

July 2022 - The EU Settlement Scheme is not settled

One year after the UK's 30 June 2021 deadline to apply to the EU Settlement Scheme (EUSS), there are approximately 6 million EU citizens with pre-settled or settled status who are at risk from a hostile environment of immigration control in the UK. Many of the rights of this very large cohort of people are protected by the UK-EU Withdrawal Agreement, but many are being denied them and are facing hostility when applying for or proving their status, and when exercising family reunion rights.

The UK government is already facing legal proceedings from the Independent Monitoring Authority (IMA) for breaches of the Withdrawal Agreement, on the grounds that 2.3 million EU citizens who have been granted pre-settled status have been put at automatic risk of losing rights to live, work, rent, losing access to the NHS and benefits, or being removed by the Home Office.

Further systemic problems are coming to light indicating escalating breaches which we set out below. The European Commission is also making strong public statements about their concerns around compliance with the agreement, which the UK Government signed less than 3 years ago.

1. The application backlog

- **Size of the EUSS backlog**

One year from the deadline millions of people were required to apply by, there are still pending applications to the EU Settlement Scheme. Statistics released by the Home Office at the end of May 2022 show that 245,700 people, **nearly a quarter of a million people, are still waiting** on a decision.

- **Length of time in the EUSS backlog**

The Home Office does not routinely publish statistical data on cases stuck in the backlog. However, our Freedom of Information (FOI) request¹ showed that as of December 2021, **over 100,000 people had been waiting for 6-12 months**, and over 12,000 people had been waiting for over 12 months. This had deteriorated dramatically since a year previously².

- **The hidden visa backlog behind the EUSS backlog**

The EUSS backlog does not include people waiting for an EUSS Family Permit, which is a prerequisite for many joining family members to be able to travel to the UK before even being able to submit an EUSS application. The Withdrawal Agreement states that these visas should be issued ***“on the basis of an accelerated procedure”***.

There are no publicly available statistics on the processing times of these applications, but Home Office correspondence³ revealed processing time has been steadily increasing, and by February 2022, an EUSS Family Permit took an **average of seven months** to be processed.

- **Delays in ability to access rights with a pending application**

In theory, those who are waiting for a decision have rights while they wait - so long as they have a Certificate of Application (CoA). For many, these Certificates sometimes take months to arrive, something

¹ https://www.whatdotheyknow.com/request/eu_settlement_scheme_waiting_tim_3#incoming-1964556

² https://www.whatdotheyknow.com/request/eu_settlement_scheme_waiting_tim_2#incoming-1817150

³ https://www.the3million.org.uk/files/ugd/cd54e3_cabe0c60b8fb4684acf5081b997f5276.pdf

the Independent Monitoring Authority has now launched an inquiry into⁴, as the Withdrawal Agreement clearly states these Certificates “*shall be issued immediately*”.

- **Problems accessing rights even with CoA**

In practice, employers and landlords are often suspicious of the CoAs, or don't want to go through the extra bureaucratic steps required by the Home Office to check the rights of people with Certificates. A CoA does not confer travelling rights.

- **Increasing number of refusals**

The average total rate of refused/rejected/withdrawn applications was 0.5% between the scheme's opening in late 2018 to the UK's departure from the EU in January 2020. Since February 2020 it has been steadily climbing, and 2022 has seen an average of 33% applications resulting in no status being granted. Many of the refusals are eventually overturned, however administrative reviews and appeals are taking over six months, therefore increasing the time people are left needlessly facing the hostile environment.

Examples reported to us⁵:

- **Families being separated while waiting for EUSS Family Permits**

“For the last six months, my elderly mother with dementia has been alone, not understanding why she can't join me in the country I've been a physician in for years.”

“I've never met my child. My wife is overwhelmed and our 2-year-old is being cared for by friends when she is at work as a carer.”

- **Fraught travel**

“I've lived in London since I was 11. I applied in 2019 and somehow, I still haven't got a decision. I was stopped twice by border control and was questioned repeatedly, being threatened with deportation to Somalia, when I clearly have a Dutch passport. I also lost a chance at a job over it.”

- **Losing job opportunities**

“Myself and my kids have EUSS status. But my husband has not even had his Certificate of Application since he applied 3 months ago. He is the only earner and has a job pending but can't start without receiving a CoA. He might lose the job opportunity.”

“Although we waited for 6 months between our pre-settled status application and receiving a CoA, it feels like we are no better off. After accessing the digital View & Prove service, the status says I can work only after the employer has verified this manually with the Employer Checking Service. No employers want to take the additional ten working days to do this and after 50 job applications/interviews, I am no closer to working.”

- **Being refused rent**

“My letting agency is asking me for a Certificate of Application to prove I have the right to rent. It's been seven months now and I haven't received it. I'm so afraid I'll be losing the house I've lived in for 10 years and have nowhere else to go.”

- **Being denied state support**

“I'm pregnant. I submitted my EUSS application 18 months ago and am still waiting. Whenever I ring

⁴ https://ima-citizensrights.org.uk/news_events/ima-launches-inquiry-to-investigate-euss-certificate-of-application-delays/

⁵ The3million has a reporting tool on its website, <https://www.the3million.org.uk/report-it>, and it also receives reports from other organisations in the migrant sector.

them, I either can't get through or they tell me to just be patient. I'm unable to get benefits, or housing assistance. I am desperate."

2. Barriers to proving status to access rights

EU citizens with status under EUSS can only prove their right to work/rent via a UK Government web portal. Many are struggling with this digital-only status. It is inaccessible for those with low digital or English literacy or certain disabilities, and it is reliant on functioning Home Office systems.

The digital-only right to work and right to rent checks have now been expanded since 6th April to nearly all migrants, including non-EU family members who have Withdrawal Agreement status, and people arriving under the Ukraine response schemes. Even though these people have valid biometric cards, employers and landlords are no longer allowed to accept these cards as proof of the right to work or rent, and instead must insist on a code from a Home Office website.

The government has acknowledged through the EU Settlement Scheme Policy Equality Statement⁶ the discriminatory disadvantages that will be faced by several protected groups of citizens including older people and those with disabilities.

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."* In Dec 2021, the3million received data that shows that over the 12 months from November 2020 to October 2021, only 44% of calls to the Resolution Centre were successfully connected. This translates to **819,153 abandoned calls in a 12-month period**, as people are either automatically disconnected after hearing a message that there is no capacity, or they hang up after waiting too long in the queue for an agent.

Examples reported to us:

the3million has received hundreds of reports from people who *are* digitally literate, who *are* able to access the "View and Prove" portal, but nevertheless find themselves unable to access proof of their status due to problems with the system:

- **Lost job & rental opportunities:**

"I was a potential candidate for a role, but I couldn't produce a share code, leading to my application being withdrawn. I can't provide for my family and find a place to rent."

- **Difficulties getting a mortgage and opening bank accounts:**

"My EUSS account has a technical problem and doesn't show my status, so now my mortgage application has been put on hold. I've already sold my current house, so I will be in a desperate situation if I'm unable to proceed."

- **Travel issues:**

"My passport expired during the covid pandemic, so I was travelling on my national ID. When coming back to the UK, the airline denied me boarding, as they knew nothing about how to check for status. I showed them my online account, and offered to give them a share code, but they refused to engage."

⁶ <https://www.gov.uk/government/publications/eu-settlement-scheme-policy-equality-statement>

3. Destitution risk for those with reasonable grounds to apply late

As at the end of March 2022, the most recent data available, there have been over 210,000 “late” applications. It was always highly likely that hundreds of thousands of people would miss the EUSS deadline in the UK, precisely because unlike most EU Member States the UK had never implemented any form of registration system for those coming to the UK under the Free Movement Directive.

the3million advocated for years for the UK to adopt a declaratory rather than a constitutive system to prevent the consequences we are seeing. We also advocated strongly for the Withdrawal Agreement’s “*reasonable grounds*” to be interpreted generously, as we knew there would be so many people who simply did not realise they had to apply - from new born babies to older people who had lived in the UK for decades to vulnerable people with digital or English literacy issues.

Although to date the “*reasonable grounds*” criteria is indeed being interpreted generously, there are several policy decisions that run contrary to the principle and impose a severe risk of casting people into destitution.

- **Expensive NHS bills.** If someone is rushed into an NHS hospital and admitted to a ward, they may be given immediately necessary and urgent treatment regardless of immigration status. For someone who should have but has not applied to the EU Settlement Scheme, they will be chargeable - at 150% of the cost of the treatment. Even if an application is subsequently submitted for the patient, and even if they are considered by the Home Office to have had reasonable grounds to submit a late application and are later granted status, the patient will remain chargeable for any treatment received before they submit their application.

The same applies to a new born baby whose parents do not submit an application before the baby is three months old - something which can be difficult to do because of the length of time to obtain ID documents for them.

Even though they go on to gain EUSS status, their entitlement to NHS healthcare is not backdated to when they first received treatment. This is not in the spirit of ‘reasonable grounds’ to apply late.

- **Welfare benefits.** Late applicants who have lived in the UK for a long time are entitled to full settled status. Having settled status means they would be eligible for welfare benefits. Someone in this situation could find themselves having to ask the state for help, only becoming aware of the need to apply for status at the point of being refused. They can then face months of delay before being granted benefits:
 - It could take a long time for someone vulnerable without current ID documents to be able to submit an application
 - Once applied, delays in Certificates of Application being issued means the benefit claim will not even be considered
 - Even with a Certificate of Application, Department for Work and Pension policy⁷ means that they may be refused benefits if they cannot demonstrate being in scope of Withdrawal Agreement Article 10 - a more complex test to satisfy than the test for EU Settlement Scheme eligibility

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033100/adm19-21.pdf, paragraph 11

Even once they become eligible to receive welfare help, that eligibility will not be backdated to when they first asked the state for help. Complete ineligibility before a Certificate of Application is issued, combined with delays to deciding their application, result in many months of not receiving help they should be entitled to, therefore risking destitution.

Examples reported to us:

- **NHS charging:**

“M suffered kidney failure and was taken to hospital as an emergency last summer, and was admitted for nearly a month. A few months later they received a huge bill for their treatment, and turned to a charity for help. That charity helped M to receive settled status within a month, however she is still stuck with a bill for nearly £25,000, and is facing debt collector demands.”

“J was involved in an accident resulting in a complicated fracture. J thought they had previously applied for settled status with the help of a friend, but it turns out that application had not been fully submitted (this is not uncommon, people can think they have gone through all stages of the application without realising there is a final SUBMIT button to be pressed). Again, after receiving a bill for nearly £21,000, J turned to a charity for help to sort out the EUSS application. J is unable to pay and NHS Trust reminder invoices have now made way for letters from a debt collector.”

4. Over 2 million people at risk from losing their rights from 2023

EU citizens and family members who have lived in the UK for less than 5 years, or who can't prove their residence for a period of 5 years or more, obtain limited leave to remain in the UK (i.e., pre-settled status) valid for 5 years. They must apply again to get permanent residence (i.e., settled status). If they do not apply before their pre-settled status expires, they lose their right to live in the UK.

Applications to the EUSS started in August 2018. Up to March 2022, there were more than 2.5 million grants of pre-settled status, of which just 300,000 had been upgraded to settled status. There are therefore over 2.2 million people who still have pre-settled status, who are at risk of losing all their rights if they forget or are unable to submit a new application. Many vulnerable people will have needed help from charities or friends to get their initial pre-settled status. They will struggle to apply for full settled status, which will demand far more evidence than their earlier application.

What makes it worse is that this time there is no common deadline of 30 June 2021 to publicise. Instead, everyone with pre-settled status has their own personal cliff-edge deadline of five years after their status was granted.

The consequences and impacts will be exactly the same as those we are seeing now, for people who don't understand that they must put in a brand-new application again, or who apply late through circumstances in their life. Certificates of Application and decisions taking a long time will leave people exposed to the Hostile Environment as seen above. We will see the loss of jobs, homes, access to welfare and healthcare, and travel problems.

The Independent Monitoring Authority, the statutory body set up to protect the post-Brexit rights of EU citizens settled in the UK, has issued legal proceedings against the Home Office, on the basis the Withdrawal Agreement does not provide an option for removing status for that reason.