UK IN A CHANGING EUROPE

THE EU SETTLEMENT SCHEME

FOREWORD

The EU Settlement Scheme (EUSS) allows EU nationals who arrived by 31 December 2020 (and some others) to protect their rights to live and work in the UK. It's about to become big news, because the deadline for application is 30 June 2021. As things stand, those who have not applied for settled status by that date will no longer have a legal immigration status in the UK. Overall, it has been hugely successful: over 5 million people have applied – far more than expected – and the vast majority of applications have been approved quickly. But no government scheme has ever had 100% compliance. There will be a rush to apply in the final few days of the scheme, but some will not make it.

The aim of this report is to explain the scheme, its background, how it works, who has applied, who may not have, and the lessons we have learned so far. It was written by Catherine Barnard, Fiona Costello, Charlotte O'Brien, Jonathan Portes and Jill Rutter, to whom we give our heartfelt thanks.

We very much hope you find what follows interesting and informative.

Catherine Barnard and Anand Menon

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1. INTRODUCTION

Ending free movement between the UK and the EU was a priority for many Brexit supporters. But changing the system for future migrants had consequences for all those who had used free movement to move to the UK to live, work or study. Promises that EU nationals would automatically be granted indefinite leave to remain and lose none of their existing rights have not been delivered.

The Withdrawal Agreement (WA) guaranteed EU nationals who arrived before 1 January 2021 most of their existing rights to work and access public services. But the UK's lack either of a population register or any consolidated database of resident foreign nationals means the authorities do not know who has the right to stay and who does not. A new scheme was needed to guarantee those rights.

Enter the EU Settlement Scheme. This allows EU nationals (together with those from Norway, Iceland, Liechtenstein and Switzerland) and some family members (we use the shorthand 'EU citizens' to cover all these groups) to apply for 'settled status' (SS), or, if they have less than five years of residence, 'pre-settled status' (PSS).

The scheme is by far the largest administrative exercise in respect of immigration ever undertaken by the Home Office — and one of the largest anywhere in the world. Overall, it has been hugely successful: around 5 million people have applied — far more than expected — and the vast majority of applications have been approved quickly. This, it should be stressed, is a staggering achievement.

Yet no government scheme generates 100% compliance. There will be tens, perhaps hundreds, of thousands of people who, while entitled to apply, will find themselves without a legal immigration status on 1 July 2021. While it is unlikely that they will immediately be subject to the full force of the UK's 'hostile environment policy', their future status remains uncertain.

Moreover, even those who have successfully applied are concerned about problems they may face after 30 June 2021 — whether in demonstrating their eligibility to exercise rights without any physical proof, or moving from pre-settled to settled status once they qualify.

As the end of the application period approaches, this briefing explains the scheme, its background, how it works, who has applied, and what happens to those who have not. It should be said that these issues are not unique to European citizens in the UK, and British citizens in the EU face many similar challenges. However these lie outside the scope of this report.

2. RIGHTS UNDER THE WITHDRAWAL AGREEMENT

The rights of EU nationals resident in the UK as of 1 January 2021 are guaranteed by three agreements: Part Two of the UK-EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement. These were all put into UK law via the EU (Withdrawal Agreement) Act 2020. Under the terms of these various agreements, the rights also extend to UK citizens resident in the EU, Norway, Iceland, Liechtenstein and Switzerland.

Eligibility

The Withdrawal Agreement gives indefinite leave to remain (ILR) to anyone who has resided legally in the host state in accordance with EU law for a continuous period of five years (this is called 'settled status' in the UK). Those who have resided in the host state for fewer than five years have the right to acquire ILR once they have completed five years of residency (before that, they can acquire limited leave to remain — known as 'pre-settled status' in the UK). The UK only requires proof of continuous residence; those applying for SS or PSS do not need to show, as they would if they were applying for Universal Credit such as they were, for example, working, self-employed, studying, a job seeker. These residency rights apply to EU citizens who moved to the UK before the end of the transition — 31 December 2020 — as well as their non-EU family members (NEFM) and any children born to, or legally adopted by, those covered by the Withdrawal Agreement (WA).

Those with settled or pre settled status can be joined in the future by certain family members who have not gained settled status or pre-settled status in their own right. In the UK, this application can be made now via the EU Settlement Scheme Family Permit Route (there is also an EEA Family Permit route, which ends on 30th June 2021). A person can apply to the EUSS Family Permit Route if they are an eligible family member of an EU, EEA or Swiss citizen; a 'person of Northern Ireland' (someone born in Northern Ireland who has British, Irish or dual British and Irish citizenship); and if the family relationship pre-existed on 31 December 2020 and the family member (with settled or pre settled status) was living in the UK by 31 December 2020. A joining family member can apply with a valid passport and must be able to provide evidence of their relationship and that the relationship was existing prior to December 2020. Eligible family

members include:

- spouse, civil partner or unmarried partner (unmarried partners must be able to provide evidence of a long-term relationship before 31 Dec 2020, usually by demonstrating that they have been living together for more than two years);
- child or grandchild aged under 21;
- dependent child or grandchild of any age;
- dependent parent or grandparent.

Joining family members need to apply to the EU Settlement Scheme within three months of arriving in the UK.

Rights for EU citizens under the WA

The key rights guaranteed to eligible persons are continued residency rights for all EU citizens, and rights to equal treatment. This also applies to what are referred to as 'non-EU family members' (NEFM) — covering, say, the Ukrainian partner of a German citizen, both of whom are resident in the UK. This means EU citizens and their NEFM are entitled to enjoy the same rights as UK nationals in respect of employment, education and access to the NHS (both settled and pre-settled holders) and welfare benefits (for those with settled status). For PSS holders, equal access to welfare benefits is the subject of litigation which will shortly come before the UK's Supreme Court and the European Court of Justice. This distinction is explained further below.

Article 27 of the WA preserves recognition of professional qualifications which people were using before the end of the transition period. So French architects can continue practising in the UK under their French qualifications, as these have already been recognised by the UK authorities.

Social security rights are also preserved. Article 30 of the WA states that EU regulations around social security coordination continue to apply to those who fall within the scope of the agreement. This means, for example, that periods of insurance, employment or residence completed under the legislation of one member state are taken into account, when necessary, for the entitlement to a benefit under the legislation of another member state.

The WA also lays out procedures for issuing residence documents (Article 18) with the aim of ensuring the process is not unnecessarily burdensome for applicants. It also preserves the rights of frontier workers — those who live in one member state but regularly work in another — although they are not eligible for the settled status scheme.

While residency rights and the protection that comes with them can last a lifetime, they can be lost through an absence from the host state for a period exceeding five consecutive years for settled status holders (or two years for pre-settled, see below). This is more generous than under current EU law, where protection is lost after two years' absence.

However, not all rights have been maintained. Local election voting rights are not covered by the WA as they are considered an issue for individual countries to decide (EU nationals were able to vote and stand in the local elections in the UK in May 2021 as those elections were due to have taken place before the end of the transition period). The UK has already signed reciprocal, bilateral voting agreements with Spain, Portugal, Luxembourg and Poland, meaning that nationals from these countries are eligible to vote in the UK's local elections. As Commonwealth members, citizens of Malta and Cyprus continue to be able to vote in both national and local elections, as can Irish citizens. However, for many other EU citizens it is currently unclear what, if any, their future voting rights might be in the UK.

Oversight and redress

Implementing Part Two of the WA on citizens' rights is the responsibility of the UK and individual member states, rather than any EU bodies. Member states must decide how to give effect to the scheme but oversight is provided by the European Commission. The UK Government committed to set up an independent oversight body, the Independent Monitoring Authority. UK courts can continue to hear cases and can make references to the European Court of Justice for another eight years. Concerns about implementation can be raised in the Joint Committee, established to oversee the WA, or the specialised committee on citizens' rights.

3. THE EU SETTLED STATUS SCHEME

The Home Office developed the EU Settlement Scheme (EUSS) to implement the citizens' rights provisions of the WA. It was launched on 30 March 2019, after a testing phase involving 200,000 people. Detailed rules on the EUSS are found in the Appendix EU to the Immigration Rules. The deadline and what happens to those that miss it are explained below.

Process

The EUSS is a 'constitutive' scheme, which means people have to apply and those applications have to be approved (some member states have 'declaratory' schemes for UK citizens, which do not require application).

The EUSS is also a digital immigration application scheme. Application is undertaken online and is free (original plans to charge a £65 fee were abandoned by the May Government), the identity check for the application can be undertaken via the EU Exit: ID document check app available on smart phones, or at document scanning centres at various locations throughout the UK, or by posting ID documents for verification. Prospective applicants may request a paper application form in lieu of the digital-only platform from the EUSS Resolution Centre under three circumstances:

- they are applying on the basis of a derivative right to reside (outlined below);
- they do not hold a valid identity document and are unable to obtain one;
- they are unable to apply using the online application form and cannot be supported to do so.

Applicants are asked to prove their identity and history of residency in the UK, and the Home Office also checks for any previous criminality.

Applicants receive digital-only proof of their status, which can be accessed with their unique log-in details via the Gov.uk portal (see below). If they need to provide proof of their status, they can use this digital platform to generate a shareable digital code which third parties (such as employers or landlords) can then use to verify the individual's immigration status. The digital status must be maintained by the status holder, and relevant ID documents linked to the status kept up to date. Many EU citizens have argued that they would rather have physical proof of their status.

The deadline for applications is 30 June 2021. Those who miss it will be considered 'undocumented' in the UK on 1 July 2021, at least until they submit an application. Late applications can still be considered if the applicant had 'reasonable grounds' for their tardiness. This is considered in more detail below.

Going from Pre-settled Status to Settled Status

EU citizens with less than five years' continuous residence are eligible only for pre-settled status. To upgrade to settled status after five years of residence, they need to apply again and prove 'continuous' residency in the UK. 'Continuous' residency means they must not have been absent from the UK for more than six out of 12 rolling months, though a single period of absence up to 12 months is permitted for 'serious reasons' which include pregnancy and childbirth, serious illness, study, vocational training or a posting abroad — as well as special rules around Covid-19 absences (more below).

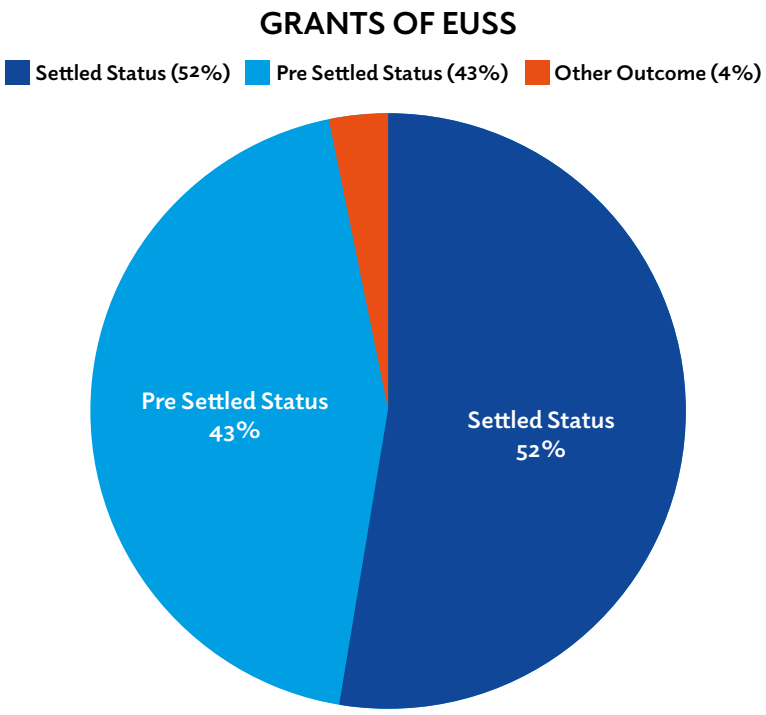
4. PERFORMANCE OF THE SCHEME

The EUSS is the largest digital immigration application scheme the Home Office has undertaken. The stated intention of the Government has been to grant status, and refusals have, to date, been low.

Applications

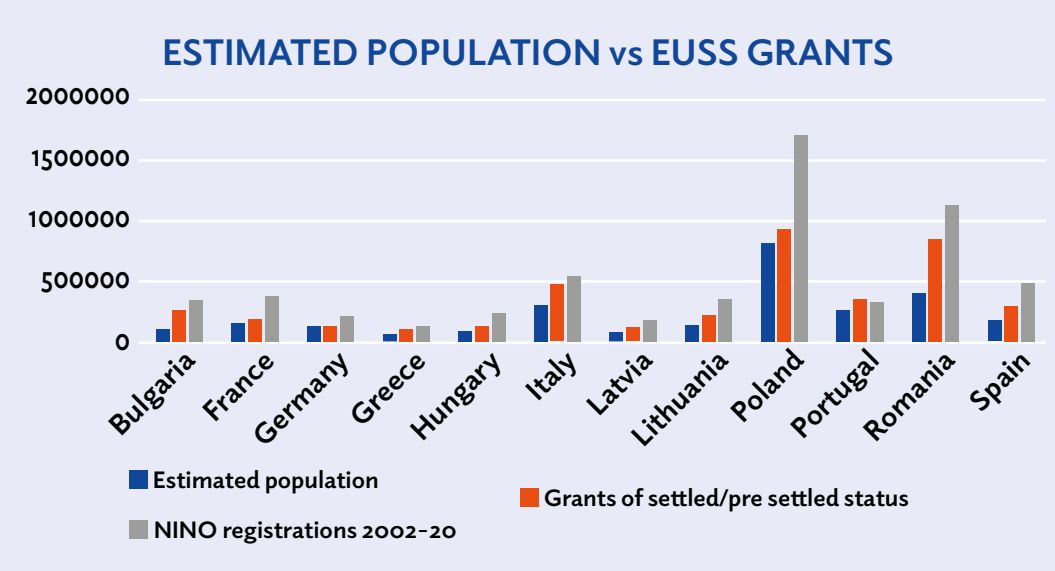
As of 31 May 2021, there had been 5.6 million applications to the scheme, of which 5.3 million had received decisions. Of these latter, 52% have received settled status and 43% pre settled status (with 2% refused, 1% invalid, 1% withdrawn) (see fig. 1). The two million people with pre-settled status will need to make a further application to the scheme, when they have completed five years' residence, to be granted settled status.

Fig 1 The grant of EUSS



Noting that some applications are from non-EU nationals, and some are duplicates or repeat applications, approximately 4.9 million EU, EEA and Swiss citizens have applied for EUSS — far in excess of expectations. Early estimates, based on the Annual Population Survey (APS) and Labour Force Survey (LFS) figures, suggested 3.4 million EU citizens were potentially eligible, revised to 3.5-4.1 million in the official Home Office impact assessment in March 2019.

The chart below shows applications, population estimates, and National Insurance numbers (NINO) issued for the 12 countries with the largest number of applications. For Romania, more than 850,000 applications have been approved, although the estimate of the resident population is only about 400,000. Approximately 1.1 million NINOs were issued to Romanian nationals, the majority within the last five years, consistent with the fact that most Romanian applicants have been granted pre settled status.



There are a number of reasons for the discrepancies between estimated numbers of EU citizens resident in the UK, and actual applications from those groups. The APS was not designed to count the eligible population, and other data suggests that our population figures have systematically underestimated the number of EU citizens resident here. As far back as 2015, the Government's own data on tax, National Insurance and benefit receipt implied that there were significantly more EU nationals resident than the APS/LFS suggested. These numbers were in turn, inconsistent with migration estimates derived from the International Passenger Survey. Since then, further evidence from HM Revenue and Customs and the Office for National Statistics, taken together, suggest APS numbers may be underestimated by 25%, or 800,000 to 1 million, with much bigger discrepancies for individual EU member states. If this were the case, then the eligible population might be between 4.2 and 5.1 million — implying anything from near-complete coverage to a possible deficit of up to approximately half a million.

The problem with the lack of a robust count of who might be eligible is that the Government cannot know how many eligible people have not applied. Nor are numbers of applications necessarily a good guide as to how many people are currently resident in the UK: a variety of sources suggest that 2020 saw significant return migration of EU citizens as a result of the pandemic, although there is huge uncertainty over the precise magnitudes.

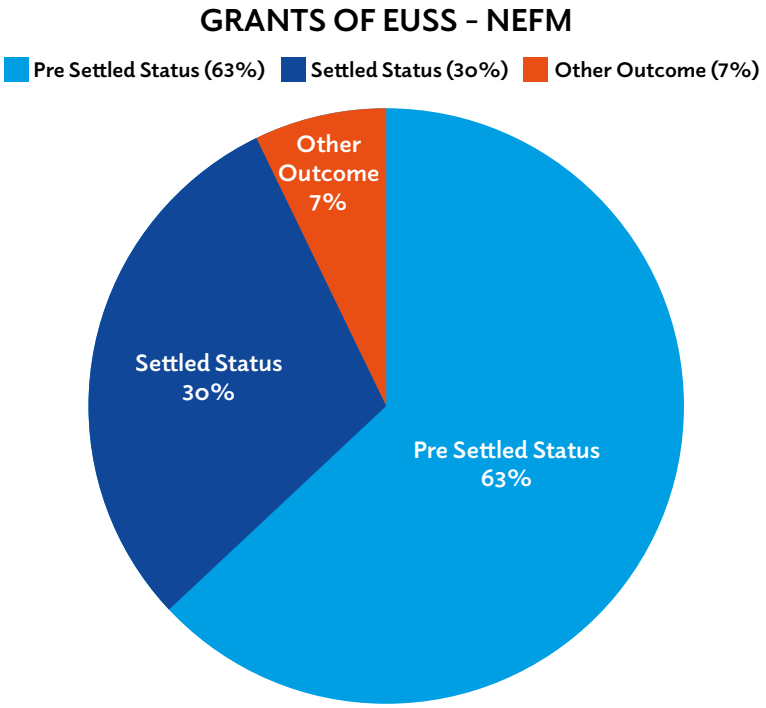
Non-EU Family Member (NEFM) applicants

Those who are not EU nationals but are married (or in a 'durable' relationship) to an EU citizen (e.g., a Brazilian husband with a Polish wife), or are the family member of an EU national living in the UK (child or parent for example), must also make an application under the EUSS scheme to regularise their status in the UK.

NEFMs represent just six per cent of total EUSS applications to date, at 340,000 applications. Very little is known about this group apart from the top line application numbers, as no further demographic breakdown of applicants is provided. The easiest way for a NEFM to apply for EUSS is by linking their application to one already made by their EU family member, who must have themselves applied for pre-settled or settled status.

Only 30% of NEFMs are receiving settled status when they apply — much lower than the figure for EU nationals — with 63% receiving PSS and a further 7% of applications refused, withdrawn or void. The higher level of PSS could be because of the increased evidential requirements this group face of proving their relationship with their relevant EU family member.

Fig 2: NEFM EUSS Outcomes



Within this group (NEFMs) are so called 'derivative rights holders' who can also apply under the EUSS. Broadly, derivative right holders are non-EU (although occasionally EU), non-British nationals whose residency rights in the UK derive from another EU, EEA or British national. So, for example, this would include a

Nigerian mother who is the primary carer of a British national child resident in the UK. She would be referred to as a '*Zambrano* carer', named after the *Zambrano* decision of the European Court of Justice.

This group must apply on paper only; they cannot access the digital platform to apply. The Home Office provides a breakdown of top line application numbers and outcomes for this group in their quarterly statistics release. Research shows that 59% of applicants via the paper application route have been female, with Nigerians, Pakistanis and Ghanaians being the largest groups of applicants. Refusal rates for those in this group are much higher than for the rest of the scheme, at 20% generally, increasing to 60% specifically for so-called *Zambrano* carers. This is because the Home Office introduced a requirement that, as Gbikpi explains 'you will only get status under the Settlement Scheme if you don't already have "leave to enter or remain in the UK, unless this was granted under this Appendix". The reasoning was that if you have permission to remain in the UK, then neither you nor the British citizens dependent on you would be compelled to leave'. However, on the 9 June 2021, the UK High Court held that this exclusion is unlawful. The judge said 'it is a fallacy to suggest that the grant of limited leave to remain has the effect of extinguishing a claim to *Zambrano* rights'.

Non-applicants

It is not possible to estimate accurately the numbers who may not apply by the deadline. But even with a take-up rate exceeding 90% — which would make EUSS more successful than many other migrant regularisation drives — large numbers would be left with their status unsecured by the deadline.

Some groups provide particular cause for concern:

1) Children. They account for only 15% per cent of applications. Some EU nationals may believe, incorrectly, that because their children were born in the UK, they do not need to apply on their behalf as rules around citizenship for children born in the UK are complex (outlined below). A still more vulnerable group is 'looked-after' children: those in the care system or in foster homes. Home Office data shows just 67% of identified looked-after children and care leavers eligible to apply for EUSS had received a status decision by 23 April 2021.

2) Over 65s. They account for only two per cent of applications. There are particular concerns that those in care homes or who have been shielding may have encountered problems in making applications, especially if they were not comfortable with the digital application system.

3) Other vulnerable groups particularly affected by the pandemic. These include those who are rough sleeping, those with mental health issues, Roma communities, victims of domestic abuse, and victims of modern slavery.

Others, too, may have encountered logistical problems exacerbated by the pandemic. Lockdown saw the closure of the EUSS Resolution Centre, the suspension of the ability to send documents by post, as well as the closure of all local scanning centres for a number of weeks. For those who did not have valid ID to make an application for EUSS, the closure of embassies and consulates during this time created a backlog for appointments for those needing, for example, new passports, which then delayed applications to the EUSS. In addition, specialist support agencies helping those who are more vulnerable or unable to complete the application also moved to virtual support which limited their capacity to help people whose problem was digital access.

The ultimate effectiveness of the scheme can only be judged when we know not just how many people successfully applied, but also how many of these hard to reach groups were left undocumented at the end of the process, and how the Government dealt with them.

5. AFTER THE DEADLINE

So, what happens after the 30 June deadline? The answer varies by group.

Those with settled status

Settled status under the EUSS is the equivalent of 'indefinite leave to remain' under UK Immigration Rules. Those with settled status can remain in the UK without a time limit and can apply for British citizenship twelve months after they have acquired their SS (if they choose to). Children born in the UK to people who have settled status are automatically British at birth (previously this was the case if one parent had acquired permanent residence at the time of birth).

People with settled status can leave the UK for up to five consecutive years without losing their settled status (four years for Swiss citizens and their family members). However, the UK Government has the ability to change this by secondary legislation, subject to the terms of the WA. Hence these rights are not guaranteed for all time.

EU nationals with settled status will almost inevitably face differences in treatment compared to UK nationals: their nationality will trigger requests to demonstrate settled status, to show their right to work, to rent, to access certain public services and so on. It remains to be seen how straightforward this will be and how it will affect, in particular, those groups (like Gypsies, Roma and Travellers) who find digital access problematic.

The Government also needs to ensure that those who may demand checks — public officials and third parties such as landlords and employers — understand the rights conveyed by settled status, to prevent EU citizens facing discrimination.

Those with pre-settled status

People with pre-settled status have a right to reside in the UK for five years. They are eligible to apply for settled status if they stay in the UK and continue to meet the suitability conditions, but they need to do so before their pre-settled status expires. There are two relevant deadlines for pre-settled status holders: five years from becoming resident in the UK, when they are entitled to apply for settled status; and five years from being awarded pre-settled status, when this status expires. Pre-settled status holders will have a window between these two dates to make a new application to the EUSS, but when their status expires they will no longer have leave to remain in the UK.

The same groups who were at risk of not applying for settled status in the first place may also be liable to fail to apply to change status — along with those who

are simply unaware of the need to apply again. Because both anniversaries will be different for everyone there will be no Government campaign around a single date to prompt people to apply for settled status. However, the Home Office has said it will remind people of the need to re-apply for settled status before their pre-settled status expires.

While absences of up to two years are permitted without losing pre-settled status, absences of over six months will interrupt continuous residence, though the special Covid-19 rules (updated on 10 June 2021) provide expansive grounds for this, extending to 12 months. This means that although someone with a 13 month absence will not lose their pre-settled status, they may have lost the chance to apply for settled status later on. If so, on the expiry of their pre-settled status they will lose the leave to remain in the UK.

For many purposes (such as working, using the NHS, and studying), the rights of pre-settled status holders are similar to those with settled status — and they will face the same risks of having a digital-only ID and their status being misunderstood by those required to check. However, the right to claim benefits is currently the subject of litigation in both the Supreme Court of the UK and the European Court of Justice. Currently, holders of pre-settled status have to show they have a further right to reside such as being a worker in order to receive key welfare benefits.

Unresolved cases on 1 July 2021

Some EU citizens will have made an application on time but not yet received a decision on their status by the 30 June 2021 deadline. The 2020 regulations provide for a continued, temporary right to reside while such decisions are being made - but only if the applicants meet tests which go beyond the requirements to successfully apply under the settled status scheme. Specifically, applicants must be able to demonstrate that they were exercising a 'right to reside' under the old regulations immediately before the end of transition (31 December 2020). This will typically mean showing that they were in 'genuine and effective' work, or that they were the family member of a worker or had permanent residence (which is in turn usually dependent on work history). If they cannot meet any of these conditions, they will lose their rights immediately, even if their application is valid (and subsequently approved).

This could create some starkly different outcomes for applicants, based on whether the Home Office reached a decision before the deadline. This is likely to impact most severely upon vulnerable applicants with complicated cases. Given reports of delays in processing applications, and Home Office statistics showing a rising backlog, this difference in treatment could become quite significant.

People who miss the deadline

The Government has always said that it will allow people with 'reasonable grounds' for missing the deadline to apply late. However, updated EUSS caseworker guidance on what precisely that meant was not issued until April 2021. Those who have not applied by the deadline, and who do not have a good reason for making a late application, will immediately and irreversibly lose their accrued rights of residence, and risk becoming subject to the hostile environment and the risk of removal — so a lot is riding on how these 'reasonable grounds' are defined.

The guidance asks caseworkers to review claims of reasonable grounds flexibly and pragmatically. It outlines some examples — children whose carers have not applied for them; people with reduced mental and physical capacity; people with EEA residence documents; victims of modern slavery; and victims of abuse — but makes clear these are not exhaustive and there is a wide, catch-all category of 'other compelling practical or compassionate reasons'. It is not clear whether just 'not knowing' about the scheme or the deadline might constitute a compelling practical reason, or whether caseworkers will look for a good reason for not knowing. But recent studies suggest that there are problems with awareness of the scheme among low paid workers in the agricultural and food processing sectors, and care workers.

The guidance suggests that decisions on late applications will become less generous over time and foreshadows potential future tightening which could cause problems for marginalised groups who only realise their lack of status years after the end of the scheme.

The guidance anticipates exceptions to the general rule that the later the application, the less likely it is to succeed — for example, for children who discover they need to apply years later when they first apply to work or study in the UK. However, they will still need to be able to show that they met the basic eligibility conditions at the end of 2020, and to demonstrate continuous residence since that point.

Those who miss the deadline but can demonstrate a reasonable ground for doing so and then make successful applications will nevertheless face losing their right to reside in the interim. Neither the rules nor the guidance address this status gap.

This has serious implications not only for the EU citizens in question, but also for third parties — employers, landlords, and so on. Under the existing rules, if they know or have reasonable grounds to believe that an individual has not applied in time or if they fail to check for EUSS status, they may incur civil or

criminal liabilities — even if they also know of a good reason for the deadline being missed. When asked in February 2021 by the Home Affairs Select Committee whether employers, who discover in July that their employees had not applied to the EUSS, would be obliged to dismiss them, the Home Secretary said that the Home Office would 'work with employers', but there has been no change to the existing legal obligations.

6. OVERSIGHT: THE ROLE OF THE INDEPENDENT MONITORING AUTHORITY (IMA)

In the WA, the UK committed to setting up an independent arm's length body to oversee the implementation of the citizens' rights provisions. This is set out in Article 159:

> In the United Kingdom, the implementation and application of Part Two shall be monitored by an independent authority (the 'Authority') which shall have powers equivalent to those of the European Commission acting under the Treaties to conduct inquiries on its own initiative concerning alleged breaches of Part Two by the administrative authorities of the United Kingdom and to receive complaints from Union citizens and their family members for the purposes of conducting such inquiries.

Although the agreement with the EU only covers the rights of EU citizens, the body itself also covers the rights of citizens from EEA countries. The legislation setting up the IMA was incorporated in the EU (Withdrawal Agreement) Act 2020, with the detail contained in Schedule 2. It received relatively little parliamentary scrutiny — and because it was part of the withdrawal negotiations there was little advance consultation on its form or functions.

The IMA was established in shadow form during 2020 and went live once the transition ended on 31 December 2020. Its new Chair, former Conservative MEP Sir Ashley Fox, was only appointed at end of 2020 and the interim chief executive was only recently confirmed permanently in her role. The IMA is sponsored by the Ministry of Justice, is based in Swansea and has a staff of just over 50 people. The UK Government is committed in the Withdrawal Agreement to ensuring it has sufficient resources to perform its functions, and the Justice Select Committee, in its letter giving its approval to the appointment of Sir Ashley, expressed disappointment at the lateness of the appointment and the narrowness of the field (only nine applied and only two were deemed appointable).

It is clearly very early days for the IMA. Its major power is to open inquiries, which it can do in response to requests from any of the governments of the UK, or on its own initiative. As such its focus is on 'systemic problems', rather than resolving individual problems — so while it wants to hear complaints from those

who think their rights are not being fully protected, it cannot deal with them individually. Its task is to spot emerging patterns, and it intends to engage with stakeholder organisations and is setting up a citizens' panel.

Complaints can result in legal action against the relevant public bodies whose performance it oversees, including applications for judicial review. But the IMA can also act without going down a legal enforcement route. Where it initiates an inquiry, it is obliged by the legislation to produce a report 'as soon as reasonably practicable', after its conclusion and to send this to the governments of the UK, Scotland, Wales and Northern Ireland. Where it includes recommendations to a particular public authority, that public authority is obliged to respond 'expeditiously, and, in any event, within the period of three months' from the date of publication.

The IMA is also required to produce an annual report on the 'implementation and application' of the citizens' rights agreements and send it to the specialized UK-EU committee tasked with overseeing the functioning of this part of the WA. Ultimately any concerns could be elevated to the Joint Committee, currently co-chaired by Lord Frost for the UK and Commissioner Maros Šefčovič for the EU.

The IMA website sets out the four areas that it will monitor: residency, mutual recognition of professional qualifications, coordination of social security systems, and equal treatment.

The legislation follows the requirements of the WA, but it is not clear that the IMA needs to be constrained by the precise role set out for it in that agreement. When Sir Ashley Fox appeared before the Justice Committee for his pre-appointment hearing in November, he set out his approach, which is now reflected in some of the initial statements on the IMA website. Rather than try to identify issues early, and warn the Government preemptively of potential trouble to come, the IMA sees itself as primarily a reactive organisation, waiting for 'failure or imminent failure' before stepping in.

In some early indications of its approach, the IMA released the results of an online survey of affected citizens, which revealed that the biggest problem was a lack of trust in public authorities to uphold their rights. In the same week it also announced the results of its intervention with the Department of Health and Social Care in response to difficulties some EU citizens living in the UK were encountering with obtaining European Health Insurance Cards for use when they travelled to EU countries. It is also intervening to make sure that the implications for EU citizens are understood by the court. It is engaging with the Home Office on the management of the end of the grace period.

There is no end point agreed for the IMA. However, the implementing legislation gave the Secretary of State the authority to transfer its powers to another body by regulation or indeed to decide they were no longer needed under the provisions of the WA.

7. CONCLUSIONS

The UK Government decided early on to make application a critical step in retaining the right to reside in the UK — a failure to obtain status by the deadline means the right is lost.

This makes the 30 June deadline a cliff edge. People could lose their rights temporarily if they have failed to apply by then and depend on the discretion of the Home Office to allow them to regularise their status. The challenge for the Government is that even though huge numbers of people have successfully applied, it does not have enough of a grip on the numbers eligible to know the scale of the non-regularisation problem it faces.

This problem will not disappear. With over two million EU citizens only granted pre-settled status, the process will last for years. Meanwhile, even those EU citizens who have acted in a timely way to preserve their rights are concerned that they potentially face problems and discrimination without clear physical proof of their status.

At one level, the EUSS is already a massive success in terms of providing a quick and efficient system which has reached huge numbers of people. But it is about to enter a phase that will require sensitive management. The Government will need to show pragmatism and flexibility in dealing with difficult cases, and be alert and responsive to the concerns of EU citizens who told the IMA that their recent experiences had made them lose trust in public bodies.

The one issue both Leave and Remain agreed on in the referendum was that the UK should be generous to all EU citizens who had moved to live, work and contribute to the UK during our membership. The UK Government will want to hold other governments to account for fair treatment of UK citizens in the EU. As the 30 June approaches, the UK Government needs to show it can make good on that promise.

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T 020 7848 2630
E info@UKandEU.ac.uk
TheUKinaChangingEurope
@UKandEU

www.UKandEU.ac.uk