



THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT AND RESIDENTIAL ACCOMMODATION) (PRESCRIBED REQUIREMENTS AND CODES OF PRACTICE) AND LICENSING ACT 2003 (PERSONAL AND PREMISES LICENCES) (FORMS), ETC., REGULATIONS 2022

(“Regulations 2022/242”)¹

What does the Statutory Instrument do?

Currently, most EU citizens and Hong Kong BN(O) visa-holders have a **digital-only** immigration status and can only prove their right to work/rent via a UK Government web portal. This legislation extends digital-only proof of right to work/rent to nearly all migrants, including people arriving under the Ukraine schemes. This is done in Part 3 of the legislation, which makes the following changes:

- Makes right to work and right to rent checks digital only for those with biometric residence cards (BRCs), biometric residence permits (BRPs) and frontier worker permits (FWPs).
 - BRCs are held by non-EU citizens² whose rights derive from EU citizens, so typically family members of EU citizens
 - BRPs are held by non-EU citizens whose rights do not derive from EU citizens and whose immigration status does not relate to the EU Settlement Scheme
 - FWPs are held by people who work in the UK but live outside the UK

Part 5 of the legislation makes the following change:

- It allows employers, landlords or letting agents to use IDVT (Identity Document Validation Technology) service providers to digitally verify identity documents of British and Irish citizens.

Policy justification

The justification for removing BRCs, BRPs and FWPs as a valid proof of right to work and right to rent is given in paragraph 7.8 of the Explanatory Memorandum. It is summarised as follows:

- There may be people (non-EU family members of EU citizens) with unexpired BRCs who have been stripped of their lawful status due to the UK leaving the EU, and who do not yet have alternative immigration status
- Since BRPs and FWPs look similar to BRCs it is simpler to also remove those as proof of right to work and rent

We object to this reasoning in the strongest possible terms.

2.5 million non-EU citizens³ are being stripped of their right to use their biometric cards to prove their right to work and rent.

Moreover, the sole stated purpose of doing this is to strip rights from a far smaller group of non-EU citizens, who are most likely *eligible* for EUSS status, living in the UK as family members of EU citizens, but for reasons including capacity, digital exclusion, or lack of understanding have not yet applied for that status.

We have extensively documented the fundamental design problems, accessibility problems and system glitches of the digital-only proof of status. We have proposed a highly cost-effective and secure alternative implementation of digital status, which has been rejected without genuine engagement as yet⁴.

¹ <https://www.legislation.gov.uk/uksi/2022/242>

² In this briefing, we mean EU citizens to include EEA EFTA and Swiss citizens

³ ONS statistics, non-EU born population estimated to be 2.6 million in June 2021

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/yearendingjune2021>

⁴ <https://www.the3million.org.uk/fixing-the-digital-status>, correspondence <https://www.the3million.org.uk/library> March 2022



Scrutiny and impact assessment

Government view:

- This instrument was subject to negative resolution procedure and would therefore have received no parliamentary scrutiny but for the tabled regret motion⁵.
- As such, the Explanatory Memorandum states that no ECHR statement is required.
- As of today's date, it does not appear any meaningful Impact Assessment has been prepared – neither a Data Protection Impact Assessment nor an Equalities Impact Assessment.
- Indeed, the Explanatory Memorandum states
 - *“There is no, or no significant, impact on charities or voluntary bodies.”*
 - *“There is no, or no significant, impact on the public sector.”*
 - *“The removal of biometric cards [is] not considered to have any adverse impact upon business and may lead to savings in costs.”*

Our view:

- We would argue against all these points on their own merit, but most importantly point out that the Explanatory Memorandum does not appear to consider the **impact on affected status holders** at all. The Government justifies a lack of impact assessment only by whether the change in legislation affects those *checking other's status*.
- The policy certainly has a **data protection impact**, as the View & Prove, right to work and right to rent mechanisms are able to store transactions against individuals of which jobs, rentals and other services they attempted to access. There is no transparency around this data – we do not know what it is used for, who it is shared with, or how long it is retained.
- There is a significant impact on **charities and voluntary bodies**. As PILC (Public Interest Law Centre) states⁶ about its EU clients: *“I'd estimate that only 10-15% would be able to use the EUSS digital portal without help”*. It therefore stands to reason that rolling out digital-only proof of right to work and right to rent, to those who previously could use a biometric card or permit, will have a significant impact on law centres and other charities, and on those who simply suffer micro-instances of job and rental refusals without obtaining help.
- There will be impact on the **public sector**, as the public sector clearly includes landlords in the form of local authorities and employers. Furthermore, the rest of the public sector needs to clearly understand the new rules, and we are already seeing gaps there. For example, we have been contacted by someone who has a BRP (status outside the EUSS) and is facing demands by the Government owned SLC (Student Loan Company) to produce a share code. SLC are refusing their BRP as proof, and it is not currently possible for someone with only a BRP to create a share code for a purpose *other than* to prove the right to work or rent.
- We would ask the Government to provide any evidence that **business** is not impacted by the removal of biometric cards. Notably, a poll⁷ commissioned by the3million in late 2020 found that *“those [employers] with experience of using the Government's digital right-to-work trial showed a stronger preference for physical documents than those who had not experienced digital checks”*.

⁵ <https://lordsbusiness.parliament.uk/ItemOfBusiness?itemOfBusinessId=112100§ionId=38&businessPaperDate=2022-06-07>

⁶ <https://www.pilc.org.uk/blog/this-system-was-created-for-people-with-easy-lives/>

⁷ http://t3m.org.uk/t3m_EmployersPoll



Review of digital status policy

Government view:

- The Explanatory Memorandum states: *“The approach to the monitoring of this legislation is that an internal review will be carried out within 12 months of the legislation coming into force and the legislation may be amended accordingly.”*
- The digital right to work was first trialled and evaluated in 2018. The evaluation report⁸ by the Government’s Central Digital and Data Office stated: *“This research raises concerns about BRP cards being retired in favour of digital only services, as the team has very strong evidence that this would cause low digital users a lot of issues. This is something that needs careful consideration with the drive to convert more services to digital and potentially remove their physical counterparts – that digital by default doesn’t mean 100% digital”.*
- The EU Settlement Scheme Policy Equality Statement⁹, published in November 2020 (though the EUSS Scheme launched in beta testing form in August 2018) acknowledges (p307-311) the discriminatory disadvantages that will be faced by several protected groups of citizens. Its only stated mitigation is *“Support is available via the Settlement Resolution Centre for users who may require additional assistance, and we are exploring additional support options for those using our online services.”*

Our view:

- Has an internal review been carried out on the 1 July 2021 roll-out of digital-only status of EU citizens?
- Has the EUSS Policy Equality Statement been updated? The Government only committed to publishing the impact assessment after sustained questioning at a Home Affairs Select Committee¹⁰ evidence session. The Government stated at the time that *“We certainly do have an equality impact assessment because it is an ongoing duty. It is a product that we continue to refresh and update.”* The publicly available EUSS PES has not been updated since its initial publication in November 2020.
- the3million has reported extensively on the challenges people face in getting help from the Settlement Resolution Centre.
 - In December 2021 we wrote to the Government¹¹ about the FOI which revealed that over the 12 months from Nov 2020 – Oct 2021, only 44% of calls to the EU Settlement Resolution Centre were successfully connected. The Government’s reply said they ‘noted’ our comments but said over 2 million calls and emails had been handled. That only indicates the scale of the issue – it shows how many people need support in the first place. Indeed, the FOI’s figure of 44% translates to 819,153 abandoned calls in a 12-month period.
 - The November 2021 report to the IMA¹² contains transcripts of telephone calls to the EU Settlement Resolution Centre and the UKVI Resolution Centre. These both illustrate the confusing menu of options that people need to navigate and show the choices leading to calls being terminated with messages such as *“We are experiencing high demand for our services and currently have no more space in our call queue. [...] Your call will now be disconnected.”*
- We are not aware of any additional support options having become available beyond the Settlement Resolution Centre.

⁸ <https://www.gov.uk/service-standard-reports/prove-your-right-to-work-beta>

⁹ <https://www.gov.uk/government/publications/eu-settlement-scheme-policy-equality-statement>

¹⁰ <https://committees.parliament.uk/oralevidence/1135/pdf/> - November 2020

¹¹ <https://www.the3million.org.uk/library>, December 2021 and January 2022

¹² <https://www.the3million.org.uk/ima-report-nov-21>, Appendix A and C



Reaction to digital-only status from users of digital status

Government view:

- The Government may quote user-satisfaction ratings of digital status checks, from “average user satisfaction survey results”¹³. In 2022 Q1 these show 76%, 80% and 84% of users are “satisfied with service overall” for View & Prove (other), right to work and right to rent checks respectively.

Our view:

- We would caveat these statistics with the following:
 - These statistics only capture those who are already able to access technology and the internet, and who have knowledge, capacity and understanding to reach the Government’s status web portals.
 - Whereas the number of profile views are split between status holders and checkers, the satisfaction responses are not, so it is not known how many of the responses come from status holders.
 - The responses, as a percentage of profile views, are very small especially given that the link to the survey is advertised to users of the status services. The responses in 2022 Q1 represent 0.24%, 0.44% and 1.29% of users of View & Prove (other), right to work and right to rent checks respectively.
 - We observed that in all three cases, there are significantly more “migrant profile views” than “checker profile views”. Since 1 July 2021, when digital-only checks became mandatory for EU citizens, the “migrant profile views” outnumber the “checker profile views” by a consistent factor of 2 for right to work and right to rent checks, and a factor of over 5 for other status checks.

Does the Government know the reason for this disparity, especially since a single share code can be used for 90 (previously 30) days for multiple employers/landlords/other checkers respectively?

the3million have received many reports of people needing to create share codes multiple times, because they are told by prospective employers, landlords or other agencies the code did not work.

- In 2020, the largest nationwide survey¹⁴ to date on the experiences and impact of the EU Settlement Scheme found that 89.5% of respondents were unhappy about the lack of a physical document.
- The devolved governments of Scotland, Wales and Northern Ireland have twice written to the UK Government, asking for physical proof of status for EU citizens, in September 2021¹⁵ and December 2021¹⁶.
- In February 2022, the3million’s 2022 survey of campaign priorities found 89.3% rated “Campaigning on a physical proof of status” as “Very important”. When asked to choose a single priority out of the 11 campaigns, by far the largest choice, from 48.8% of respondents, was physical proof of status.
- In April 2022, a survey¹⁷ by the Citizens’ Rights Project of EU citizens in Scotland found that nearly 90% of the participants would like to have a physical proof of their pre-settled or settled status.

¹³ <https://www.gov.uk/government/publications/home-office-data-q1-2022>

¹⁴ <http://www.t3m.org.uk/SettledStatusSurvey>

¹⁵ <https://www.gov.scot/news/physical-proof-of-status-should-be-offered-to-eu-citizens/>

¹⁶ <https://www.gov.scot/news/physical-proof-of-status-should-be-offered-to-eu-citizens-1/>

¹⁷ <https://citizensrightsproject.org/2022/04/15/eu-citizens-in-scotland-want-physical-proof-of-their-immigration-status/>



Contrast: Digital status for British and Irish citizens - Digital status for other citizens

One part of the Government, DCMS, has been consulting on, and developing, a means for British and Irish citizens to prove their status digitally.

The way they will be able to do this is essentially by having their passport validated by an Identity Document Validation Technology (IDVT) service provider, so that they can then prove their status digitally, typically by an identity app on the citizen’s phone.

Non-British or Irish citizens however do not have access to this technology. Their digital-only status is not a status they can own or hold within an app on their phone. Instead, they must make a request to the Home Office via a web portal each time¹⁸ they need to prove their rights anew.

British and Irish citizens who can avail themselves of the digital option will nevertheless still have their physical passport as a fallback option in cases where the digital proof does not work, or the employer/landlord in question does not wish to use the IDVT digital check process.

Non-British or Irish citizens have no such fallback option. For:

- *those citizens* who are digitally excluded,
- *those circumstances* where internet is temporarily unavailable, the Government web portal is temporarily unavailable, or individuals’ digital status is subject to long-running IT glitches, or
- *those employers or landlords* who are unable to, or prefer not to, engage with digital status checks

the status check will simply fail, and a citizen will suffer the consequence of an opportunity lost or worse.

Whereas the IDVT status check respects the citizen’s privacy, the View & Prove status check records each time a citizen attempts to prove their status, and each employer, landlord or other organisation that checks their status.

Note that British citizens in the EU, protected by the Withdrawal Agreement, have the right to a physical residence document that is identical for all Member States.¹⁹

	British and Irish citizens in UK	Other citizens in UK	British citizens in EU
Who owns the digital proof of status?	The citizen	The Home Office	The citizen
Is it mandatory to check digitally?	No	Yes	No
Is there a physical backup in case a digital check fails in certain circumstances?	Yes	No	Yes
Is data shared with the Home Office / Member State when a digital check is made?	No	Yes	No

¹⁸ Once permission is obtained for a certain type of status check it can be re-used for 90 days for that same purpose.

¹⁹ [https://ec.europa.eu/transparency/documents-register/api/files/C\(2020\)1114_0/de0000000059881?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2020)1114_0/de0000000059881?rendition=false)



Overview of problems with digital status

- Some cohorts are **digitally excluded**, and struggle to navigate and access the online proof of status:
 - University of York / Public Law Project paper “Discrimination in Digital Immigration Status”²⁰ contains statistics about digital exclusion of elderly, disabled and Roma people:
 - 96% of all households in Great Britain have an internet connection compared to only 80% of households of one adult aged 65 and over
 - 81% of all adults use a smartphone, compared to only 48% of adults aged 65 to 74, and 36% of adults aged 75 and over
 - Nominet, the guardian of the .UK internet infrastructure, published its first “Nominet Digital Youth Index research”²¹, which found that:
 - 1 million young people are at risk of becoming digitally excluded
 - A third of young people do not have access to home broadband
 - An ONS report, “Exploring the UK’s digital divide”²² found:
 - Amongst long-term sick / disabled working age adults, 22.3% are internet non-users, vs only 1.7% among employed working age adults
 - Roughly 40% of households where household income was below £15,000 had no access to the internet, vs only 1% where household income was above £40,000
 - A recent Ofcom review²³ highlights that digital exclusion is not split equally across the population, with older people, financially vulnerable and those with impairment conditions more likely affected.
- the3million has received hundreds of reports from people who are **digitally literate**, able to access the “View and Prove” portal, but **nevertheless unable to access proof of their status** due to problems with the system:
 - Many receive errors such as “The details entered don’t match our records”, “Sorry, there is a problem with the service”, “Service currently unavailable”, “You are already logged in”, “We cannot find your current status in this service”
 - Many used to be able to access their status, see their photograph and generate a share code, but now their photograph is missing and attempts to generate a share code result in a system error
- the3million wrote a report for the Independent Monitoring Authority in March 2022²⁴, focused entirely on problems ***maintaining*** a digital immigration account.
- Of particular concern is the system’s inability, by design, to cope properly or consistently with multiple immigration applications, such as re-applications following incorrect refusals, upgrades from pre-settled to settled status, an EUSS status with a non-EUSS status such as student visa, spousal visa etc.
- the3million has already received multiple reports from people with non-EUSS status using the new right to work and right to rent portals, who are faced with the same errors such as “We cannot show your details”, “The details entered don’t match our records”.

²⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847619

²¹ <https://www.nominet.uk/2-1-million-young-people-are-at-risk-of-becoming-digitally-excluded-new-research-has-found/>

²²

<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04>

²³ https://www.ofcom.org.uk/data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf

²⁴ <https://www.the3million.org.uk/ima-report-mar-22>