

Submission to the Home Affairs Committee following presentation of oral evidence on settled status

Changes to settled status in case of a “no deal” Brexit

21 February 2019

The UK Government’s proposed plans for citizens’ rights in the event of the UK leaving the EU without a deal are set out in a policy paper by the Department for Exiting the European Union¹, published on 6 December 2018. The paper claims to “remove any ambiguity about [the] future” of EU nationals and their family members living in the UK, and ensure that rights for this group of people are preserved. It should be emphasised that this is a policy paper and not a legally binding document. Without any legal guarantees and oversight arrangements between the EU and the UK, the rights of EU citizens in the UK are extremely vulnerable to future changes.

the3million has concerns about the paper’s proposed changes to the application process and the rights conferred by settled status in the event of no deal: namely a reduced time frame to apply, reduced family reunion rights and the loss of appeal rights.

Time frame to apply

The Government has accepted it will be a challenge to register all EU citizens and family members in the time frame set if there is an EU/UK deal, which gives EU citizens until 30 June 2021 to apply for a new status². In the event of no deal, the deadline to apply for settled status would be 31 December 2020. This would give over three million people less than two years to apply for a new immigration status with no grace period, further increasing the risk that large numbers of citizens, including vulnerable groups (such as children in care, elderly people, victims of trafficking or domestic abuse) will fail to apply by the deadline³.

As expanded on during the committee’s evidence hearing on 12 February 2019⁴, the risks to those not applying and acquiring status under the EU Settlement Scheme are dire. In the event of a no deal, those who do not have status after 31 December 2020 will become victim to the hostile environment – resulting in denial of free treatment from the NHS, loss of right to work and rent, freezing of bank accounts and so on.

Equally, it has yet to be clarified what legal status EU citizens and their family members will have inside the UK between 29 March 2019 and 31 December 2020. The Home Office has proposed a grant of status to those wishing to enter the UK after 29 March 2019⁵. However, there is no proposed legal framework for what status EU citizens will have who are resident in the UK **before** 29 March 2019 until they apply for status under the EU Settlement Scheme. This will undoubtedly create problems, both at the border and when EU citizens navigate the hostile environment.

¹ <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex-it>

² <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent/eu-settlement-scheme-statement-of-intent>

³ <https://www.jcwi.org.uk/guaranteeing-settled-status-for-eea-nationals>

⁴ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/eu-settlement-scheme/oral/96447.html>

⁵ <https://www.gov.uk/guidance/european-temporary-leave-to-remain-in-the-uk>

Family reunion rights

EU citizens with settled status will have their family reunion rights curtailed relative to the Withdrawal Agreement, which protects the right of EU citizens to be joined in the UK by close family members such as children, spouses and partners, parents and grandparents living overseas at the exit date. Whereas the Withdrawal Agreement places no time limit on - for example - bringing an elderly dependent parent from the EU to the UK in future, in event of no deal the parent can only move to the UK before 29 March 2022.

According to the policy paper, this would “bring the rights of EU citizens in line with the rights of UK nationals from 30 March 2022”. However, the rights of UK nationals in this respect are extremely restricted. Requirements under the adult dependent relative route of the immigration rules are exceptionally complex and difficult to meet, and the costs associated with an application exceed £3,000.

EU citizens with pre-settled status will have no future family reunion rights at all - in contrast to the Withdrawal Agreement, which states that EU citizens exercising treaty rights in the UK can be joined by family members⁶. This is a serious restriction, especially considering that many EU citizens who **have** been living in the UK for more than 5 years are nevertheless being granted pre-settled status rather than settled status.

Right to appeal and independent oversight

The Government policy paper states that EU citizens would have the right to challenge a refusal of UK immigration status under the Settlement Scheme only by way of administrative review (a Home Office internal review procedure) and judicial review (a High Court remedy). EU citizens would therefore lose their right of appeal to challenge a refusal of UK immigration status before a judge.

Compared to launching a judicial review, the existing right of appeal is much lower cost and lower risk for an individual citizen. An appeal judge can make findings as to the facts of a case and direct the Home Office to make the correct decision. In addition, a tribunal appeal should protect a person’s right to remain in the UK whilst their appeal is ongoing, whereas judicial review does not - citizens applying for judicial review will lose their access to healthcare and their rights to work and right to rent while the judicial review is ongoing.

There is no reference in the policy paper to an Independent Monitoring Authority to oversee the settled status scheme, as outlined in the EU/UK Withdrawal Agreement. In the3million’s view, a “no deal” scenario does not change the need for a strong independent authority with the necessary powers, mechanisms and resources to effectively monitor delivery of the scheme by the Home Office.⁷ The Independent Chief Inspector of Borders and Immigration (ICIBI), which has been proposed by the Minister of State for Immigration to provide oversight of the EU Settlement Scheme, does not investigate individual cases. It has also been reported that the Home Office fails to carry out nearly half of ICIBI recommendations⁸.

⁶ Article 10(1)(e), Agreement on the Withdrawal of the UK from the European Union

⁷ <https://blogs.lse.ac.uk/brexit/2018/03/26/eu-citizens-in-the-uk-need-a-independent-authority-to-monitor-their-rights/>

⁸ <https://www.freemovement.org.uk/home-office-fails-to-carry-out-nearly-half-the-immigration-inspectors-recommendations>