

# *Getting it right from the start*

*Securing the future for EU citizens in the UK*

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**British  
Future...**

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About British Future:

British Future is an independent, non-partisan thinktank engaging people's hopes and fears about integration and migration, opportunity and identity, so that we share a confident and welcoming Britain, inclusive and fair to all.

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# Foreword: *An important test that the Home Office must get right from the start*

While the referendum decision to leave the EU will result in significant changes to immigration policy, the future of the 3.5 million EU citizens<sup>1</sup> who have already made the UK their home is a separate issue. The Withdrawal Agreement between the UK and the EU guaranteed their rights – and there is overwhelming political and public support for this protection<sup>2</sup>.

The Home Office has set up the EU Settlement Scheme to secure the status of EU citizens, which launches on 21 January 2019. The Government expects that up to 3.5 million people will apply over the next three years. Developing and delivering the EU Settlement Scheme will be one of the largest tasks that the Home Office has ever had to undertake – and it is important that it gets this right from the start.

The stakes are high. Even if 5% of eligible applicants struggle to apply or are rejected, this equates to 175,000 people. Should the EU Settlement Scheme experience problems, employers risk losing key staff who might choose to return to their home countries. Public trust in the Government's ability to manage migration is already low and operational failure of the EU Settlement Scheme will further damage confidence in the immigration system.

There has been considerable investment in making the Scheme work effectively, including the development of a new digital registration system and plans to hire extra UK Visas and Immigration staff to deal with additional EU casework<sup>3</sup>. Nevertheless, a number of questions remain unanswered. How should the Government encourage compliance? Who might struggle to secure settled status and in what numbers? What action will be taken if significant numbers of applicants for settled status are rejected?

This report makes constructive proposals that would improve the operation of the EU Settlement Scheme and make sure that EU citizens who are eligible and want to remain in the UK are included. It examines the potential barriers to securing settled status, the groups most likely to be affected and the early actions that the Home Office should take to make sure that the system works as well as possible. In particular, this report sets out five key commitments that the Home Office should make to help get it right from the start: investing in the system; getting information to hard-to-reach groups through effective communications; building trust and accountability through greater transparency; providing redress when mistakes are made; and making a British citizenship offer to EU citizens.

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The EU Settlement Scheme was piloted in 2018 and got off to an encouraging start. The Home Secretary and his officials have made commitments on transparency and user engagement. Resources have been allocated, including nearly £50 million on an IT system. The Government made public its new technology and in August 2018 piloted the Scheme with EU citizens living in the Liverpool area. A larger pilot of EU citizens working in higher education, health and social care opened in November 2018. The new system goes fully live in early 2019.

There is scope for policy changes to improve the system: for effective monitoring and accountability mechanisms and continued investment in the system. The time to implement these changes is now, when they can have the greatest impact. We believe that the proposals we make are practical and will make the EU Settlement Scheme work better: for EU citizens themselves; for the Home Office, which has to deliver this scheme; for the Exchequer and for wider society.

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# Executive summary

Leaving the European Union will result in changes to the UK's immigration system. But the status of the 3.5 million EU citizens who currently live in the UK is protected in the Withdrawal Agreement and their status will be guaranteed by the Home Office through the EU Settlement Scheme. This commitment will stand in the event of the UK leaving the EU without a deal. Primary legislation underpinning the EU Settlement Scheme will form part of the Withdrawal Agreement Bill.

EU citizens and their family members who have five years' continuous residence in the UK by 31 December 2020 will be able to apply for 'settled status'. Those who do not have five years' residency by that date will be eligible for 'pre-settled status', enabling them to stay until they have reached the five-year threshold for settled status. EU citizens who have arrived in the UK before 31 December 2020 have a six-month grace period – up to 30 June 2021 – to apply to the EU Settlement Scheme<sup>4</sup>.

Costing between £500 million and £600 million<sup>5</sup>, administering the EU Settlement Scheme is one of the largest tasks the Home Office has faced in its history. Any programme of this scale inevitably faces many challenges. The Home Office has invested in a streamlined digital application process which will enable most EU citizens to submit their application with ease and without the need for legal advice. The use of IT and cross-linking with HMRC data means that the majority of EU citizens will receive a decision rapidly. The Home Office, in 2018, piloted this technology with two large groups of EU citizens and is working with local authorities, employers and civil society organisations to try to make sure that everybody who wants to remain in the UK knows that they need to register for pre-settled or settled status.

It is likely that about 70% of EU citizens in the UK will have correct information about the EU Settlement Scheme and will be able to submit their applications with ease. But research<sup>6</sup> suggests that about 30% of EU citizens risk being left out, for reasons which relate both to people's individual circumstances and the way the system operates. There are still misunderstandings about the mandatory nature of the scheme, particularly among those who speak little English. Stay-at-home parents and children in care may find it difficult to provide evidence of their residency in the UK. HMRC records are being cross-linked to Home Office records and used to verify the residency of EU citizens, and already the pilots of the EU Settlement Scheme have shown cases where official records do not match each other.

Should just 5% of those who need settled status fail to apply or be refused, this adds up to 175,000 people in the UK with an insecure immigration status or no status at all. In future this group of EU citizens may find themselves in the same position as those affected by the recent Windrush scandal: destitute, barred from working, at risk of exploitation and unable to access basic services such as the NHS. A large and visible population of undocumented

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migrants also reduces public trust in the Government's ability to manage immigration. At a time when the UK is negotiating trade deals, such a high-profile policy failure would send out the wrong message to this country's future trading partners.

These are all pressing arguments to invest in the new system and make sure that everyone who is eligible and wants to remain in the UK is able to apply for pre-settled or settled status. There are simple interventions which, if put in place, would minimise the number of people who fall outside the EU Settlement Scheme. The Government should take action and adopt these five key commitments to get things right from the start.

## Five key commitments:

### i) Ongoing investment in the system

Home Offices resources have been invested in developing the streamlined digital system that will process the majority of applications to the EU Settlement Scheme. But there will still be many EU citizens – between 10% and 30% - who may require assistance from a 'human' Home Office caseworker and at the time of writing, the Home Office is still struggling to recruit extra staff<sup>7</sup>. Although the application process is now close to launch, there is also still policy to be decided: about the appeal system and the application process for 'frontier workers',<sup>8</sup> for example. There must be ongoing investment, from now until June 2021, to make the EU Settlement Scheme work.

**The Home Office must employ sufficient immigration casework staff to process complex cases and to help EU citizens who struggle to make their applications to the EU Settlement Scheme. These staff must receive sufficient training, with the use of agency staff kept to a minimum. There must also be a clear commitment from Government to learn from the pilots, resolve problems and tie up policy loose ends.**

### ii) Systematic and sustained communication

There is a risk that many EU citizens may have incorrect information about the EU Settlement Scheme, not knowing that it applies to them and will be mandatory after 29 March 2019. Some EU citizens may also put off applying for pre-settled or settled status because they fear rejection, including many who have previously been refused Permanent Residence under the old system. Good communications are an essential part of building confidence in the EU Settlement Scheme and making sure that all those who need to can and do apply. It is welcome that the Government is working with councils, employers and civil society organisations to help them get to hard-to-reach groups. But

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communication campaigns need to be systematic and sustained if they are to reach the people that they need to and build confidence in the EU Settlement Scheme.

**The Home Office must continue to engage with councils, employers and civil society organisations, particularly those offering advice to EU citizens. The information campaign must be systematic and sustained, with an extra push in Spring 2021 when the deadline for applying for pre-settled and settled status approaches. Publicity about the EU Settlement Scheme must be translated into all the relevant languages, with this process also needing coordination. The Government must use multiple routes to contact hard-to-reach groups: at ports of entry, through DWP and HMRC contacts, through employers, local authorities, faith groups and through minority ethnic media.**

### iii) Transparency

Transparency and political accountability are crucial to the smooth operation of the EU Settlement Scheme. The Home Office has so far been open with key stakeholders, through regular meetings and by publishing the evaluation of the pilot schemes. But no publicly available performance indicators have been set for the EU Settlement Scheme, although these exist in other areas of immigration in the form of Migration Transparency Data.

Eventually, the main UK mechanism for independent oversight will be the Independent Monitoring Authority (IMA) which will come into operation in January 2021. This non-departmental public body will be able to receive complaints, hold formal inquiries and take legal action if needed. Until the Independent Monitoring Authority is set up, the Independent Chief Inspector of Borders and Immigration will monitor the operation of the EU Settlement Scheme. He will present a report on the Scheme in early 2019.

**The Home Office must put in place performance indicators covering the EU Settlement Scheme, for example targets for the time it takes to process complex cases. These should be publicly available as Migration Transparency Data. It should set a threshold percentage for rejections of applications for settled status which, if exceeded, should trigger an investigation to understand the reasons for an unexpectedly high refusal rate.**

**Parliament, civil society and business also have an important role in holding the Home Office to account. MPs and these groups must make use of Home Office performance indicators such as the Migration Transparency Data.**

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Although the rights of EU citizens will be protected in the EU (Withdrawal Agreement) Bill, the detail of the system will be set out in the Immigration Rules - the statutory instruments laid before Parliament which decide in practice whether and how a person can enter or remain in the UK. The Home Office has made more than 5,700 changes to the Immigration Rules since 2010, with these changes laid before Parliament with little or no explanation. This situation means that it is near-impossible for most MPs, journalists, civil society organisations and many immigration lawyers – all of which have a role in scrutinising the Government - to keep track of the changes and hold the Government to account.

**Immigration Rule changes should be published, with accompanying explanatory notes and in draft form, in advance of their laying before Parliament. In the long-term, the Government might consider setting up an independent organisation that works like the existing Social Security Advisory Committee, an independent statutory body that scrutinises the proposed secondary legislation underpinning the social welfare system. The Government should also review the threshold for immigration policy change that requires primary legislation.**

#### iv) Redress when mistakes are made

Although the Home Office has stated that its default position will be to grant settled status rather than to refuse, it is inevitable that some mistakes will be made and eligible EU citizens will be refused. But the high rate of refusal and many errors made when EU citizens applied for Permanent Residence – a system that runs until 29 March 2019 – has left a legacy of mistrust among many EU citizens in the UK.<sup>9</sup>

In order to build confidence in the new EU Settlement Scheme it is essential that EU citizens have speedy redress if they feel that they have been wrongfully refused. The Withdrawal Agreement Bill will give EU citizens the formal right to appeal against a decision made under the EU Settlement Scheme, initially through the tribunal system, which falls under the remit of the Ministry of Justice. The Home Office will also bring in an internal administrative review process, which aims to address mistakes and prevent those who have been refused pre-settled or settled status needing to appeal to a tribunal. Many categories of non-EU citizens can ask for an administrative review if they have been refused a visa. But many of those who have seen this process in operation – including the Independent Chief Inspector of Borders and Immigration - have concluded that the administrative review process is far from satisfactory.

**The Home Office should put in place a high-quality administrative review process for the EU Settlement Scheme, setting a 10-working-day target for making decisions. This will require extra staff in the unit that**

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**processes administrative reviews, who will need training. Applicants need a process that is easy to navigate and they should be given much greater guidance than do current applicants for administrative review. The immigration exemption in the Data Protection Act 2018 should be repealed, giving EU citizens access to the information held on them that has been used to make a decision.**

#### v) Make EU citizens a British citizenship offer

Prior to November 2015, EU citizens with five years' continuous residence in the UK could be granted British citizenship, providing they had met the good character and English language requirements and passed the Life in the UK citizenship test. After this date, rules changed and EU citizens were obliged to have 12 months' additional Permanent Residence in the UK on top of five years' continuous residence, as well as meeting the other requirements. This change was accompanied by increases in the costs of applying for British citizenship, with the fee for most adults now set at £1,330<sup>10</sup>, while it costs the Home Office an average of £272 to process applications for citizenship. This has meant that a process that is meant to help integration has been made more difficult, with high costs putting it out of reach for many families. The requirement to apply twice to the Home Office within a 12 month period has added to the administrative burdens on this government department.

**The Government should make a citizenship offer to EU citizens who arrive in the UK before 31 December 2020. If they have five years' continuous residency and meet the other requirements for British citizenship – good character, English language and knowledge of life in the UK – they should be offered citizenship at a reduced cost of £300 and without the need to have 12 months' Permanent Residence or Settled Status.**

Not all EU citizens will want, or are able, to become British citizens as the law in some EU countries forbids dual nationality. But this one-off proposal cuts bureaucracy, encourages integration and sends out an important message of welcome to EU citizens themselves, the communities where they live and the UK's future trading partners.

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# I. The current system for EU citizens and what will replace it

## i) The current system

Article Six of EC Directive 2004/38/EC - commonly known as the freedom of movement directive - gives EU citizens and their immediate family members the right to reside in another EU country for an initial three month period. Article Seven of the same directive gives them further rights of residence in an EU country, providing they fulfill certain conditions. EU citizens can remain in the UK and be termed a 'qualified person' under EU and UK law if they are (i) in employment; (ii) self-employed; (iii) job-seekers, although they lose their right to reside as job-seekers after 91 days; (iv) students; or (v) self-sufficient persons. The policy enshrined in this directive was incorporated into UK law through the Immigration (European Economic Area) Regulations 2006, legislation which will be repealed after Brexit.

The EEA Agreement, signed in 1992, enables Iceland, Lichtenstein and Norway to participate in the Single Market and commits them to the same rules regarding freedom of movement as EU countries. Switzerland is not a member of the EEA, but signed a bilateral agreement with the EU in 1999 that also allows for freedom of movement within 32 European states for qualified persons.

EEA+ citizens who are qualified persons can apply to the Home Office for a Registration Certificate that shows they are legally resident in the UK. This costs £65<sup>11</sup>. While there were 169,154 applications for registration cards in 2017 - up by 56% on the previous year<sup>12</sup> - there are few benefits in having such a document, as passports are usually sufficient to satisfy the immigration checks required by landlords and employers.

There is a stronger merit in applying for Permanent Residence: 12 months' Permanent Residence is needed before a person can apply for British citizenship. Similar to Indefinite Leave to Remain (ILR), a status granted to non-EU citizens, Permanent Residence gives people settled status, enabling them to live in the UK permanently without time limits on their stay. However, Permanent Residence differs from ILR in a number of significant ways:

- Permanent Residence is an immigration status that specifically derives from the UK's membership of the EU.
- Applicants for Permanent Residence do not need to pass the citizenship test and meet the English language criteria, whereas applicants for ILR need to do so.

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- There is no salary threshold for Permanent Residence, but those who are applying for ILR after a Tier 2 visa have to meet a £35,000 salary threshold unless they are on a shortage occupation list, or are exempted workers.
  - Permanent Residence for EEA+ citizens does not become invalid if a person leaves the country for more than two years, whereas a two-year period of absence from the UK for those with ILR means that a person loses their right to settlement.
  - Permanent Residence is much cheaper than ILR, costing the applicant £65 compared to £2,389 for most categories of ILR<sup>13</sup>.

Applications for Permanent Residence increased sharply in 2016 (Figure 1). Much of this increase was due to uncertainty felt by EU citizens after the referendum. The requirement, introduced in November 2015, to have 12 months' Permanent Residence before an EEA+ national could apply for British citizenship also contributed to the increase in applications for Permanent Residence.

This spike in applications, alongside the efforts of campaigning groups such as The 3Million, drew attention to the high proportions of refusals among those who applied for Permanent Residence (Figure 2). Since 2006, there have been 84,529 applications for Permanent Residence refused or declared invalid. In the three months from April to June 2018 alone, nearly a quarter (24.4%) of the 28,120 applications for Permanent Residence were refused or declared invalid by the Home Office<sup>14</sup>, with 6,884 people affected.

Reasons that account for the high rate of refusal include incomplete documentation, an absence or breaks in comprehensive sickness insurance<sup>15</sup> or previous failures to sign on with the Workers Registration Scheme<sup>16</sup> or Workers Authorisation Scheme covering EU8 and EU2 citizens respectively<sup>17</sup>. An application form that is 85 pages long, alongside a lack of Home Office guidance on the documentation that is needed, has undoubtedly contributed to the high rate of refusal.

Given that this system will remain in operation until 29 March 2019, an immediate moratorium on Home Office refusals of Permanent Residence applications would be desirable. Referring those who would be refused into the EU Settlement Scheme would stop some of the personal distress and also reduce the administrative burden placed on the Home Office.

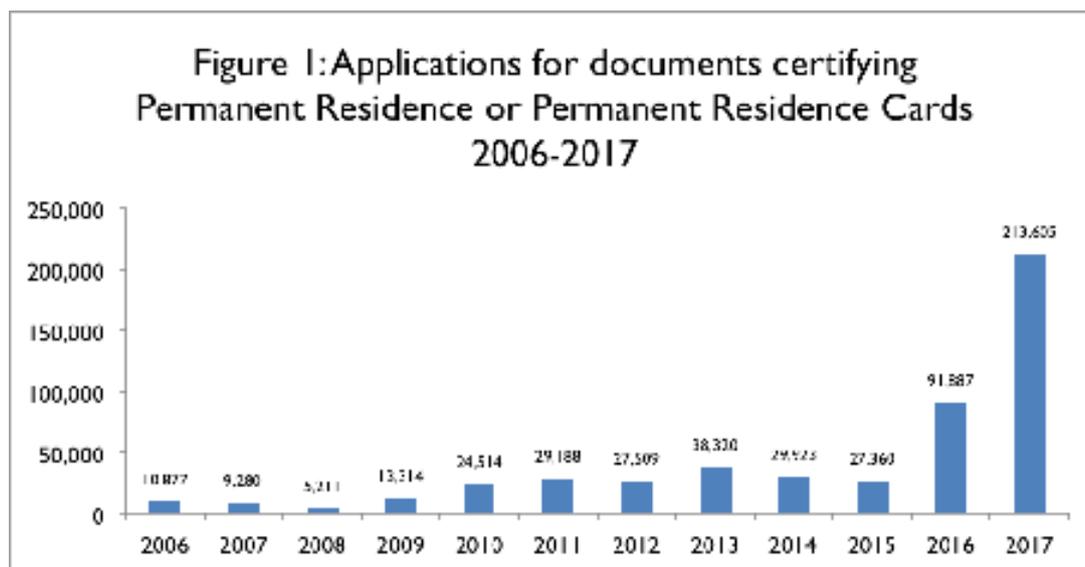
## The appeal process

The law currently allows EU citizens to appeal against a Home Office decision to refuse Permanent Residence - as well as decisions to detain and deport them. Appeals are lodged online, although EU citizens can request an oral hearing in front of a First Tier Immigration and Asylum Tribunal<sup>18</sup>. A tribunal judge can also request that an appellant appears in person.

In the financial year 2017-2018 there were 45,340 appeals to the First Tier Immigration and Asylum Tribunal, of which 8,995 (19.8%) were EEA free movement cases<sup>19</sup>. The average length of time it took these EEA appeals to clear was 50 weeks, up from 46 weeks in the financial year 2016-2017. Civil society groups working with EU citizens argue that this is an unacceptable delay.

## A legacy of mistrust

The unnecessarily burdensome application process for Permanent Residence, alongside the high rate of refusal, has contributed to mistrust of the Home Office among many EU citizens, as well as anxieties about how the future system will operate. Given this legacy, it is essential that the Government is open and transparent so as to build trust in the new system. Although a new body – the Independent Monitoring Authority – will eventually be set up to protect citizens’ rights, broader mechanisms of accountability are needed, alongside continued political will to make the new system work.



## ii) The new system

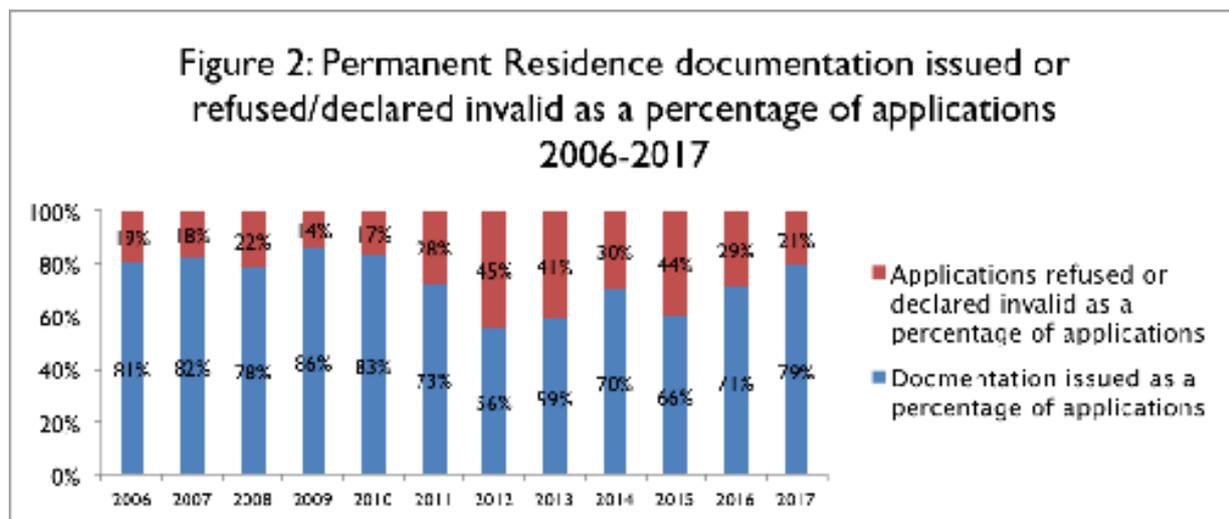
The UK Government will replace the present immigration system covering EU citizens after Brexit with the streamlined EU Settlement Scheme. It is intended that this is operational in early 2019 in preparation for the UK leaving the EU on 29 March 2019.

EU citizens and their family members who, by 31 December 2020, have five years’ continuous residence<sup>20</sup> in the UK will be eligible for ‘**settled status**’. This will allow them to stay in the UK indefinitely.

EU citizens and their family members who arrive in the UK by 31 December 2020, but will not have been continuously resident for five years, will be eligible for ‘**pre-settled status**’, enabling them to stay until they have reached the five-year threshold for settled status.

**Close family members**<sup>21</sup> living overseas will still be able to join an EU national who arrived by 31 December 2020, providing that the relationship existed on that date and continues to exist when that person wishes to come to the UK. Future children are also protected. Family members whose future status is guaranteed also include **non-EU nationals** whose presence in the UK is set out in the 2004 freedom of movement directive, or whose residence rights are protected in the draft Withdrawal Agreement<sup>22</sup>.

The Government has also decided to offer pre-settled and settled status, under the same terms, to **non-EU family members of British citizens** whose present status derives from ‘Surinder Singh’ case law<sup>23</sup>.

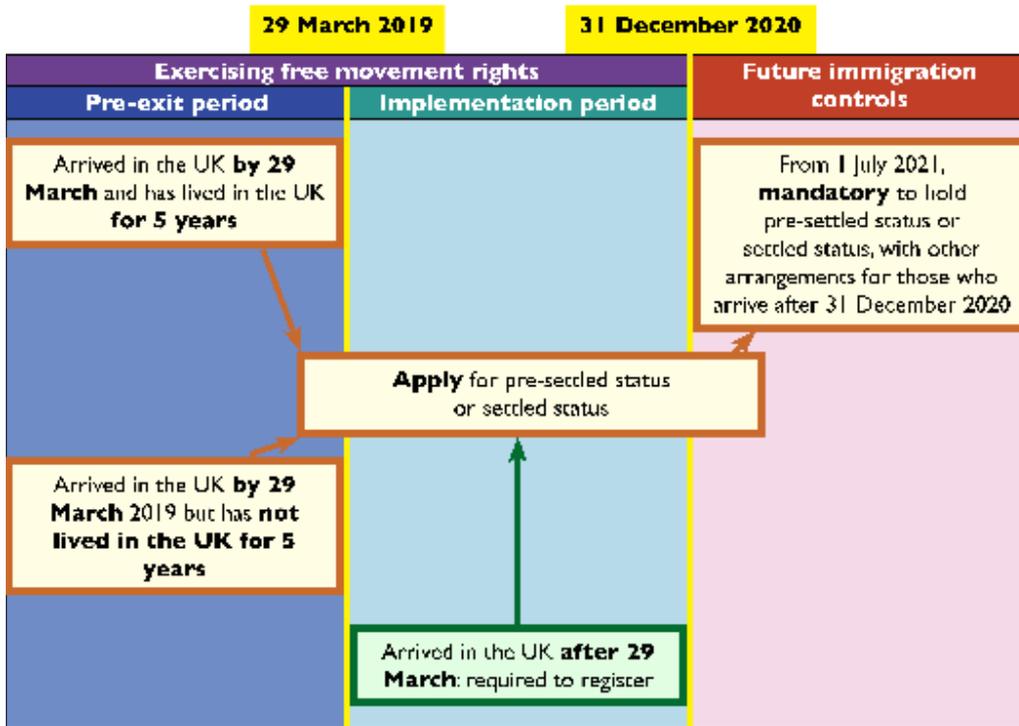


Source: Home Office quarterly immigration statistics, table ee\_02.

Although 31 December 2020 has been set as the cut-off date for qualifying for pre-settled or settled status, there is a **six-month grace** period to apply to the EU Settlement Scheme, with EU citizens allowed to submit their applications until 30 June 2021. After this date it will be mandatory to hold pre-settled or settled status, with those EU citizens previously granted Permanent Residence obliged to re-apply.

Pre-settled and settled status will enable EU citizens and their close family members to travel in and out of the UK, work in the UK, use the NHS, enrol in education and access benefits and pensions in the same way as UK nationals. Settled status remains valid if an EU national spends time living outside the UK, unless that person is absent for a continuous period exceeding five years.

Figure 3: The EU Settlement Scheme



## The EU Settlement Scheme

The operation of the new system will be set out in the Immigration Rules, some of which have already been laid before Parliament. Using such secondary legislation allows the Government to start work on the new system. Eventually, the rights of EU citizens will be incorporated in primary legislation through the proposed EU (Withdrawal Agreement) Bill<sup>24</sup> which is likely to be published in January 2019. This legislation will also cover issues such as the mutual recognition of professional qualifications and coordination of social security systems.

The Withdrawal Bill will also put in place appeal rights and set up a non-departmental public body, the Independent Monitoring Authority (IMA) to oversee EU citizens' rights. The IMA will come into operation in January 2021 and will have the power to receive complaints from citizens and take appropriate action if they believe there has been a failure on the part of the authorities to implement the terms of the Withdrawal Agreement. Similar to the Equality and Human Rights Commission, it will have the power to hold formal inquiries and launch legal action if it believes that there have been systematic failures with the EU Settlement Scheme. The IMA will present an annual report to the UK Parliament and to a joint UK-EU Committee.

Until the Independent Monitoring Authority is set up, the implementation of the new scheme will be monitored by the Independent Chief Inspector of Borders and Immigration, who will present a report on the EU Settlement Scheme early in 2019.

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The UK Government has come to an agreement with Iceland, Lichtenstein, Norway and Switzerland, and it is intended that guarantees offered to EU citizens will also apply to the citizens of these countries.

The Government will guarantee the status in the event of the UK leaving the EU without a deal<sup>25</sup>. The operation of the EU Settlement Scheme will remain the same. However, in a no deal scenario this guarantee will only be extended to those who have arrived in the UK by 29 March 2019. There would be no transition period. Accountability mechanisms may also be different, as the Independent Monitory Authority would not report to a joint UK-EU committee. In a no deal scenario there is also less political pressure to prioritise extra Home Office resources.

## How the application process will work

The streamlined digital application process is already up and running, online and through a smartphone app. In future, applicants without smartphones or computers will be able to fill in their application online in public libraries and at special contact centres. The Home Office is also considering giving extra face-to-face or other assistance to vulnerable groups such as elderly care home residents.

Applicants for pre-settled or settled status will be required to answer a small number of questions which will verify their **identity, eligibility** and their **suitability**, ie good character.

**Identity:** applicants will be required to verify their identity and nationality through their passports or identity cards. They will also have to upload their facial image so that this can be checked against the biometric data in their passports or identity cards.

**Eligibility:** applicants will have to show that they are resident in the UK by providing their National Insurance number, which will be checked against HMRC or DWP records. These records will verify residence in the UK and enable EU citizens applying for settled status to show five years' 'continuous residence'. Other documentation that verifies eligibility can also be provided where HMRC data is unable to show this.

**Suitability:** applicants will be asked to declare any criminal convictions. These will be checked against UK databases and overseas records, where appropriate. EU citizens with serious and unspent criminal convictions will be refused pre-settled and settled status. The Home Office will also refuse EU citizens who have (i) been subject to deportation or exclusion orders, mostly foreign national prisoners or (ii) EU citizens whose presence in the UK has been judged not to be conducive to the public good<sup>26/27</sup>. Immigration rule changes published in July 2018<sup>28</sup> also propose to exclude EU citizens who have been subject to a removal decision from the UK on the grounds that they were not fulfilling the criteria outlined in the freedom of movement directive to allow them to remain in the UK as a 'qualified person'.

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The price of settled status will be £65 for an adult and £32.50 for a child, although people who have already been granted Permanent Residence will face no extra charge.

It is intended that most applicants will receive their decisions quickly, within a two-week period unless additional checks are needed. There are no plans to issue EU citizens with a certificate or the biometric residence cards held by migrants from outside the EU. Instead, EU citizens will receive online confirmation of pre-settled or settled status which they can print. Non-EU citizens who are family members of EU citizens will, however, receive a biometric residence card.

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## 2. Barriers to securing settled status

With up to 3.5 million cases, the registration of EU citizens is one of the largest tasks the Home Office has faced. Any programme of this scale inevitably faces many challenges. The Home Office has invested in technology that will enable most cases to be processed rapidly. It is working with local authorities, employers and civil society organisations to make sure that everybody who wants to remain in the UK knows that they need to register for pre-settled or settled status. Both the Home Secretary and officials have stated that the Government's 'default' position would be to grant pre-settled or settled status, not to refuse. It is anticipated that the majority of EU citizens should be able to navigate the new system with relative ease.

Nevertheless, some EU citizens may face a range of barriers that effectively exclude them from a secure immigration status. They may not register, perhaps because they do not realise they need to do so, or because perhaps they fear being rejected. Other EU citizens may struggle to produce the evidence required or to navigate the system. These barriers are set out below, along with suggested remedies.

Should just 5% of those who need settled status fail to apply or be refused, this adds up to 175,000 people in the UK with an insecure or no immigration status. This is a highly undesirable situation, for the individuals themselves, the communities in which they live, for councils and for central Government which needs the public to have confidence in the immigration system. It is essential that the numbers of EU citizens who are excluded by the new system is kept to a minimum.

## i) Information barriers

EU citizens do not apply to the EU Settlement Scheme because they do not hear about it or do not realise that it applies to them and will be a mandatory requirement. Evidence from civil society and faith groups suggests that there is still a great deal of misunderstanding about the EU Settlement Scheme<sup>29</sup>.

Estimated numbers affected	Risk	Remedies
Up to 1 million people may be at risk of having incorrect or no information about the EU Settlement Scheme.	Medium.	<p>Population and network mapping.</p> <p>Consultation with employers, councils, faith and civil society groups.</p> <p>Targeted and systematically-planned information campaigns up to May 2021.</p> <p>Translation of Home Office guidance and community advice material.</p> <p>Ongoing intelligence and monitoring.</p>

### Groups at risk

These include:

- Children of EU citizens whose parents believe that they are covered by parental documentation. Estimates drawn from the Annual Population Survey suggest that there were 727,000 children who are EU citizens living in the UK with their EU citizen parents<sup>30</sup>.
- Children and adult EU citizens who were born in the UK but have not registered as British citizens. They may mistakenly believe that their birth in the UK protects them. Estimates suggest that in 2017 there were 323,000 UK-born non-Irish EU citizens living in the UK<sup>31</sup>.
- Elderly EU citizens who are long-term residents in the UK, who may believe that the settled status scheme applies to more recent arrivals or may not understand the scheme because of mental incapacity. Estimates suggest that in 2017 there were 284,000 EU citizens in the UK who had been resident for more than 20 years. Some of this group have Indefinite Leave to Remain, but there are advantages in them applying for settled status if they want to spend time living outside the UK.
- EU citizens who have already been granted Permanent Residence but do not know that they will need to reapply for settled status. Between 2004 and 2017 some 401,519 EU citizens were granted Permanent Residence in the UK.

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Although not all of them will have remained in the UK and others will have gone on to secure British citizenship, it is likely that there are 300,000 EU citizens with Permanent Residence living in the UK.

- Non-EU family members of EU citizens. Some 33,092 EEA Family Permits were issued to non-EEA family members entering the UK in 2016 alone, with nearly 283,000 such permits issued between 2005 and 2016. This group mostly comprises non-EU family members – usually spouses and dependent children – whose rights derive from the 2004 freedom of movement directive. There is also a much smaller group which comprises non-EU children or carers of EU citizens whose rights of residence derive from wider EU law – not the freedom of movement directive – but were protected in the draft Withdrawal Agreement<sup>32</sup>.
- Non-EU family members of British citizens whose presence derives from *Surinder Singh* case law<sup>33</sup>. This is a very small group of people from a diverse range of countries, with just 165 people entering the UK through this route in 2013<sup>34</sup>.

Those with limited literacy or fluency in English may also struggle to understand the requirements of the EU Settlement Scheme. Estimates from the 2011 Census suggest that there were 288,000 EU citizens who reported not speaking English well or at all, although this figure is likely to have increased since then, with the arrival of low-skilled migrants from Bulgaria and Romania. Literacy rates and fluency in English among eastern European Roma adults is lower than among their non-Roma co-nationals, particularly among those from Romania<sup>35</sup>.

Isolated EU citizens who have fewer social links with co-nationals are also at risk of not hearing about EU Settlement Scheme or misunderstanding its requirements.

A specific group who may have different social and work networks to most EU citizens are ‘onward’ or secondary migrants from the EU. These are people born outside the EU who have gained the nationality of another EU country before moving on to the UK. They include Somalis with Dutch, German and Swedish passports, Latin Americans with Spanish and Portuguese passports and Sri Lankans (Tamils) with German and French passports (see Table Two). As members of minority ethnic groups, their social networks may be different from their co-nationals. It is essential that information campaigns reach them.

Table Two: Annual Population Survey estimates of migrant stock by country of nationality and country of birth: EEA+ citizens, January-December 2017

Country of nationality	Total Population Resident in UK, 2017	Onward Migrants - Numbers born outside country of nationality or UK
Poland	1,021,000	7,000
Romania	411,000	15,000
Italy	297,000	75,000
Portugal	235,000	87,000
Lithuania	199,000	<5,000
Spain	182,000	36,000
France	181,000	27,000
Germany	154,000	29,000
Latvia	117,000	<5,000
Hungary	98,000	5,000
Netherlands	97,000	37,000
Bulgaria	86,000	<5,000
Slovakia	82,000	<5,000
Greece	70,000	13,000
Czech Republic	49,000	<5,000
Sweden	43,000	9,000
Denmark	32,000	8,000
Belgium	25,000	<5,000
Cyprus (European Union)	19,000	<5,000
Austria	18,000	5,000
Finland	16,000	<5,000
Norway	12,000	<5,000

## Remedies

Information about the EU Settlement Scheme is available – in English – on the Home Office website, with plans in place to translate it into 23 EU languages. This department is working with employers, local authorities and civil society organisations to make sure that information about the scheme reaches as many EU citizens as possible. The Home Office has developed a toolkit and package of advice for employers. It has also recently made up to

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£9 million available to civil society organisations to enable them to help vulnerable and at-risk EU citizens and their family members who need to complete an application. The Mayor of London and some local authorities have started to put out publicity materials or have announced that they plan to do so, once the EU settlement scheme is fully operational. At the time of writing, however, councils' involvement in publicising the scheme has been patchy.

Many EU citizens already know about the EU Settlement Scheme. The challenge is to get to those groups listed above who may be misinformed about the new requirements or have no information at all. It should be noted that the Government already has much experience of getting information to hard-to-reach migrant and minority groups. It may be worth reviewing the strategies used by the Department for Education in 2015 when it undertook an information campaign to encourage the uptake of free early education, targeting EU migrant workers, Somalis and south Asians among others. Multiple routes to hard-to-reach groups were used and the Department for Education also advertised the free early education scheme by using the online, print and broadcast media of relevant minority ethnic and migrant communities. Drawing from what was learned in this information campaign, it is recommended that:

- The Home Office needs to systematically map the civil society organisations, faith groups, cafes, shops and other networks of EU citizens, and make sure that information, perhaps in poster form, reaches the organisations and places that EU citizens visit.
- Information campaigns must be systematic and sustained, with an extra push in Spring 2021 when the deadline for applying for pre-settled and settled status approaches.
- Steps must be taken to make sure that local authorities support the efforts of the Home Office. At the time of writing local authority responses are patchy, with some conducting information campaigns and others inactive.
- Publicity about the EU Settlement Scheme must be translated into all the relevant languages, with this process also needing coordination.
- Multiple routes to hard-to-reach groups are needed: at ports of entry, through DWP and HMRC contact, through employers, local authorities, schools, Citizens Advice, faith groups, shops and cafes and through minority ethnic media.

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## ii) Compliance barriers

EU citizens may not apply to the EU Settlement Scheme because they fear rejection.

Estimated numbers affected	Risk	Remedies
Up to 200,000 people.	Initially high, but once significant numbers of EU citizens receive status some of these concerns may be alleviated.	Home Office contact with those previously refused Permanent Residence.  Continued Home Office engagement with councils, advice agencies, faith and civil society organisations.  Clear Government information on the threshold for rejection because of criminal convictions.  Resources are made available for written information and face-to-face advice services for groups who may be reticent about applying.

### Groups at risk

Those at risk include the 85,000 people who have previously been refused Permanent Residence or had their applications declared invalid<sup>36</sup>.

The Government has made clear that those with serious criminal convictions and people about whom there are serious and pressing security concerns will not be granted pre-settled or settled status. Applicants will have to declare criminal convictions which will be checked against existing databases. There are already immigration rules and clear sentencing thresholds that bar entry or the granting of citizenship and indefinite leave to remain for those with serious criminal convictions<sup>37</sup>. However, organisations working with eastern European migrants report concerns that people with minor and spent criminal convictions, cautions or those who have been guilty of civil offences may be reluctant to apply for fear of refusal.

Immigration Rule changes published in July 2018<sup>38</sup> also propose to refuse EU citizens who have been subject to a removal decision from the UK on the grounds that they were not fulfilling the criteria outlined in the freedom of movement directive to allow them to remain in the UK as a *'qualified person'*. Until a High Court case in December 2017, many of the EU citizens who have been

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removed have been homeless rough-sleepers<sup>39</sup>. This legacy may have created some anxiety among EU citizens who have been homeless during their time in the UK, not just rough sleepers but a much larger group of people who have lived as ‘sofa surfers’ in precarious accommodation.

Other anxieties are being voiced too, with some EU citizens concerned that cash-in-hand working will lead to their being refused. The above concerns, alongside language difficulties, may also put the most vulnerable EU citizens at risk of unscrupulous or incompetent immigration ‘advisers’ who charge their clients large sums of money for poor quality information<sup>40</sup>.

## Remedies

There are a number of ways that those who fear rejection can be encouraged to apply for pre-settled and settled status. The Home Office should consider providing information to those who have previously been refused Permanent Residence, in order to encourage re-application.

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### iii) Navigation barriers

Applicants find the process too hard to navigate unaided and fail to apply for pre-settled or settled status.

Estimated numbers affected	Risk	Remedies
20,000 people	Low due to measures put in place by the Home Office.	Piloting with vulnerable groups. Ongoing consultation with faith and civil society organisations. Translation of guidance material. Funding for targeted advice services, including for agricultural workers. Access and assistance points in local authorities.

#### Groups at risk

Although overall numbers are small, there are some EU citizens who will find the application process difficult, particularly those with low levels of literacy, limited English language fluency, limited IT skills, slow broadband or lack of access to IT hardware including a smart phone with a suitable contract. Anxieties about the application process may force some EU citizens to turn to unscrupulous immigration advisers.

It should be noted that 19% of those in the first pilot scheme (just over 1,000 people in 12 NHS Trusts and three universities) had difficulties with some of the terminology in the application process and 9% had difficulties inputting their names, sometimes due to different naming conventions.

#### Remedies

The Home Office is addressing many of the above issues, using evidence from its two pilots. It has made £9million available to civil society organisations to help vulnerable clients, and is also enabling EU citizens to submit their applications online in designated public libraries and at special contact centres. The Home Office has suggested that it will operate a telephone helpline, although no details have been made public about this at the time of writing. It has also committed to translating the online guidance for the EU Settlement Scheme into the 23 other official languages of the EU. This commitment must be honoured as soon as possible. It is also essential that there is ongoing consultation

with civil society organisations working with vulnerable groups, as well as evaluation of how libraries and special contact centres are used by those who might struggle with their application.

#### iv) Evidence barriers

EU citizens struggle to prove their residence in the UK, leading to their application being rejected or delayed.

Estimated numbers affected	Risk	Remedies
60,000 people	Medium	<p>Identification of vulnerable groups.</p> <p>Continued Home Office engagement with advice agencies, faith and civil society organisations, particularly those working with vulnerable groups.</p> <p>Agreed Home Office procedures in Immigration Rules for frontier workers and groups such as children in care and victims of domestic abuse, whose legal presence in the UK relies on someone with whom they are no longer in contact.</p> <p>Agreed Home Office performance indicators covering the time taken to process complex cases.</p> <p>Sufficient Home Office staff to process more complex applications.</p> <p>Easy access to redress should applications for settled status be refused.</p> <p>Information campaign to highlight the risks of cash-in-hand work.</p>

#### Groups at risk

Even with a streamlined process a range of personal circumstances may mean that some people struggle to provide the evidence of residency that is needed to secure settled status. Those at risk include full-time carers who do not undertake paid

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work and have no HMRC paper trail. EU citizens who are self-sufficient or have been economically inactive may also struggle to prove their residency, particularly if they have lived in temporary and precarious forms of housing. Others at risk are children in care and family members separated from the EU citizen who acts as the ‘qualified person’ under EU and UK law.

Frontier workers are another group who may struggle to prove their residency. These are people who live in the UK but work in another EU country – often Ireland, France or Belgium. ONS and Irish Census data suggests that about 500 people live in Northern Ireland but work south of the border<sup>41</sup>. The draft Withdrawal Agreement protects frontier workers but at the time of writing, there has been no Home Office announcement of how their application for pre-settled or settled status will be processed. It may not be possible for them to use the streamlined digital application processes.

A further group who may struggle to provide evidence are those who have undertaken ‘cash in hand’ work and have no HMRC records. Victims of trafficking and those who have worked for unscrupulous employers may also struggle to provide the evidence needed to show residency in the UK because there is no corresponding HMRC data.

## Remedies

Many of the remedies are set out above and include continued Home Office engagement with organisations working with vulnerable groups, procedures in the Immigration Rules for groups such as children in care, victims of domestic abuse and those whose legal presence in the UK relies on someone with whom they are no longer in contact.

While the Home Office has taken on additional staff to work on the EU Settlement Scheme, it is essential that they are retained and that the Home Office puts in place performance indicators covering the time taken to process complex cases. At the time of writing there are still concerns that insufficient staff are in place. In November 2018, Home Office officials told the House of Commons Home Affairs Committee that the department required 4,100 people to work on Brexit, but as of 13 November it had only recruited 2,662 of them<sup>42</sup>.

## v) Implementation barriers

The Home Office system experiences technical difficulties, names do not match official records and delays or mistakes are made in complex cases leading to individual hardship and a loss of confidence in the EU Settlement Scheme.

Estimated numbers affected	Risk	Remedies
150,000 people <sup>43</sup>	<p>Large scale malfunction – low risk.</p> <p>Mistakes and delays for those with complex cases – medium risk.</p>	<p>Prioritisation and sufficient initial resources put into the system.</p> <p>Learning from pilot schemes.</p> <p>Updates to stakeholders and transparency.</p> <p>Translated and tailored guidance on different spelling and naming conventions.</p> <p>Clarity on additional evidence that may be needed.</p> <p>Agreed Home Office performance indicators covering the time taken to process complex cases.</p> <p>Sufficient Home Office staff to process more complex applications.</p> <p>Monitoring: by the Home Office, the Chief Inspector of Borders and Immigration/Independent Monitoring Authority, Parliament, media and civil society.</p> <p>Easy redress and a responsive appeals process with appellants given access to the Home Office data held on them.</p>

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## Groups at risk

As already noted, there has been considerable investment in an IT system and the Home Office has employed more staff to deal with casework<sup>44</sup>. This and the decision to pilot the EU Settlement Scheme means that the risk of large scale IT malfunction is low.

The evaluation of the first pilot identified problems matching some applicants' names with official records, sometimes because spellings and names on passports did not match those held by HMRC. Different naming conventions and the use of diacritical marks such as the German *umlaut* in personal names may lead to applications needing manual processing.

More complex cases may require the intervention of 'human' case workers. This group may include EU citizens who cannot easily prove their residence or those whose details cannot be matched against existing HMRC records. Over 4% of EU citizens who took part in the first pilot of the EU Settlement Scheme - covering 1,053 people working in 12 NHS trusts and staff and students at three Liverpool universities - found their data could not be matched against existing Government records. Scaled up, this would amount to 154,000 people across the UK.

## Remedies

Many of the remedies are set out above. It is essential that the Home Office employs sufficient staff to process complex cases. It also needs to set and make publicly available performance indicators for the EU Settlement Scheme, for example setting targets for the time it should take to process applications. Performance indicators already exist in other areas of immigration and are published in the form of Migration Transparency Data<sup>45</sup>.

Where the Home Office has made errors it is essential that individuals have redress, ideally without the need to appeal to a First Tier Immigration and Asylum Tribunal. The Home Office has stated that it intends to put in place an internal administrative review process, enabling errors to be corrected and saving the need for an immigration appeal<sup>46</sup>. At the time of writing, however, no details have emerged about the review process.

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## vi) Qualification barriers

The criteria that are set for granting settled status exclude significant proportions of individuals, other than those with serious and unspent criminal convictions.

Estimated numbers affected	Risk	Remedies
Unknown	Low	<p>An agreed Home Office threshold for rejections, above which an investigation is triggered.</p> <p>Data transparency.</p> <p>Early monitoring by the Home Office, the Chief Inspector of Borders and Immigration/Independent Monitoring Authority, Parliament (including the Home Affairs Committee), media and civil society.</p> <p>Easy redress, with a responsive appeals process in which appellants are given access to the data held on them.</p>

## Groups at risk

Both the Home Secretary and Home Office officials have stated that the Government's 'default' position would be to grant pre-settled or settled status, not to refuse. Nevertheless, organisations working with EU citizens are concerned that some EU citizens will have their applications rejected by the Home Office because the criteria for residence are set too high. These concerns are partly a legacy of the high rate of refusal under the previous system for granting Permanent Residence. A further risk is that instead of an outright refusal, an applicant with the required five years' residence is granted pre-settled status, with no resolution of their case.

## Remedies

Most of the remedies are set out above. The Home Office needs to set a threshold percentage for rejections of applications for settled status and if this is exceeded it should trigger an investigation to understand the reasons for the high refusal rate.

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## vii) Exclusion barriers

There is a risk that some people are overlooked or excluded from the EU Settlement Scheme, or that there are delays in deciding how to administer their applications.

Estimated numbers affected	Risk	Remedies
Very small numbers	Medium	An early announcement on the rights of ‘Zambrano carers.’  Make changes to immigration rules to prevent individual hardship and costly legal challenge.

### Groups affected

There is a lack of clarity about the rights of ‘posted workers’: EU citizens who carry out their work in one EU state while being formally employed by another. A French national employed by a Paris-based IT company but posted to work in the UK would be an example of a posted worker.

There are small numbers of non-EU citizens who have the right to live in the UK under wider EU law, rather than the 2004 freedom of movement directive. Some of them have been protected in the draft Withdrawal Agreement, for example those living in the UK as a result of the *Chen*, *Ibrahim* and *Teixeira* cases<sup>47</sup>. At the time of writing, the process for how these groups might apply to the EU Settlement Scheme has not been announced by the Home Office.

There are also a few non-EU nationals living in the UK and currently protected by wider EU law, but whose rights were not protected in the draft Withdrawal Agreement, in particular, non-EU nationals living in the UK as a result of the *Ruiz Zambrano* case<sup>48</sup>. The Home Office has yet to announce publicly whether the EU Settlement Scheme will apply to them and how people in this group can make their application.

### Conclusions

The two pilots of the EU Settlement Scheme show that the majority of EU citizens will find the streamlined digital application process easy to navigate. Based on existing data it is likely that about 70% of EU citizens in the UK will have correct information about the EU Settlement Scheme and will be able to submit their applications with ease. But about 30% of EU citizens may struggle with the new system and risk being left out, for a variety of reasons which relate both to their individual circumstances and the way that the EU Settlement Scheme operates. Simple interventions, set out above and put in place now, would significantly reduce this number.

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## 3. Making the EU Settlement Scheme work better

As well as making sure that all those eligible to remain in the UK under the EU Settlement Scheme can do so, there are some policies that the Government could enact that would make the EU Settlement Scheme work better - for EU citizens themselves, for employers, for the Home Office and for wider society.

### An efficient and easy-to-navigate system of redress

The Government has announced that it will put in place both an administrative Home Office review process and formal appeal procedures for EU citizens who want to contest a refusal of pre-settled or settled status<sup>49</sup>. The administrative review process can be put in place without the need for primary legislation but, at the time of writing, has yet to be launched. The Withdrawal Agreement Bill will legislate for the appeals system, which will not come into operation until after 29 March 2019. It is particularly important that the administrative review process is speedy and easy to navigate.

The Withdrawal Agreement Bill will give EU citizens the formal right to appeal against a decision made under the EU Settlement Scheme, initially through the tribunal system, which falls under the remit of the Ministry of Justice. Although appeals can be lodged online and resolved without the appellant attending in person, there are currently long delays in clearing cases lodged with Immigration and Asylum tribunals, currently 50 weeks to clear an EEA free movement case in a First Tier Immigration and Asylum tribunal<sup>50</sup>. Any increase in the number of appeals will inevitably increase such delays, a likely scenario given the size of the EU Settlement Scheme.

Some refusals of pre-settled or settled status may arise from Home Office mistakes, rather than a disputed interpretation of the law that requires a tribunal judge to make a decision. In such circumstances, it is welcome that the Home Office has decided to offer administrative reviews of decisions made under the EU Settlement Scheme. There is some precedent for this, as non-EU applicants for visas are allowed to ask for an administrative review<sup>51</sup> or a reconsideration of a decision made by the Home Office<sup>52</sup>. But the operation of the current administrative review system is far from adequate. The process is difficult to navigate without specialist advice and without access to the information on which the Home Office decision has been made. The Independent Chief Inspector of Borders and Immigration 2016 report on administrative reviews found that *“there was significant room for improvement in respect of the effectiveness of administrative review in*

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*identifying and correcting case working errors, and in communicating decisions to applicants.*<sup>53</sup> There was a re-inspection of administrative reviews in 2017; although the Chief Inspector noted improvements, the 2017 report also concluded that “*the Home Office was not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms.*” It was noted that Home Office staff processing the reviews had very little training and that their recording of decisions was inadequate<sup>54</sup>.

It is essential that the Home Office invests in a high quality administrative review process for the EU Settlement Scheme. This will require extra staff in the unit that processes administrative reviews, who will need training. Applicants need a process that is easy to navigate and they need to be given much greater guidance than current applicants for administrative review. A 10-working-day target should be set for processing an administrative review. EU citizens must also have access to the information about them, held by the Government, that has been used to make immigration decisions. Currently, this is not possible as the Data Protection Act 2018 included an immigration exception which prevents people from accessing their Home Office Immigration data. Investing in this first line of redress will limit the need for EU citizens to appeal to Immigration and Asylum tribunals.

## Simplify the Immigration Rules

Although the rights of EU citizens will be protected in the EU (Withdrawal Agreement) Bill, the detail of the system will be set out in the Immigration Rules. Already, in July 2018, Immigration Rules on the EU Settlement Scheme have been accepted by Parliament. As the EU Settlement Scheme is rolled out and the administrative review and appeal systems are put in place, further changes to the Immigration Rules will be laid before Parliament.

Immigration Rules are statutory instruments that decide in practice whether and how a person can enter or remain in the UK, with the Immigration Act 1971 giving the Home Secretary powers to make and change Immigration Rules without needing to amend legislation.

Changes to the Immigration Rules are presented to Parliament by the Home Secretary or Immigration Minister. Parliament cannot amend the rules, only accept or reject them. In reality, most changes are accepted with little or no parliamentary debate, arguably because no explanatory notes - save the minister's oral clarification - accompany the changes. Moreover, the Home Office has made more than 5,700 changes to the Immigration Rules since 2010, with the Immigration Rules doubling in length over the same time period<sup>55</sup>. In such a situation it is near-impossible for most MPs to keep track of the changes and fulfil their role of scrutinising the work of the Government.

Similar legislative arrangements do not generally apply to other areas of government. As a consequence changes to education, health, transport and housing policy face much greater scrutiny,

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within and outside Parliament. Social security law is complex, and similar to immigration in that much everyday practice is set out in secondary legislation. However, the Social Security Advisory Committee (SSAC) was established in 1980 with the independent statutory remit of scrutinising draft secondary legislation on social security – with its advice available to both Government and Parliament. Its 14 members come from a wide range of professional backgrounds. Ministers are usually required to submit regulations in draft to the SSAC, which may decide to scrutinise them formally.

It is to be welcomed that the previous Home Secretary Amber Rudd referred the Immigration Rules to the Law Commission, with the aim of making them simpler and clearer. The Law Commission is expected to report sometime in 2019. But political accountability would be increased if MPs received Immigration Rule changes, with accompanying explanatory notes, in draft form prior to their laying before Parliament. In the long term, the Government might consider setting up an independent organisation that works like the Social Security Advisory Committee, with the aim of scrutinising secondary legislation on immigration. An alternative might be an expansion of the remit and membership of the Migration Advisory Committee. The Government should review the threshold for immigration policy change that requires primary legislation.

## Make EU citizens a British citizenship offer

Prior to November 2015, EU citizens with five years' continuous residence in the UK could be granted British citizenship, providing they had met the good character and English language requirements and passed the Life in the UK test. After this date, rules changed and EU citizens were obliged to have 12 months' additional Permanent Residence in the UK on top of five years' continuous residence and other requirements. This change was accompanied by increases in the costs of applying for British citizenship, with the fee for most adults now set at £1,330<sup>56</sup>, while it costs the Home Office an average of £272 to process an application for citizenship. Citizenship fees in the UK are far higher than in most other OECD countries, with the costs for adults being US\$725 (£570) in the United States, AU\$285 (£165) in Australia and €255 (£230) in Germany.

We recommend a change to citizenship policy so that EU citizens who arrive before 31 December 2020, acquire five years' continuous residency and meet the other requirements for British citizenship – good character, English language and knowledge of life in the UK – are offered citizenship at a reduced cost of £300 without the need to have 12 months' Permanent Residence or Settled Status. Such a policy would mean that people make only one application to the Home Office, rather than going through two processes, and will thus reduce administrative burdens on this government department<sup>57</sup>.

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Becoming a British citizen also supports integration, as applicants have to demonstrate they can speak English and know about life in the UK. It levels the playing field, giving migrants and their children access to the same rights as other citizens. Citizenship ceremonies also signal to wider society that newcomers are demonstrating their commitment to Britain and in turn are being welcomed as full members of their new communities.

Not all EU citizens will want or are able to become British citizens, as the law in some EU countries forbids dual nationality<sup>8</sup>. Both the UK and the relevant Governments need to consider how to deal with EU citizens who do want to take up British citizenship but also retain their existing nationality. But this one-off proposal would cut bureaucracy and send out an important message of welcome to EU citizens themselves, the communities where they live and the UK's future trading partners.

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## Conclusion – *Getting it right from the start: the prize for success and the costs of failure*

While the EU referendum decision has divided public opinion on many issues – and while most people are expecting changes to future migration from the EU – there is a clear consensus among the public and politicians that EU citizens already living here are welcome to stay, with their rights protected.

Securing the settled status of EU citizens living in Britain is an important test for the Home Office, and one that is important to get right from the very start. It is one of the biggest administrative challenges that this department has faced, requiring the processing of applications from some 3.5 million British residents.

Get this wrong, and the Home Office could potentially create a new ‘Windrush generation’ of people who came to the UK perfectly legally but are denied access to work, the NHS and the benefits of our welfare system. If just 5% of EU citizens fail to apply or to secure status, it would leave 175,000 people living in the UK without legal documentation. That would further undermine the trust of both migrants and the public alike in the Government’s ability to manage immigration competently and fairly – a theme that British Future heard frequently as we travelled the country talking to citizens for the National Conversation on Immigration. The Windrush scandal illustrated that people have a strong sense that the system should treat individuals fairly and humanely.

So it is important that the Home Office front-loads its efforts to make the system as effective as possible in communicating to EU citizens that they will need to apply for settled or pre-settled status and processing their applications when they do so. The majority of cases will be straightforward and the proposed system should manage them efficiently. But the Home Office will also need to devote resources to handling those cases that are not straightforward and providing redress when people feel their application has not been dealt with fairly. It will need to get this right, and be seen to do so, in order to overcome the legacy of mistrust borne from the Windrush scandal and the many refusals from a Permanent Residence scheme that was unwieldy and prone to administrative errors.

By getting this right the Home Office can demonstrate more than its administrative competence. It can show that with care and application, the Government can tackle the complex challenges inherent in managing immigration, in a way that is both robust and fair. It can also show that Britain outside the EU still welcomes and values the contribution of those EU citizens who have chosen to make Britain their home.

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# Notes and references

1. Citizens of the 27 remaining states of the EU. Irish citizens are unaffected by changes to the free movement directive 2004/38/EC because their residency rights derive from the Ireland Act 1949. Citizens of EEA countries (Iceland, Lichtenstein and Norway) and Switzerland will also lose free movement rights in the UK. This report will refer to EU citizens, although citizens of the above four non-EU countries are also affected by Brexit.
2. ICM polling for British Future in June 2016 found that 84% of the British public support letting existing EU migrants stay – including over three-quarters (77% per cent) of Leave voters – with any future changes to freedom of movement applying only to new migrants.
3. Brandon Lewis MP, Minister for Immigration, evidence to House of Commons Home Affairs Committee 21 November 2017.
4. Home Office (2018) EU Settlement Scheme: statement of intent 21 June 2018, London: Home Office.
5. It will also raise between £170-£190 million in revenue. See Government Impact Assessment for the EU Settlement Scheme, July 2018 available on [www.legislation.gov.uk/ukia](http://www.legislation.gov.uk/ukia)
6. See for example, Sumption, M. and Kone, Z. (2018) *Unsettled status: Which EU citizens are at risk of failing to secure their rights after Brexit?* Oxford: The Migration Observatory at the University of Oxford.
7. Para 58 in House of Commons Home Affairs Committee (2018) *Home Office Preparation for the UK Exiting the EU*, December 2018, London: House of Commons.
8. These are people who live in the UK but work in another EU country – often Ireland, France or Belgium.
9. Based on the most recent Home Immigration statistics quarterly release, with 24.4% of applications for Permanent Residence refused between April and June 2018.
10. An applicant will also have to pay for a ceremony (£80), the Life in the UK test (£50) and any legal advice.
11. The Home Office issues a similar document to family members of ‘qualified persons’ including non-EU nationals, which also costs £65.
12. Home Office quarterly immigration statistics, table ee\_02.
13. <https://www.gov.uk/government/publications/visa-regulations-revised-table/8-october-2018>
14. Home Office quarterly immigration statistics, table ee\_02.
15. Since 2011, students, self-sufficient persons and their dependents are required to have comprehensive sickness insurance to be a ‘qualified person’ under the 2004 freedom of

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- movement directive. However, this requirement was given little publicity.
16. Between 2004 and 2011 EU citizens from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia were required to register with the Home Office within one month of starting work with a new employer and to apply for a registration card. The Workers Authorisation Scheme, for Bulgarian and Romanian nationals, was a similar scheme which ran between 2007 and 2014.
  17. See British Future (2016) *Report of the Inquiry into securing the status of EEA+ nationals in the UK*, London: British Future.
  18. EEA nationals can apply for permission to appeal to an Upper Tribunal should they believe that the decision of the First Tier Tribunal was legally wrong.
  19. Ministry of Justice tribunals and gender recognition certificates statistics, quarterly release, April – June 2018.
  20. Continuous residence is defined as six months in any 12 month period.
  21. Spouse, civil partner, durable partner, dependent child or grandchild or dependent parent or grandparent.
  22. These include non-EU children and carers whose rights were determined in the Chen, Ibrahim and Teixeira judgments of the European Court of Justice. See Home Office (2018) EU Settlement Scheme: statement of intent 21 June 2018, London: Home Office.
  23. It allows non-EU family members of British citizens to apply for a UK visa using EU law, as opposed to applying under UK law. The British citizen has to go and work in another EU state (or be self-employed) for at least 3 months and their ‘centre of life’ must be seen to be there. In case of spouses/ civil partners, both the UK and non-EU spouse/civil partner must have lived together in that EU member state and have been married before returning to the UK.
  24. Department for Exiting the European Union (DExEU) (2018) *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union: white paper*, London: DExEU.
  25. Department for Exiting the European Union (DExEU) (2018) *Citizens’ Rights – EU Citizens in the UK and UK nationals in the EU: Policy Paper*, London: DExEU.
  26. See Statement of Changes in Immigration rules presented to Parliament by the Secretary of State for the Home Department, July 2018.
  27. Just 26 exclusion orders were served in 2016 according to the Government’s annual transparency report of disruptive powers.
  28. See Statement of Changes in Immigration rules presented to Parliament by the Secretary of State for the Home Department, July 2018.

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29. National Conversation on Immigration stakeholder meetings and British Future meetings with key stakeholders April – November 2018.
  30. Estimate in Sumption, M. and Kone, Z. (2018) *Unsettled status: Which EU citizens are at risk of failing to secure their rights after Brexit?* Oxford: The Migration Observatory at the University of Oxford.
  31. Annual Population Survey estimate, January 2017-December 2017.
  32. Known as those with ‘derivate rights’ including those as a result of the Chen, Ibrahim and Teixeira judgments of the European Court of Justice. See Home Office (2018) EU Settlement Scheme: statement of intent, London: Home Office.
  33. Home Office (2018) EU Settlement Scheme: statement of intent, London: Home Office.
  34. <https://www.whatdotheyknow.com/request/195563/response/486379/attach/html/4/Sanitised%20Data%20FOI%2030563.xls.html>
  35. Self-reported illiteracy among Romanian Roma adults is in excess of 30%. See European Agency for Fundamental Rights (2014) Roma Survey: the education situation of Roma in 11 EU member states, Vienna: FRA.
  36. Since 2006, there have been 84,529 applications for Permanent Residence refused or declared invalid.
  37. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673998/GGFR-Section-1-v29.0-EXT.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673998/GGFR-Section-1-v29.0-EXT.PDF)
  38. See Statement of Changes in Immigration rules presented to Parliament by the Secretary of State for the Home Department, July 2018.
  39. See Home Office European Economic Area (EEA) administrative removal instructions published 14 December 2014.
  40. <https://www.lawgazette.co.uk/law/tribunals-urged-to-collect-data-on-dishonest-immigration-practitioners/5066734.article>
  41. <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/livingabroad/2017-09-21#migration-and-regular-movement-across-the-land-border-between-ireland-and-northern-ireland>
  42. Para 58 in House of Commons Home Affairs Committee (2018) Home Office Preparation for the UK Exiting the EU, December 2018, London: House of Commons.
  43. Based on the evaluation of the first pilot of the EU Settlement Scheme.
  44. House of Commons Home Affairs Committee (2017) *Home Office delivery of Brexit: immigration*, London: House of Commons.

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45. <https://www.gov.uk/government/collections/migration-transparency-data>
  46. Home Office (2018) EU Settlement Scheme: Statement of Intent 21 June 2018, London: Home Office.
  47. Home Office (2018) EU Settlement Scheme: statement of intent 21 June 2018, London: Home Office.
  48. A non-EU national, who is the primary carer of an EU national, if a refusal would result in the EU national being forced to leave the EU.
  49. Home Office (2018) EU Settlement Scheme: Statement of Intent, 21 June 2018, London: Home Office.
  50. Ministry of Justice tribunals and gender recognition certificates statistics, quarterly release, April – June 2018.
  51. Most out-of-country visa applicants do not have the right of appeal to an Immigration and Asylum tribunal, but can instead apply for an administrative review at a cost of £80, refundable if the applicant is successful. There were 2,393 applications for administrative review between October and December 2018.
  52. The introduction of an administrative review process was partly because most out-of-country visa applicants lost their right to appeal to an Immigration and Asylum tribunal.
  53. The Independent Chief Inspector of Borders and Immigration (ICIBI) (2016) An inspection of the Administrative Review processes introduced following the 2014 Immigration Act September - December 2015, London: ICIBI.
  54. *ibid* (2016) A re-inspection of the Administrative Review process January to March 2017, London: ICIBI.
  55. <https://www.theguardian.com/uk-news/2018/aug/27/revealed-immigration-rules-have-more-than-doubled-in-length-since-2010>
  56. An applicant will also have to pay for a ceremony (£80), the Life in the UK test (£50) and any legal advice.
  57. See evidence of Ian Robinson, formerly a senior Home Office official to the Home Affairs Committee cited HAC (2018) Home Office delivery of Brexit: immigration, London: House of Commons.
  58. Austria, Estonia and the Netherlands do not usually permit dual citizenship.

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## About British Future

British Future is an independent, non-partisan thinktank seeking to involve people in an open conversation which addresses people's hopes and fears about identity and integration, migration and opportunity, so that we feel confident about Britain's Future.

We want to ensure that we engage those who are anxious about cultural identity and economic opportunity in Britain today, as well as those who already feel confident about our society, so that we can together identify workable solutions to make Britain the country we want to live in.

# British Future...

*British Future is an independent, non-partisan thinktank engaging people's hopes and fears about integration and migration, opportunity and identity, so that we share a confident and welcoming Britain, inclusive and fair to all.*

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