

# The UK's "EU Settlement Scheme"

## Summary of issues and concerns

### Issues specific to a no-deal Brexit

A Brexit without a Withdrawal Agreement, and therefore no deal on citizens' rights, is hopefully less likely now. We cannot predict what the results of the UK Parliamentary elections on 12<sup>th</sup> December 2019 will be. If there is a Conservative majority, we assume that the current Withdrawal Agreement will be passed. If Labour is able to govern, we assume that a softer Brexit will be negotiated and subjected to a referendum.

However, we cannot exclude the possibility of a hung parliament resulting in the UK leaving the EU without a Withdrawal Agreement on the 31<sup>st</sup> January 2020.

We are aware that various EU27 Member States have been reassured by the British Government that even in the event of a disorderly Brexit without a Withdrawal Agreement, the rights of EU citizens and their families are adequately guaranteed by the EU Settlement Scheme. (See for example a [debate in the Dutch parliament](#), where the Secretary of State for Justice Broekers-Knol states that the contacts the Dutch government has had with the UK has given them confidence that pre-settled and settled status adequately protect the rights of their Dutch citizens even in the event of a no-deal.)

In this document we would like to set out why we feel the reassurance of the British government is not warranted.

- It is the **British government's stated policy to reduce EU citizens' rights** in the event of no deal. The [policy paper](#) published in December 2018 states that:
  - EU citizens will have no family reunion rights after March 2022
  - Citizens who need to apply under the EU Settlement Scheme will not have the right of appeal
- The British government is **further reducing EU citizens' rights by use of secondary legislation** without parliamentary scrutiny. The [Public Law Project](#) has sent the Government a Letter Before Claim, in which they argue that the Government is [abusing](#) its so-called '[Henry VIII' powers](#). These powers enable a Government minister to amend primary legislation (Acts of Parliament) by secondary legislation, without Parliament having full scrutiny or ability to amend the legislation.

In relation to Brexit, these powers were created in the [European Union \(Withdrawal\) Act 2018](#), to make any necessary changes to the retained EU law copied and pasted into UK law by the Act. There was a **specific promise that these powers would not be used to change any rights**. We argue that promise has been broken, and are asking the Courts to pronounce on the limit of these powers.

Some examples of the rights in question include the right to bring nationality discrimination claims relating to freedom of establishment and free movement of services, criminality thresholds for expulsion and the right of family members to enter the UK with a valid passport and EU residence card.

- On the 23<sup>rd</sup> October, the **House of Lords passed a '[Motion of Regret](#)'** about the regulations relating to setting up companies, self-employment and providing services. Convention means that this is the most the House of Lords is able to do. The motion states that rights are being removed.

- The European Affairs Committee of the House of Representatives in the Netherlands sent a [letter to Lord Callanan](#) on 10<sup>th</sup> October in which, amongst other concerns, they ask the Lord Callanan to “guarantee that there will be no discrimination on the basis of nationality with regard to their [EU citizens’] rights to set up companies, be self-employed or provide services”. To date there has been **no reply to this letter**.
- Regardless of whether there is a Withdrawal Agreement, we have concerns about the fact that the EU Settlement Scheme is a constitutive scheme, and therefore citizens who do not apply in time will lose their lawful status in the UK. The Home Office Minister [Brandon Lewis admitted](#) that such citizens will be subject to the UK’s ‘[Hostile Environment](#)’ and are **at risk of detention and removal from the UK**. In a no-deal Brexit this is made worse by the fact that there will be a lack of protection from the CJEU and there will be no independent Monitoring Authority as envisaged by the Withdrawal Agreement. The Brexit Steering Group of the European Parliament recently raised [six aspects of the EU Settlement Scheme](#) that remain a concern.

### **Issues that arise even if there is a deal**

- As mentioned earlier, we are extremely concerned about those EU citizens who do not apply for settled or pre-settled status. It is a fact that no regularisation scheme worldwide has ever managed to reach 100% of its target audience. In combination with the fact that the UK has never registered its citizens, and is facing an unprecedented and extremely large catch-up exercise, we continue to [argue](#) that the **legal basis of the EU Settlement Scheme must be changed to a declaratory scheme**.
- EU citizens will not be issued with **physical documents**. They will therefore be the only group of citizens in the UK who will need to navigate the Hostile Environment (right to work, rent, banking, healthcare, education and benefits) with a digital only status. British citizens are able to use a British passport as physical proof, and non-EU citizens are issued with a physical residence card which acts as proof of status. We argue that EU citizens should likewise be [issued with physical proof](#) of their pre-settled or settled status.
- The UK’s Data Protection Act 2018 grants everyone the fundamental right of access to their personal data. However, an exemption included in the Act by the UK Government has meant that those seeking **access to personal data for immigration purposes could be denied** if it would “prejudice effective immigration control”. We have launched a [Judicial Review](#) against this exemption, and are currently awaiting permission to appeal.

Many citizens are also very concerned about the security of their personal data, following reports that the telephone App to check identity has [major security loopholes](#). It would be possible for a malicious agent to use an altered version of the app when helping citizens with their applications.

- Finally, there are many practical implementation problems with the EU Settlement Scheme, and we simply list some publications below:
  - The backlog of unprocessed applications has grown to [over half a million applications](#) and we are concerned that too many people are being given pre-settled instead of settled status
  - Concerns around the statistics of the scheme, and whether some [applications are being double counted](#)
  - The latest in our series of [newsletters about the EU Settlement Scheme](#)