having their benefits interrupted (House of Lords 2021).

Yet these exemptions only relate to existing employees, tenants and claimants, and there are still major gaps for people who make late applications. Individuals who apply after the deadline could have to wait for months for a decision without being able to start a new job, enter into a new tenancy agreement, or make a new benefit claim. Given the evidence above suggesting long delays in some outstanding applications, some individuals who miss the deadline could face a period of extended limbo where their rights are severely limited.

iii. People who are refused status

The vast majority of people who apply for the EUSS receive a positive outcome. A small proportion of concluded applications (around 2 per cent or 94,000) have been refused, while a further share have been deemed invalid (around 1 per cent or 75,000) (Home Office 2021b).[6] While the numbers are small, they have increased over time. There are also some notable variations by sub-category: for instance, by March 2021 a total of 54 per cent of Zambrano applications had been refused (Home Office 2021g). (It is worth noting, however, that these figures separately count repeat applications made by the same person, and so some refusals may be followed up with a successful application.)

Some people who are refused may be considered ineligible or unsuitable for legitimate reasons. However, there is a risk that applicants who are in principle eligible and suitable for status fail to secure it because they struggle to navigate the EUSS process or are unable to provide sufficient evidence (Benn 2020). As noted above, certain cohorts may face particular difficulties in successfully completing their application – for instance, those with language or digital literacy barriers or those with serious physical or mental health problems.

Unless they have made a resubmission or appeal, in-principle eligible applicants who have been refused status and have no other form of leave will no longer be lawfully resident in the UK after 30 June. This means they will be vulnerable to the various effects of the hostile environment.

iv. People with pre-settled status

[6] An application is valid when it has been submitted using the required process and the required proof of identity and nationality and biometrics have been provided. Unlike refused applications, invalid applications come with no right of appeal.

Around 43 per cent of concluded applications to the EU settlement scheme result in 'pre-settled status', offering only limited leave to remain in the UK for five years (Home Office 2021b).

While this allows for status holders to continue to live, work, rent, and access free healthcare in the UK, it is less generous than settled status for the purpose of receiving benefits. Unlike in the case of settled status, those with pre-settled status must demonstrate a qualifying 'right to reside' in the UK in order to pass the habitual residence test for accessing Universal Credit and a number of other benefits. In practice, this means that they must provide evidence that they are exercising EU treaty rights as, for example, either a worker, former worker, or family member (Parkes and Morris 2020).

These restrictions on access to benefits are now being contested in the courts. In December 2020, the UK Court of Appeal found in the *Fratila* case that the requirement for those with pre-settled status to have a qualifying 'right to reside' constituted unlawful discrimination on the grounds of nationality. The case will now be heard by the Supreme Court, though the hearing has been delayed ahead of a judgment by the Court of Justice of the EU (CJEU) on a related case (O'Brien 2021).

Aside from the matter of accessing benefits, pre-settled status has other limitations. People with pre-settled status must reapply for settled status in order to secure indefinite leave to remain in the UK (ie permanent residence). If they do not apply in time, they could lose their permission to stay in the UK. In order to apply, they need to show they have been living in the UK for a continuous five-year period starting before the end of December 2020 (ie in general no absences of more than six months in any 12-month period, with a one-off 12 month absence allowed for an important reason).[7] There is therefore a risk that some people who want to transfer on to settled status will not be able to demonstrate five years' continuous residence, creating a 'dead end' for their pre-settled status (the3million 2021b). This means that, unless they have the option of transferring on to a new type of leave, they will have to either leave the UK or stay on without permission.

Therefore, people with pre-settled status will be protected for now as the EUSS deadline passes; but there is a risk that some may become subject to the hostile environment at a later date when their temporary leave expires.

[7] It should be noted that if someone with pre-settled status has broken continuous residence but returned to the UK before the end of December 2020, they have the option to reapply for pre-settled status on the basis of their new period of residence. This could give them another chance to secure settled status through five years of continuous residence (see Hickman 2021).

v. People with settled status

Compared with the other cohorts discussed, people with settled status will be in the most secure position after the end of the grace period. Their rights to work, rent, and access free healthcare will be protected; they will have an automatic 'right to reside' for accessing benefits; and their right to stay in the UK will be permanent, unless they are absent for more than five years in a row. Those with settled status should therefore in principle be safeguarded from the effects of the hostile environment.

One challenge, however, will be managing how to prove this status in practice. The government has introduced a digital-only process for demonstrating pre-settled or settled status – employers, landlords and service providers will need to use an online service to determine someone's status. There is a possibility that, without a physical document as a backup, some with settled status may face discrimination if employers, landlords and officials are reluctant to use the online service or face difficulties navigating it (the3million 2020). The experiences of people with settled status will therefore need close monitoring once the grace period ends and the new system is implemented in practice.

Finally, there are additional complications for people with settled status who want to obtain UK citizenship. Applicants for citizenship need to meet a residency requirement. This requirement involves demonstrating settlement for at least a year (unless they are married to a British citizen), as well as legal residence in the UK for five years prior to the application (or three years for those married to a British citizen). Consequently, EU applicants must generally have been exercising EU treaty rights for this period – a higher bar than the residency requirement for securing settled status. This means that there will be some people who were able to get settled status based on five years of continuous residence but who were not always exercising treaty rights through this period and so cannot rely on it for a citizenship application. The rules could complicate citizenship applications for many with settled status, though the Home Office has said it will exercise discretion where justified (Halliday 2021).

POLICY SOLUTIONS

In this section of the briefing, we will propose recommendations for addressing the challenges EU citizens and their family members could face as we near the end of the grace period. The recommendations focus on protecting the rights of individuals who miss the deadline, mitigating the risk of discrimination, and providing greater support for cohorts with pre-settled status.

Measures for protecting EU citizens who miss the deadline

As discussed in the previous section, the Home Office has acknowledged the possibility of missing the deadline on 30 June and has released guidance for people to submit a late application if they have reasonable grounds for missing the deadline. While this guidance is wide-ranging, there are a series of gaps and ambiguities (O'Brien and Welsh 2021). Although the guidance demonstrates a degree of flexibility by stating that 'for the time being' the 'benefit of any doubt' should be given to applicants, given the gaps in the guidance there is considerable discretion for decision-makers to make 'reasonable grounds' decisions. This increases the chance of inconsistency and human error.

We therefore recommend that changes are made to address gaps in the guidance and ensure consistency from decision makers. Some areas where the guidance could be expanded include, but are not limited to:

- ***Vulnerable people***: According to the Home Office, vulnerable people who may need support in completing their EUSS application include those who: are elderly, isolated, or disabled; are children in care; have significant language or literacy problems; have mental health issues; do not have a permanent address; or are the victims of domestic abuse or human trafficking (Home Office 2021h). Although additional support is signposted for this cohort on the Home Office website, it is not clear if being included in one of these categories is normally reason enough to be eligible for a late application (though some categories such as children in care are listed). Therefore, under the 'other compelling practical or compassionate reasons' section in the guidance, being a vulnerable person should be listed explicitly, with accompanying examples.

- ***Bereavement:*** The guidance acknowledges that an applicant's personal circumstances could prevent them from applying to the EUSS on time. However, bereavement should be considered as normally constituting reasonable grounds for a late application, given these circumstance could seriously impede an individual's ability to apply on time.

- ***Destitution:*** The Migration Observatory has noted that people living in poverty could face particular barriers to applying to the EUSS – for instance, because they may be under greater stress or because they may find it harder to demonstrate eligibility as a result of being employed in informal work (Sumption and Fernández-Reino 2020). Moreover, this group could face greater challenges from the hostile environment in light of their more precarious economic circumstances. Destitution should

therefore be considered as normally constituting reasonable grounds for a late application within the Home Office guidance.

As noted above, the current guidance also suggests that 'for the time being' applications should be given the 'benefit of any doubt' in making a reasonable grounds decision. The Home Office has gone further in saying that for an 'initial period' after the EUSS deadline late applications will be admitted in most cases where the applicant was unaware that they had to apply, but no precise time frame has been set (Desira 2021). For greater clarity, we recommend that the government should confirm that 'initial period' will last until at least the end of the year and will be extended further if necessary.

Measures for protecting people as they await their application outcome

Even if someone is considered to have reasonable grounds for a late application, there is still a risk that they become vulnerable to the hostile environment in the interim period of waiting for a decision. Although the Home Office has indicated that it typically takes five working days to process an application (provided no follow-up is needed), evidence shows that this is not always the case, and, as previously stated, applicants have in some cases waited more than 12 months for an outcome.

Individuals who apply after the 30 June deadline will not have their full free movement rights protected in the period of waiting for a decision. While the Home Office has issued guidance to give employers and landlords the option of retaining employees and tenants who they discover have failed to apply by the deadline if they submit a late application within 28 days of being asked, this guidance only helps existing employees and tenants. Individuals will still be prevented from starting new work and entering into new private tenancy agreements. Similarly, while existing benefit claimants are expected to be protected while they make a late application, new benefit claimants will only be able to make a successful claim once they have secured status.

Therefore, legal guarantees should be put in place to protect EU citizens and their family members while waiting for late EUSS applications to be processed. Current protections only apply to those who have made an in-time application. **We therefore recommend that similar legal protections are extended to late EUSS applicants who are waiting for their application to be approved.** We also accordingly recommend that certificates of application are recognised as proof of entitlement to work, rent and access services in the UK, even when they are issued after 30 June.

Measures for tackling discrimination

In our prior report on the government's hostile environment measures, we highlighted that a core element of the hostile environment is the increased reliance on untrained citizens – such as landlords, employers of NHS workers – in order to carry out checks on people to determine their immigration status (Qureshi et al 2020). This, in turn, could risk discriminatory outcomes for EU citizens when they apply for jobs, look for housing, or engage with public services after 30 June. For instance, employers or landlords may want to avoid the risk of being penalised if they unintentionally hire employees or house tenants without a valid immigration status, and therefore they may be biased towards refusing jobs or housing to EU citizens.

There is evidence that EU citizens themselves are concerned about discrimination. The Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) identified in a survey of EU citizens living in the UK that one in four respondents did not feel that institutions treated them equally to UK citizens most or all of the time. Additionally, 30 per cent of respondents were not confident that their rights would be upheld, citing a lack of trust in the government as one of the primary reasons (IMA 2021).

In order to counter the risks of discrimination posed to EU citizens, we suggest that the requirement to check an individual's immigration status should also be accompanied by an obligation to support them where appropriate. This would reflect a similar duty imposed on Immigration Enforcement. According to Home Office guidance, where Immigration Enforcement officers encounter someone who may be eligible for the EUSS from 1 July, they are expected to provide a 28-day written notice to give them an opportunity to apply to the scheme (Home Office 2021a). Current guidance for employers and landlords suggests they should signpost potential applicants and they can advise existing employees and tenants to apply within 28 days without terminating their contracts, but there is no obligation for them to do so (Home Office 2021d, Home Office 2021e).

We therefore recommend that the government should require employers, landlords and officials to signpost EU citizens and their family members to the EUSS if they have reason to believe that they may be eligible. This strategy should encourage a culture of positive duty and help to rebalance the risk that they may simply avoid engaging with EU citizens for fear of prosecution. In particular, we make the following recommendations for employers, landlords, and public officials:

- ***Employers***: After 30 June, when hiring new employees, employers should be obliged to signpost anyone who they consider may be eligible for the EUSS to engage with the scheme and submit a late application. If late EUSS applicants have their rights to work protected while they wait for a decision, as per our recommendations above, this should not impede the employer's decision to hire someone who is in the process of obtaining their pre-settled or settled status.

  Similarly, the guidance for employers with existing employees who have not yet applied for the EUSS should be clarified. The current guidance says that employers are not required to do retrospective right to work checks on existing employees, but if they do discover that an employee has not applied to the EUSS and has consequently lost their right to work then they can advise them that they have 28 days to apply. If the employee applies within this period, they can then use their certificate of application – together with confirmation from the Home Office that the application has been made – as a 'statutory excuse' for avoiding a civil penalty for hiring a worker illegally (Home Office 2021d). This guidance should be clarified so that it is non-optional: employers should be obliged to advise existing employees that they have 28 days to apply for the EUSS, rather than simply seeking immediate dismissal.

- ***Landlords*** *(England only)*: After 30 June, when signing on new tenants, landlords and letting agents should be obliged to signpost anyone who they consider may be eligible for the EUSS to engage with the scheme and submit a late application. Similar measures should be put in place to ensure that landlords and letting agents advise existing tenants to apply within 28 days, in line with the guidance for employers above.

- ***Public officials***: After 30 June, public officials should be obliged to signpost any individuals they work with who they consider may be eligible for the EUSS to engage with the scheme and submit a late application. Individuals in this category could include public servants working in housing, health and social care, and welfare. Given they are particularly likely to be in contact with citizens who face barriers to applying, they can play a critical role in signposting any service users to available support (or, where qualified, providing support themselves).

Measures for supporting people with pre-settled status

As discussed in the previous section, people with pre-settled status only have limited leave to remain for a total of five years. In order to secure permanent residence, they must reapply for settled status within that period once they are

eligible. If they do not, they risk losing their status and facing the impacts of the hostile environment. Even if they do apply, some might find that they do not qualify for settled status if they have not remained in the UK for a continuous period of five years (ie generally no breaks of more than six months in any 12-month period, with a one-off 12 month absence allowed for an important reason).

The Home Office should therefore allow people with pre-settled status to transfer on to settled status as their limited leave to remain runs out, provided they can give evidence that they are still living in the UK. There should be no requirement to demonstrate five years of continuous residence; this can be assumed on the basis of the original application for pre-settled status. This would make it easier to apply and reduce the risk of individuals being trapped in a 'dead-end' pre-settled status which cannot be extended.

It is not clear what the public benefit is in requiring people with pre-settled status to make a full new application to secure settled status. Those who have applied for pre-settled status will already have faced most of the checks (eg on identity and suitability) for those who apply for settled status. While there may have been concerns previously that EU citizens would have taken advantage of the EUSS by applying for pre-settled status based on a short visit to the UK before the end of the transition period and then switching to settled status at a later date, the transition period has now passed and so there is little risk of abuse from making the process easier.

Alongside these reforms, the government should continue its communications campaign to encourage people with pre-settled status to apply for settled status when they are eligible. While the Home Office has said that it will contact people to let them know they can apply for settled status before their pre-settled status expires, concerns have been raised that status holders may change their contact details in the intervening period and so become hard to reach. This highlights the need for a broader communications campaign – involving broadcast and social media, local authorities and services, and charities and community groups – to continue to make people aware they need to apply for settled status in order to guarantee their rights for the long term.

CONCLUSION

In many respects, the Home Office has taken a refreshing approach to the EU settlement scheme. The scheme has offered a high level of flexibility and openness, acknowledging the varied circumstances of EU citizens and their family members. Indeed, the Home Office's generous stance – reflected, for

instance, in the reasonable grounds guidance – could help to address some of the shortcomings in other areas of the immigration system.

However, it is essential to note that the success of the EUSS does not change the fact that many EU citizens and their family members are likely to be at significant risk once the deadline for the scheme passes. As we have highlighted in this briefing, there are widespread concerns that individuals who are eligible for the scheme will fall through the cracks, lose their status overnight, and eventually be exposed to the immigration enforcement measures embedded within the hostile environment. Ultimately, this could have a devastating impact on EU citizens and their family members, as well as serious reputational consequences for the Home Office.

Safeguarding the rights of those who are eligible for the EU settlement scheme must therefore be of paramount priority for the government. The recommendations made in this paper aim to ensure that the government maintains its commitments to EU citizens already living in the UK and their family members. They include proposals for the Home Office to provide further clarity to the guidance on applications which miss the deadline, offer legal protections to late applicants while they wait for a decision, and ease the process for transitioning from pre-settled to settled status. These measures will be vital for protecting the integrity of the EU settlement scheme, preventing eligible applicants from facing severe hardship, and upholding the prime minister's pledge to preserve the rights of EU citizens and their family members.

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