EU Settlement Scheme

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Summary

This briefing provides an overview of the EU Settlement Scheme (EUSS).

The scheme is open for applications from EU, EEA and Swiss citizens (hereafter referred to commonly as “EU citizens”) and their family members. It was implemented in a phased approach.

The EUSS has been established to grant eligible applicants an immigration status allowing them to remain in the UK following its departure from the EU. The new status is necessary as the UK intends to repeal the law of free movement at the end of the transition period.

The GOV.UK webpage ‘Apply to the EU Settlement Scheme (settled and pre-settled status)’ sets out who needs to apply under the EUSS, alongside relevant deadlines and eligibility criteria. The Government have also devised an online tool for people to find out what to do and when if they wish to continue living in the UK after Brexit. This tool allows individuals to input their personal circumstances and be directed to general information.

The detailed rules on the EUSS are found in Appendix EU of the Immigration Rules. The Appendix sets out the legal basis on which settled status or pre-settled status will be granted.

The Library Insight ‘The progress of the EU Settlement Scheme so far’ analyses the statistics on applications to the scheme. It is updated as new statistical information on the scheme is released.

What is the EUSS?

The EUSS is a Home Office scheme which implements the citizens’ rights provisions of the Withdrawal Agreement. It does this by granting UK immigration status to EU citizens and their families who are living in the UK under EU free movement law. EU citizens must be resident in the UK prior to the end of the transition period to be eligible for status under the EUSS, with some exceptions. The application deadline is the 30 June 2021, as per the conditions in the Withdrawal Agreement.

The scheme should grant applicants either settled or pre-settled status. In accordance with Article 15 of the Withdrawal Agreement, EU citizens who have 5 years continuous residence in the UK ‘shall have the right to reside permanently’. This right is granted by the UK in the form of settled status.

EU citizens who have yet to accrue 5 years continuous residence are eligible to apply for pre-settled status. Pre-settled status allows the holder to remain in the UK for a further 5 years from the date they were granted pre-settled status. This provides the necessary time for applicants to become eligible for settled status. Holders of pre-settled status can then switch to settled status by submitting another application if they meet the eligibility requirements.
The Government has said settled or pre-settled status will allow EU citizens to continue living and working in the UK after it leaves the EU on broadly the same terms as they do under EU law.  

There has been criticism of the EUSS for forcing people to make an application to remain in the UK. Some have instead argued the scheme should be declaratory, and that the evidential requirement should be removed.

**EUSS conditions**

The EUSS has broadly been established in line with the provisions set out in the Withdrawal Agreement but has more favourable conditions than stipulated in some areas.

The UK has similar agreements with EEA countries and Switzerland in the form of the UK-EEA Separation Agreement and the Swiss Citizens’ Rights Agreement. Both agreements largely mirror the provisions set out in the Withdrawal Agreement in relation to residency. As such, the EUSS applies to EU, EEA and Swiss nationals.

**Application process**

The application checks three basic principles; identity, UK residency and suitability. The process is primarily online and has been designed to be streamlined compared to other immigration applications.

The EUSS is open to EU, EEA and Swiss citizens, and some non-EEA citizens in certain circumstances. It is estimated that as of mid-2019 there are around 3.4 million EU citizens currently living in the UK (excluding Irish nationals, who need not apply). Taking into account people who have migrated to the UK while the scheme has been open, the number of people required to apply in order to secure their status could be closer to 4 million. Implementing a scheme with such a high number of potentially eligible applicants presents a significant challenge for the Home Office.

The initial Statement of Intent declared the Government will be ‘looking to grant, not for reasons to refuse’ during the application process.

Then Prime Minister Theresa May announced in January 2019 that the application fee would be waived when the scheme opened fully on 31st March 2019. Applications to the EUSS are therefore now free of charge, and all applicants who paid the fee during the test phase are entitled to a refund.

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1 GOV.UK, Policy Paper: EU Settlement Scheme: statement of intent, 21st June 2018
4 Independent Chief Inspector of Borders and Immigration, An inspection of the EU Settlement Scheme, November 2018-January 2019
5 GOV.UK, Policy Paper: EU Settlement Scheme: statement of intent, 21st June 2018
6 Hansard, House of Commons debate, Leaving the EU, 21st January 2019, Column 28
7 GOV.UK, EU Settlement Scheme: application fee refunds, 28th March 2019
**Immigration advice**

Only qualified persons can provide immigration advice. Unregulated advisors who give immigration advice are subject to civil and criminal penalties. The Office of the Information Services Commissioner (OISC) regulates the provision of immigration advice. The OISC published guidance related to ‘Immigration Assistance’ in December 2018 which applies to the EU Settlement Scheme.
1. EUSS and the Withdrawal Agreement

1.1 Withdrawal Agreement

Part Two of the Withdrawal Agreement (WA), agreed on 17 October 2019, relates to citizens’ rights provisions, including the right of permanent residence for EU citizens residing in the UK, and UK nationals residing in the EU. There were no changes to the citizens’ rights provisions in the current agreement from the 14 November 2018 version.

Article 15 states (emphasis added):

Union citizens and United Kingdom nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years or for the period specified in Article 17 of Directive 2004/38/EC, shall have the right to reside permanently in the host State under the conditions set out in Articles 16, 17 and 18 of Directive 2004/38/EC. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.8

Meanwhile, Article 18 of the WA outlines the agreement that host states can require EU citizens or UK nationals and their respective family members to apply for a new residence status which confers this right. In the case of the UK, this is the EU Settlement Scheme.

Whilst the Government have established the EUSS in accordance with the conditions set out in Article 18, some conditions are arguably more favourable than specified by the agreement. Some of the conditions attached to applying for residence status that are set out in Article 18 are summarised below. The conditions can be read in full in Article 18 of the Withdrawal Agreement.

As the WA has been ratified, these conditions must apply to the EU Settlement Scheme (except where the Government has adopted a more favourable approach):

- The deadline for submitting the application shall not be less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period.9
- For persons who have the right to commence residence after the end of the transition period in the host State, the deadline for submitting the application shall be 3 months after their arrival.10

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8 GOV.UK, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 19 November 2019 (hereafter Withdrawal Agreement), Article 15
9 GOV.UK, Withdrawal Agreement, Article 18(1)(b)
10 GOV.UK, Withdrawal Agreement, Article 18(1)(b)
The deadline for submitting the application shall be extended automatically by 1 year where the Union has notified the UK, or the UK has notified the Union, that technical problems prevent the host State either from registering the application or from issuing the certificate of application.\textsuperscript{11}

Where applicants miss the deadline, the authorities shall examine the reasons for this, and if these reasons constitute ‘reasonable grounds’, applicants shall be allowed to submit an application within a reasonable further period of time.\textsuperscript{12}

Application forms shall be short, simple and user friendly. Applications made by families at the same time shall be considered together.\textsuperscript{13}

The document evidencing status shall be issued free of charge, or for a charge not exceeding that imposed on citizens or nationals of the host State for the issuing of similar documents.\textsuperscript{14}

Persons who, before the end of the transition period, hold a valid permanent residence document or valid domestic immigration document conferring a permanent right to reside shall have the right to exchange that document for a new residence document upon application, after a verification of their identity, a criminality and security check, and confirmation of their ongoing residence. Such new residence documents shall be issued free of charge.\textsuperscript{15}

The identity of the applicants shall be verified through the presentation of a valid passport or national identity card for Union citizens and UK nationals, and through the presentation of a valid passport for their respective family members and other persons who are not Union citizens or UK nationals. The acceptance of such identity documents shall not be made conditional upon any criteria other than that of the validity of the document. Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State shall return that document upon application without delay, before the decision on the application has been taken.\textsuperscript{16}

The host State may only require Union citizens and UK nationals to present, in addition to the identity documents:

\begin{itemize}
  \item Confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed.\textsuperscript{17}
  \item If applicants are ‘economically inactive’, then supporting documents can be required that provide evidence they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence
\end{itemize}

\textsuperscript{11} GOV.UK, Withdrawal Agreement, Article 18(1)(c)
\textsuperscript{12} GOV.UK, Withdrawal Agreement, Article 18(1)(d)
\textsuperscript{13} GOV.UK, Withdrawal Agreement, Article 18(1)(f)
\textsuperscript{14} GOV.UK, Withdrawal Agreement, Article 18(1)(g)
\textsuperscript{15} GOV.UK, Withdrawal Agreement, Article 18(1)(h)
\textsuperscript{16} GOV.UK, Withdrawal Agreement, Article 18(1)(i)
\textsuperscript{17} GOV.UK, Withdrawal Agreement, Article 18(1)(k)(i)
and that they have comprehensive sickness insurance cover in the host State.\textsuperscript{18}

— If applicants are students, then proof of enrolment at an establishment accredited or financed by the host State on the basis of its legislation or administrative practice, proof of comprehensive sickness insurance cover, and a declaration or equivalent means of proof, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State.\textsuperscript{19}

- The competent authorities of the host State shall help the applicants to prove their eligibility and to avoid any errors or missions in their applications; they shall give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions.\textsuperscript{20}

- Criminality and security checks may be carried out systematically on applicants. Applicants may be required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of application.\textsuperscript{21}

The applicant shall have access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based.\textsuperscript{22}

**UK agreements with EEA EFTA states and Switzerland**

Whilst the Withdrawal Agreement is between the UK and the EU, similar agreements have been agreed between the UK and the EEA EFTA states (Iceland, Liechtenstein and Norway) and between the UK and Switzerland: the **UK-EEA Separation Agreement** and the **Swiss Citizens’ Rights Agreement**.

Both EEA and Swiss nationals are eligible to apply for the EU Settlement Scheme. Article 17 of the UK-EEA Separation Agreement, and Article 16 of the Swiss Citizens’ Rights Agreement, relate to the issuance of residence documents, and they broadly mirror the provisions agreed in the WA between the UK and EU.\textsuperscript{23}

The explanatory documents published alongside both agreements state the Government’s **EU (Withdrawal Agreement) Act** is intended to give effect to the WA in UK law, and this Bill is also intended to be the

\textsuperscript{18} GOV.UK, Withdrawal Agreement, Article 18(1)(k)(ii)
\textsuperscript{19} GOV.UK, Withdrawal Agreement, Article 18(1)(k)(iii)
\textsuperscript{20} GOV.UK, Withdrawal Agreement, Article 18(1)(o)
\textsuperscript{21} GOV.UK, Withdrawal Agreement, Article 18(1)(p)
\textsuperscript{22} GOV.UK, Withdrawal Agreement, Article 18(1)(r)
\textsuperscript{23} GOV.UK, Swiss Citizens’ Rights Agreement, 20th December 2018
primary vehicle for the implementation of the EEA and Swiss agreements.\textsuperscript{24}

There are some differences between the provisions in the Swiss agreement and those in the WA and EEA Agreement.

\textsuperscript{24} HM Government, Explainer for the agreement on arrangements between Iceland, the Principality of Liechtenstein and the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, following the withdrawal of the United Kingdom from the European Union, 20\textsuperscript{th} December 2018
2. Settled and pre-settled status

2.1 What is settled status?

Settled status is available to those who have five years continuous residence in the UK (further information on the continuous residency requirement can be found in Section 5.2 of this Briefing). Settled status is also known as ‘indefinite leave to remain under the EU Settlement Scheme.’ Holders of settled status will be able to continue living and working in the UK for as long as they like, with no need to apply for future immigration status. Those with settled status may be eligible to apply for British citizenship.

**Settled status is not an automatic right.** EU citizens will need to apply for and be granted status. EU citizens who fail to apply for settled status before the deadline may no longer have a legal right to live in the UK.

This differs from the right of permanent residence which EU citizens have experienced until now under EU law, which is granted automatically after 5 years lawful residence. This right will no longer apply within the UK once the Government repeals free movement.

2.2 What is pre-settled status?

Pre-settled status is also known as ‘5 years limited leave to enter’ or ‘limited leave to remain’. Pre-settled status allows the holder to remain in the UK for a further 5 years from the date they were granted that status.

Government guidance states that if applicants do not have 5 years’ continuous residence when applying, they will usually get pre-settled status. The guidance explains that applicants should only need to submit 1 document dated in the last 6 months to be granted pre-settled status.

Once 5 years continuous residence is reached pre-settled status may be converted to settled status. If applicants will reach 5 years’ continuous residence at some point before 30th December 2020, the Government have said they can choose to wait to apply until they have reached 5 years’ continuous residence. This means that if the application is successful, they will be granted settled status without having to apply for pre-settled status first.
2.3 What about EU citizens who miss the application deadline?

EU citizens who miss the application deadline may no longer have lawful status in the UK. This is because the Government plans to repeal free movement law after the UK leaves the EU, so EU citizens must ‘convert’ the legal basis of their presence in the UK from EU free movement law to UK immigration law.

The May and Johnson Governments have said they would take ‘flexible’ and ‘reasonable’ approaches to EU citizens who missed the deadline. However, they did not specify how this will work in practice, raising concerns in parliament and amongst campaigners. Concerns were heightened when then Security Minister Brandon Lewis suggested in October 2019 that it was possible EU citizens may face immigration enforcement measures if they missed the deadlines.

Then, in January 2020 a number of UK media outlets reported that the European parliament’s Brexit co-ordinator Guy Verhofstadt had discussed the issue with then Brexit secretary Steve Barclay. The BBC reported, for example:

Mr Verhofstadt told BBC Radio 4’s Today programme he believed those who missed the deadline would still be able to apply for settled status after “giving grounds why it was not possible to do it within the normal procedures”.

* There will be no automatic deportation,* he added.

2.4 Can settled or pre-settled status be lost?

Time spent outside the UK

Settled and pre-settled status can be lost by time spent outside UK.

Those with settled status should be able to spend up to 5 years in a row outside the UK before losing their status. In the case of Swiss citizens, this is 4 years.

This is more favourable than the requirement in place for holders of other types of indefinite leave to remain (not under the EU Settlement Scheme). Further information on this can be found in Section 7 of the Statement of Intent for the EU Settlement Scheme.

Pre-settled status will be lost if the holder spends 2 years in a row outside the UK.

Criminality

EUSS status can also be lost by way of deportation under UK law.

Article 20 of the Withdrawal Agreement states:

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31 See, for example, PQ 5426 [on immigration: EU nationals] 5 November 2019
32 ‘Brandon Lewis admits EU citizens who miss immigration status deadline could face deportation’, Politics Home, 10 October 2019
33 ‘Brexit: There will be no automatic deportation for EU citizens – No 10’, The BBC, 17 January 2020
34 GOV.UK, Apply to the EU Settlement Scheme: What you’ll get [accessed 19 September 2019]
35 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), What you’ll get
The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.

This means that following the transition period, the UK can restrict the right of residence of a person if they commit a new crime, and effectively remove their settled or pre-settled status.

The Withdrawal Agreement makes clear that if a crime is committed during the transition period, or whilst the UK remains a member of the EU, the existing EU law on deportation will apply\(^{36}\) (as set out in the *Immigration (European Economic Area) Regulations 2016*).

However, if a person with settled status commits a crime after the transition period they will be subject to the current UK thresholds for deportation for non-EEA nationals. A *Free Movement* briefing ‘How criminal convictions affect settled status for EU citizens’ notes that protection against deportation is far weaker in UK law compared to EU law, “so a sharp increase in deportation action against resident EU citizens would therefore be expected after the protection of EU law standards ceases to apply”\(^{37}\).

### 2.5 Switching from pre-settled status to settled status

Holders of pre-settled status must maintain continuous residence to qualify for settled status. This generally means the applicant must not have been absent from the UK for more than 6 months in total in any given 12-month period. Further information on the continuous residence requirement is set out in Section 5.2 of this paper.

Holders of pre-settled status will need to make an application for settled status when they become eligible. The onus is on the individual to make a new application.

The lack of a structured process has drawn criticism, including from the House of Lords EU Justice Sub-Committee, who raised their concerns in a letter to the then Home Secretary Sajid Javid on 27 February 2019. The letter stated that without prompts or a proper system, EU citizens with pre-settled status are at risk of not knowing they need to re-apply\(^{38}\).

There have also been suggestions that holders of pre-settled status should automatically be granted settled status after five years. However then Home Secretary Sajid Javid stated this would not be possible or

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\(^{36}\) GOV.UK, *Withdrawal Agreement*, Article 20

\(^{37}\) Free Movement, Colin Yeo, Briefing: How criminal convictions affect settled status for EU citizens, *18th February 2019*

\(^{38}\) Parliament.uk, Letter to Rt. Hon. Sajid Javid from Baroness Kennedy of The Shaws, Chairman of EU Justice Sub-Committee, *27 February 2019*
desirable.\textsuperscript{39} He noted some holders of pre-settled status may not qualify for settled status. For example, the continuous residence requirement may not be fulfilled, some holders of pre-settled status may not intend to remain in the UK, or could have left during the intervening period, and some may have already qualified for settled status before five years.\textsuperscript{40}

The then Home Secretary did say that consideration will be given to whether it would be possible to implement a reminder system to prompt people to apply for settled status when their pre-settled status nears expiry.\textsuperscript{41}

\textsuperscript{39} Parliament.uk, Letter to Baroness Kennedy of the Shaws QC, Chairman of EU Justice Sub-Committee, from Rt. Hon. Sajid Javid, 20th March 2019

\textsuperscript{40} Parliament.uk, Letter to Baroness Kennedy of the Shaws QC, Chairman of EU Justice Sub-Committee, from Rt. Hon. Sajid Javid, 20th March 2019

\textsuperscript{41} Parliament.uk, Letter to Baroness Kennedy of the Shaws QC, Chairman of EU Justice Sub-Committee, from Rt. Hon. Sajid Javid, 20th March 2019
3. EUSS eligibility

The GOV.UK page ‘Apply to the EU Settlement Scheme: Who should apply’ provides an overview of the eligibility requirements.

In most cases EU, EEA and Swiss citizens who wish to remain in the UK will need to apply to the scheme.42

Non-EU citizens should apply to the EUSS in some circumstances.43 Government guidance states non-EEA nationals are eligible to apply if they are the following:

- Family member of an EU, EEA or Swiss citizen
- Family member of a British citizen and lived outside the UK in an EEA country together (known as the ‘Surinder Singh’ route)
- Family member of a British citizen who has EU, EEA or Swiss citizenship and who lived in the UK as an EU, EEA or Swiss citizen before getting British citizenship
- Previously had an EU, EEA or Swiss family member living in the UK (retained right of residence)
- Primary carer of a British, EU, EEA or Swiss citizen (known as ‘Zambrano’ and ‘Chen’ carers)
- Child of an EU, EEA or Swiss citizen who used to live and work in the UK, or the child’s primary carer (known as ‘Ibrahim and Teixeira’ children)44

The EU citizen family member will usually need to apply to the scheme too. It is possible to link applications together; the Government guidance related to the EUSS and family members states:

Your family member will be given an application number when they apply. You can use this to ‘link’ your application to theirs, so that your applications are considered together.45

It is important to note that the Government have advised that the following groups of people may also need to apply to the EUSS:

- EU, EEA or Swiss citizen family members of British citizens
- Family members of EU, EEA or Swiss citizens who do not need to apply (such as family members of Irish nationals)
- Born in the UK but not a British citizen
- Holders of permanent residence documents
- Those on the ‘Surinder Singh’ route

42 The Home Office guidance ‘EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members’ provides in-depth information on the eligibility requirements.
43 Further information including the list of eligible family members can be found on the GOV.UK page ‘Apply to the EU settlement scheme (settled and pre-settled status): If you’re not an EU, EEA or Swiss citizen’.
44 GOV.UK, ‘Apply to the EU Settlement Scheme (settled and pre-settled status): If you’re not an EU, EEA or Swiss citizen’.
45 GOV.UK, ‘Apply to the EU Settlement Scheme (settled and pre-settled status): If you’re not an EU, EEA or Swiss citizen, When to apply’.
• Those with derivative residence rights under EU law

3.1 Derivative rights of residence

The EU Settlement Scheme is also open to people resident in the UK based on their ‘derivative right’ to reside under EU law.

These include ‘Chen carers’ (the primary carer of a self-sufficient EEA citizen child), ‘Ibrahim and Teixeira’ cases (a child of a former EEA citizen worker who is in education in the UK and their primary carer), and ‘Zambrano carers’ (the primary carer of a British citizen child or dependent adult). In September 2018 it was estimated there were around 1,700 people currently relying on a derived right to reside in the UK.46

Unlike Chen and Ibrahim and Teixeira cases, Zambrano carers are not protected by the WA, however the Government stated in the Explanatory Memorandum to the Statement of Changes to the Immigration Rules (HC 1919) that:

In light of the particular circumstances of these cases, it is appropriate that their long-term stance in the UK should be protected by bringing them within the scope of the EU Settlement Scheme.

The Government was criticised, including by the Refugee and Migrant Children’s consortium, for the delay in clarifying the rights of people with derived rights of residence in the UK following Brexit. The Government initially said in the Statement of Intent for the EUSS in June 2018 that ‘further details will be provided in due course on the new status available to them’,47 however the detail was not provided until March 2019. The Home Affairs Select Committee report on the EUSS stated:

It should not have taken such a length of time for the Government to make a clear and unambiguous statement on the rights of Zambrano carers under the Settlement Scheme and following Brexit. We welcome the clarity the Government has now afford this group, but it is unacceptable that these citizens were left in limbo for so long.48

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46 Freedom of Information request figures, obtained by Free Movement, 29th October 2018
47 Home Office, EU Settlement Scheme: Statement of Intent, 21st June 2018, Section 6.11
48 Home Affairs Select Committee, EU Settlement Scheme report, 30th May 2019, 4.81
4. Who may not need to apply?

The Government’s guidance ‘Apply to the EU Settlement Scheme (settled and pre-settled status): Who should apply’ states people do not have to apply if they have indefinite leave to enter or remain in the UK, or are Irish citizens. British citizens need not apply to the scheme.

The guidance also states the following groups do not need to apply:

- EU, EEA or Swiss citizens who moved to UK before it joined the EU
- Frontier workers (work in UK but do not live here)
- Exempt from immigration control (e.g. foreign diplomats)

4.1 Irish nationals

Irish nationals have a special status in UK law under the Common Travel Area which pre-dates the rights they have as EU citizens. The Republic of Ireland is not considered to be a foreign country for the purposes of UK law and Irish citizens are not considered to be ‘aliens’. Irish citizens are instead treated as if they have permanent immigration permission to remain in the UK from the date they take up ‘ordinary residence’ here.

Because of this special status, Irish citizens do not have to apply to the EUSS. However, they can apply to the scheme if they wish to do so, and in most cases their non-Irish and non-British family members will need to apply. The Home Office guidance on the EU Settlement Scheme states:

Irish citizens enjoy a right of residence in the UK that is not reliant on the UK’s membership of the EU.

This means that Irish citizens do not need to apply for status under the scheme. Nonetheless, Irish citizens can make an application under the scheme, should they wish to do so.

Their family members (who are not Irish citizens or British citizens and who do not have leave to enter or remain in the UK) will need to make an application for status under the EU Settlement Scheme, and they can do so whether or not the Irish citizen has done so.

There has been controversy over the settled status scheme and its potential impact on the rights of those from Northern Ireland and the Good Friday Agreement. In March and April, campaigners and media outlets claimed that the Government has re-classified Northern Irish people as being automatically British by birth. The House of Commons Library briefing paper ‘Northern Ireland, Citizenship and the Belfast/Good Friday Agreement’ provides further information.

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49 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), Who should apply
50 House of Commons Library, Commons Briefing Paper, The Common Travel Area and the special status of Irish nationals in UK law, 16 October 2019
51 House of Commons Library, Commons Briefing Paper, The Common Travel Area and the special status of Irish nationals in UK law, 16 October 2019
52 Home Office, ‘EU settlement scheme: EU, other EEA and Swiss citizens and their family members’, 8 November 2019, p 12
On 9 January 2020 the Secretary of State for Northern Ireland and the Tánaiste published a joint ‘New Decade, New Approach’ deal to restore the devolved Northern Irish Government. The proposals include extending the same family reunion rights in the UK to the people of Northern Ireland as are currently enjoyed by those who hold only Irish citizenship.

For information on criminality and deportations of Irish nationals see the House of Commons Library briefing paper ‘The common travel area and the special status of Irish nationals in UK law’.

4.2 Indefinite leave to remain

If someone already has indefinite leave to remain (ILR) or enter the UK, then the Government has said there is no need for them to apply to the EUSS. However, they can apply if they wish to do so and more information can be found on the GOV.UK webpage ‘Apply to the EU settlement scheme (settled and pre-settled status: if you have permanent residence or indefinite leave to remain’.

European nationals who arrived in the UK before 1st January 1973 may have been granted indefinite leave to remain automatically.

The online guidance states:

You’ll usually have applied for indefinite leave to remain. You may already have it if you’re an EU citizen who was living in the UK on 1 January 1973 and there was no time limit on how long you were allowed to stay in the UK. However you might have lost it if you spent more than 2 years in a row outside the UK.

According to Government guidance related to the EUSS, if European nationals do not have a document confirming their ILR status, they can either:

- apply to the EU Settlement Scheme to get settled or pre-settled status
- apply to the Windrush Scheme to get proof of ILR status

4.3 Frontier workers

Frontier workers are EU, EEA and Swiss citizens who work in the UK but live elsewhere. For instance, a worker who lives in the Republic of Ireland but works in Northern Ireland.

Frontier workers who wish to continue working in the UK but do not live here will need to apply for a ‘frontier worker’ permit to enter the UK.

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53 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), If you have permanent residence or indefinite leave to remain
54 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), If you have permanent residence or indefinite leave to remain
55 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), If you have permanent residence or indefinite leave to remain
56 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), If you have permanent residence or indefinite leave to remain
from 1 January 2021. If they do wish to live in the UK, they will need
to apply to the EU Settlement Scheme if they meet the requirements.
For further information on frontier workers and non-EU family members
see the Government guidance ‘EU Settlement Scheme: non-EU citizen
family members of frontier workers’.

57 GOV.UK, Working in the UK as a frontier worker from 1 January 2021, published 29
January 2020
5. What does the application process involve?

The EU Settlement Scheme application checks 3 basic requirements:

1. Identity
2. UK residence
3. Suitability

In most cases, the application is completed using the Home Office smartphone app ‘EU Exit: ID Document Check’ and an online form. The app is used for the identity checks, whilst the online form is used for UK residence and criminality checks. The app is currently available on Android devices and Apple iPhone 7 and newer models.\(^{58}\)

Not everyone can make an online application and some applicants are required to contact the EU Settlement Scheme Resolution Centre about a paper application.\(^{59}\)

It is possible to apply to the EUSS from outside the UK using the ‘EU Exit: ID Document Check’ app. If EEA or Swiss applicants cannot scan their ID using the app, the document can be sent via post. This is not the case for non-EEA citizens, who according to the Government guidance, must contact the EU Settlement Resolution Centre for assistance.\(^{60}\)

5.1 Identity

The ‘EU Exit: ID Document Check’ app is used to verify applicants’ identity in the first stage of the application process. The Government have published guidance for applicants on how to use the app: ‘Using the EU Exit: ID Document Check app’.

A valid passport or national identity card is required as proof of identity. This means it must not have expired.

If an applicant does not have an identity document, it may be possible to use other evidence in certain situations. The Government have encouraged applicants to contact the EU Settlement Resolution Centre in this situation.

EEA nationals who have an identity document with a biometric chip can digitally upload the document to the application via the smartphone app.

If the document is not biometric, or the applicant is a non-EEA national applying from the UK, then documents can be sent via post instead.

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\(^{58}\) GOV.UK, Using the ‘EU exit: ID document check’ app, updated 1 November 2019
\(^{59}\) GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status) Apply to the EU Settlement Scheme, Who cannot use this service
\(^{60}\) GOV.UK, EU Settlement Scheme: applying from outside the UK, 9th April 2019
Home Office have said they will return documents as soon as they have been scanned.\(^{61}\)

It is also necessary for applicants to provide a digital photo of their face using the app.

### 5.2 UK residence

An essential component of the EUSS application is determining how long the applicant has been resident in the UK.

Residency requirements were agreed in the WA, but it is important to note that the EUSS uses more favourable residency requirements. The requirements set out in the WA reflect the existing requirement for EU citizens to be ‘exercising Treaty rights’ to be permitted to remain in a Member State other than their own for longer than 3 months. For example, under EU law students or economically inactive people exercising their free movement rights must hold comprehensive sickness insurance in their host state. Article 18 of the WA permits the UK and EU Member States to require proof of this insurance when considering whether to issue residence documents (see Section 1.1 of this Briefing).

However, the Home Office confirmed on 26\(^{th}\) January 2018 that:

> we will not require students and self-sufficient people living here to prove that they have held comprehensive sickness insurance when they apply for settled status in the UK. Students and self-sufficient people living here can still be granted settled status even if they have never held this.\(^{62}\)

During the application automated checks can be conducted to confirm residency. The applicant is prompted to provide their National Insurance number which will allow an automated check of their residence based on tax and certain benefit records. While it is not compulsory, the Government have said that most applicants who provide their National Insurance number do not need to provide any further evidence of their UK residence.\(^{63}\)

The Government’s detailed guidance ‘EU Settlement Scheme: evidence of UK residence’ provides information on how to submit evidence if the automated check does not satisfy the requirements, alongside examples of what constitutes evidence. The Home Office has adopted an approach of ‘evidential flexibility’ to allow caseworkers to exercise discretion where appropriate.\(^{64}\)

To be eligible for settled status applicants must have 5 years continuous residence in the UK.\(^{65}\)

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\(^{61}\) GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), What you’ll need to apply

\(^{62}\) What do they know, FOI request, Home Office response, 26\(^{th}\) January 2018

\(^{63}\) GOV.UK, EU Settlement Scheme: UK tax and benefits records automated check, 29\(^{th}\) March 2019

\(^{64}\) GOV.UK, Policy Paper: EU Settlement Scheme: statement of intent, 21\(^{st}\) June 2018

\(^{65}\) The continuity of residence requirement for settled status mirrors the continuous residence requirements set out in EU law for EEA nationals to be granted the right of permanent residence in a Member State.
Home Office guidance ‘EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members’ defines continuity of residence as (emphasis added):

Completing a continuous qualifying period of residence in the UK and Islands generally means that the applicant has not been absent from the UK and Islands for more than 6 months in total (in a single period of absence or more than one) in any given 12-month period, throughout the period of residence relied upon by the applicant.

A continuous qualifying period of residence is also broken where a person has served, or is serving, a sentence of imprisonment of any length in the UK. The Government guidance states:

Where a person has completed a continuous qualifying period of residence in the UK and Islands of less than 5 years (and the person has not acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations, or the right of permanent residence in the Islands through the application there of section 7(1) of the Immigration Act 1988 or under the Immigration (European Economic Area) Regulations of the Isle of Man), that continuous qualifying period is broken, and restarts from scratch on release, where the applicant served or is serving a sentence of imprisonment of any length in the UK and Islands.66

Previous continuous residence can also be relied upon to make an application for settled status. Five years continuous residence in the UK can be used as the basis of an application if no ‘supervening event’ has occurred in the meantime. This means the applicant must not have been absent from the UK for more than five years in a row and must not have been subject to a deportation order.

The exceptions to the continuous residence requirement are:

- a single period of more than 6 months but which does not exceed 12 months for an important reason (for example, pregnancy, childbirth, serious illness, study, vocational training or an overseas work posting)
- any period of absence on compulsory military service
- time spent abroad as a Crown servant, or as the family member of a Crown servant
- time spent abroad in the armed forces, or as the family member of someone in the armed forces.67

Prison

EU citizens who have accrued their five years continuous residence prior to imprisonment can rely on this residence in application for settled status, if their imprisonment does not lead to a deportation.68 Those who are imprisoned before they can accrue 5 years continuous

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66 Home Office, EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, updated 8 November 2019, page 60
67 Home Office, EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, updated 8 November 2019, page 59
68 PQ 162 [on Immigration: EEA nationals] 5 November 2019
residence will have their continuity of residence broken by the term of their imprisonment.

5.3 Suitability

There are two main ways in which an applicant can fail to meet the suitability requirements of the EUSS. In summary:

- Past criminal conduct leading to the applicant becoming subject to a deportation or exclusion order/decision at the date of the EUSS decision (Rule EU15 of Appendix EU)
- Providing false or misleading information, representations or documents in their application for EUSS (Rule 16 of Appendix EU)

The legal basis for an application to be refused for suitability reasons is set out in rules EU15, EU16 and EU17 of Appendix EU of the Immigration Rules.

The Home Office guidance ‘EU settlement scheme: suitability requirements’ explains that assessment of suitability must be conducted on a case by case basis on the applicant’s personal conduct in the UK and overseas. This includes whether they have any “relevant prior criminal convictions” and whether they have been open and honest in their application.69

Refusals made for suitability reasons do not give rise to the right for an administrative review.70 However, they do have a statutory right of appeal under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020, which came into force for applications made after 31 January 2020.

EU15 and deportation due to criminal convictions

The Home Office checks applicants to determine whether they have committed serious or repeat crimes, and whether they are a threat to security. Past conduct can lead an applicant to be refused status under the EUSS, in accordance with Article 20 of the WA.

Applicants who are over 18 are required to declare any criminal record convictions in the UK and overseas. Applicants do not need to declare the following:

- Spent convictions
- Cautions
- Alternatives to prosecution, such as speeding fines

The Home Office will also check applicants against the Police National Computer (PNC) and the Warnings Index (WI) for past conduct.

Those who have committed a ‘minor crime’ are still be eligible for status under the EUSS, and those with other convictions may still be granted status, with decisions made on a case-by-case basis.

Under Rule EU15 an applicant must be refused where, at the date of the EUSS decision, they are subject to a deportation order or to a decision to make a deportation order (EU15(1)).

While the rules do not clarify what would cause an applicant to be considered for deportation, this information is set out in the Home Office suitability guidance. The guidance explains that a Home Office caseworker will refer an EUSS application for consideration for deportation or exclusion under certain circumstances; for example, where the applicant has received a conviction resulting in imprisonment within the last 5 years. If an applicant meets one of these circumstances and UKVI immigration enforcement decides to issue a deportation or exclusion order or decision then they must be refused their application for EUSS.

The guidance states that where an applicant has a known past conviction (or convictions) which was not referred to the Home Office for deportation consideration under the policy in place at that time, and they have not committed any further offence which meets the referral criteria, the application must be considered without referral to Immigration Enforcement.

**Rule EU16**

Under Rule EU16 an applicant may be refused if the decision maker is satisfied that the refusal is proportionate and where certain conditions are met; for example, where false or misleading information, material to the decision, was provided in relation to the EUSS application. A full list of the conditions can be found in Rule 16 of Appendix EU.

This is a discretionary power.

**Applying from prison?**

The Home Office has said that an EU citizen who is in prison “will not generally be eligible to apply to the scheme while they are serving that sentence.” The Justice Gap commented:

> What is also uncertain is what attitude the government is likely to adopt towards EU nationals in prison applying for EUSS and what, if any, resources are going to be set aside to make them aware of the scheme and how to apply before the cut off periods.

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71 If the applicant is subject to either an Islands deportation order or exclusion decision made under the laws of the Bailiwicks of Guernsey or Jersey, or the Isle of Man, they may be refused EUSS
75 PQ 282340 [on young offenders: EU nationals] 6 September 2019
76 ‘EU citizens with a criminal conviction post-Brexit’, The Justice Gap, 21 January 2020
5.4 Decision

Applicants receive the decision via email. Status can be confirmed online using the Home Office online checking service ‘View and Prove your Rights in the UK’.

**Proof of settled or pre-settled status is online only. There is no physical proof of status.** However, non-EU family members with settled status will get a biometric residence permit (BRP) if they don’t already have one.\(^{77}\)

The Home Office has said its standard decision time is 5 days with up to 1 month required for some cases.\(^{78}\)

**Appeals**

The WA provides for a right of appeal against decisions to refuse to grant residence rights. This is reflected in clause 11 of the European Union (Withdrawal Agreement) Act 2020 which provides a power to make regulations giving a right of appeal against certain specified “citizens’ rights immigration decisions”. The *Immigration (Citizens’ rights appeals (EU exit) Regulations 2020* (2020 No. 61) were subsequently made under this power and came into force on 31 January 2020. The regulations apply to applications made from 31 January 2020 and give the applicant a right of appeal to the First Tier Tribunal (immigration chamber). Decisions to refuse the application, or to grant pre-settled status where the applicant believes they are entitled to settled status, may be appealed.

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\(^{77}\) See, for example, [PQ 217651 (on Immigration: EU nationals)](https://www.parliament.uk/business/committee/commons-lords/decisions/pq-217651/) 11 February 2019

\(^{78}\) [PQ 4384 (on Immigration: EU nationals)](https://www.parliament.uk/business/committee/commons-lords/decisions/pq-4384/) 5 November 2019
6. Support for applicants

6.1 EU Settlement Resolution Centre

The EU Settlement Resolution Centre has been established to answer queries from applicants and deal with issues. The Independent Chief Inspector of Borders and Immigration’s (ICIBI) May 2019 inspection report noted that statistics of calls and emails during Beta testing phases of the scheme suggests ‘a significant proportion of applicants felt they needed some assistance with their application’.79

The centre can be contacted by telephone or via contact form.80 Calling the support centre both domestically and from overseas incurs a charge and the Government has been criticised for this by opposition MPs and campaign groups.81 In response to the criticism, a spokesperson for the Home Office stated that such telephone numbers are often in mobile phone packages as inclusive minutes.82

The contact form allows applicants to submit a question about applying to the EUSS. The Government website states they will reply within 5 working days.83

6.2 Assisted Digital Service

The UKVI’s Assisted Digital Service can be used to “support applicants without the appropriate access, skills or confidence” to complete EUSS applications online. The Assisted Digital Service is free to use, and provides the following support:

- Telephone support from a skilled adviser who can help applicants complete their application form online
- Face-to-face support at a centre to access and complete the online form
- Face-to-face support at home to complete the form – a We Are Digital tutor visits applicants at home to help complete the online form

The Assisted Digital locations can be found on the ‘EU Settlement Scheme: Assisted Digital locations’ webpage. It is important to highlight that the Assisted Digital Service supports applicants in completing the application form itself, not the initial ID check.

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79 Independent Chief Inspector of Borders and Immigration, An inspection of the EU Settlement Scheme, November 2018-January 2019, page 27
80 The contact details can be found on the Government webpage ‘Contact UK Visas and Immigration about your application’
81 Politics Home, Anger as EU citizens forced to pay call charges for post-Brexit rights hotline, 18th March 2019
82 Politics Home, Anger as EU citizens forced to pay call charges for post-Brexit rights hotline, 18th March 2019
83 GOV.UK, Ask a question about applying for settled status
6.3 Provisions in place for vulnerable people

The Government have put in place a ‘comprehensive vulnerability strategy’ for the EUSS. In February 2019 then Immigration Minister, Caroline Nokes said the Home Office has held monthly meetings with representatives of EU citizens on the design and development of the scheme since November 2017. As part of this process the Home Office sought to identify the needs of potentially vulnerable applicants including the disabled, elderly and isolated.\(^{84}\) A ‘vulnerability cohort’ was included in the second beta test phase of the EUSS, which comprised individuals being supported by one of seven community organisations or ‘looked after’ children in the care of one of five local authorities.\(^{85}\)

Some measures have been put in place, such as allowing for paper applications to be made when applicants are ‘unable to access the support mechanisms in place’.\(^{86}\) Yet it is unclear what constitutes ‘being unable to access support’. In response to a Parliamentary Question, Baroness Williams of Trafford said a triage process will ensure paper application forms are given to those with ‘specific needs’.\(^{87}\) The Immigration Minister has also confirmed it is possible for someone to apply to the scheme on behalf of someone with a mental incapacity.\(^{88}\)

£9 million of grant funding to ‘reach and give practical support to vulnerable citizens and their families’ has been awarded to 57 organisations throughout the UK. According to the Government, the organisations have bid to support an estimated 200,000 vulnerable individuals to make their application over the next 12 months (year 2019/20). The full list of the organisations awarded funding has been published on the GOV.UK website.

The Home Office have said they are working with stakeholders to produce child-friendly materials that will support younger applicants to understand and engage with the scheme. The Home Office have established a ‘children’s specific content steering group’ to develop age-appropriate communications material. This steering group is made up of children’s rights bodies including legal experts and academics specialising in European children’s rights, and communications professionals.\(^{89}\)

However, in a letter from Baroness Kennedy of the Shaws to the Home Secretary, the House of Lords EU Justice Sub-Committee expressed concerns that only 1% of the applicants in the PB2 trial were

\(^{84}\) Parliament.uk, Immigration: EU Nationals, Written question 213250, 5th February 2019
\(^{85}\) Independent Chief Inspector of Borders and Immigration, An inspection of the EU Settlement Scheme, November 2018-January 2019, page 21
\(^{86}\) Parliament.uk, Immigration: EU Nationals: Written question HL 14710, 3rd April 2019
\(^{87}\) Parliament.uk, Immigration: EU Nationals: Written question HL 14710, 3rd April 2019
\(^{88}\) Parliament.uk, Immigration: EU Nationals: Written question 222665, 21st February 2019
\(^{89}\) Parliament.uk, Immigration: EU Nationals, Written question 223237, 27th February 2019
categorised as vulnerable compared to an estimated 10-20% of the EEA population resident in the UK. The Committee expressed concern that the £9 million grant will not be sufficient to cater for the number of people requiring assistance. According to the Impact Assessment for the EUSS, Home Office internal analysis estimates that the total number of EEA citizens eligible to apply for the EUSS by the end of the implementation period on 31 December 2020 is likely to be between 3.5 million and 4 million. If the EU Justice Sub-Committee estimates and the Home Office estimates are correct, this would indicate at least 350,000 vulnerable applicants could be expected to apply to the EUSS. In response to the letter, the then Home Secretary, Sajid Javid, stated the Home Office will monitor the outcomes of the overall support package, “so we can make adaptations over the lifetime of the scheme”.

90 GOV.UK, Impact Assessment for EU Settlement Scheme, July 2018
91 Parliament.uk, Letter from the Home Secretary, Sajid Javid, to Baroness Kennedy of The Shaws, Chairman of the EU Justice Sub-Committee, 17th April 2019
7. Associated rights

7.1 Social security

EU law does not require Member States to give EEA migrants unrestricted access to social benefits. Broadly speaking, a person who moves from one Member State to another has access to benefits in the host country if they are economically active, or able to support themselves. Working EEA migrants enjoy full free movement rights and are entitled to in-work benefits on the same basis as nationals of the host country. EEA migrants not looking for work, or unable to work because of sickness or disability, may have no access to benefits.

Since 2004 EEA nationals cannot be “habitually resident” for certain UK benefits unless they satisfy the “right to reside” requirement. The requirement applies to claims for a range of benefits including Universal Credit, Child Benefit and housing assistance from local authorities.

An EEA national can satisfy the right to reside requirement in a number of ways, e.g. as a worker, a self-employed person, a jobseeker, a self-sufficient student, or as a family member of a person falling into one of these categories. People may also satisfy the requirement if they have a “derivative right to reside” (e.g. as a primary carer of a child in education). Some people who are not economically active will only be able to satisfy the right to reside requirement as a “self-sufficient person.” This means they must have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have comprehensive sickness insurance cover.

EEA nationals can also acquire a permanent right of residence if they have resided legally in the UK for a continuous period of five years (or less in certain circumstances). A person is “residing legally” during any period in which they have a right to reside as a worker, self-employed person, jobseeker, etc; or as a family member of such a person. Periods when the person had a derivative right to reside do not however count towards permanent residence. Further details can be found in a Commons Library briefing, People from abroad: what benefits can they claim?

A person granted settled status under the EUSS has a right to reside that satisfies the right to reside requirement and can therefore claim benefits that are subject to that requirement (provided, that is, they meet the other conditions for entitlement).

People with pre-settled status do not automatically satisfy the right to reside requirement, and to access benefits must be able to demonstrate

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92 Switzerland is not a member of the EEA, but as a result of an agreement that came into force on 1 June 2002, Swiss nationals enjoy broadly the same rights as EEA nationals with regard to freedom of movement, including in relation to access to benefits.

93 The habitual residence test does not apply to claims for Child Benefit or Child Tax Credit, but people without a right to reside in the UK are treated as not present in Great Britain, and therefore not entitled, to these benefits.

94 DWP, DMG Memo 6/19, May 2019; ADM Memo 9/19, May 2019; HB Circular A7/19, July 2019
a qualifying right of residence under the existing rules, as outlined above.

The Child Poverty Action Group (CPAG) has commenced judicial review proceedings on behalf of two EU citizens refused Universal Credit on the basis that their pre-settled status was not a qualifying right of residence for benefits purposes. CPAG argues that under EU law the UK cannot, having granted a right of residence under domestic law, discriminate against a person on the grounds of their nationality in terms of entitlement to benefits, relative to a British citizen. The case is expected to be heard in the High Court in early 2020.95

7.2 Access to the NHS

The NHS is a residency-based healthcare system and entitlement to free NHS hospital treatment is based on ‘ordinary residence’ in the UK or exemption from charges under the NHS (Charges to Overseas Visitors) Regulations 2015. These regulations place a duty on NHS bodies providing non-emergency hospital treatment to charge those overseas visitors who are not exempt and recover charges from them.96

During the transition period it is not necessary for an EEA/Swiss citizen living in the UK to demonstrate that they have status under the EU Settlement Scheme in order to access the NHS. Those who have started living in the UK by 31 December 2020 will need to apply to the EU Settlement Scheme (before 30 June 2021) in order to secure ordinary residence for the future. After 31 December 2020 EEA/Swiss nationals moving to the UK will need to comply with relevant new immigration rules in order to be ordinarily resident.

Detailed guidance can be found in the Department of Health and Social Care’s Guidance on Implementing the Overseas visitors Hospital Charging Regulations (updated February 2020), which also provides the following summary:

15. From 1 January 2021, unless the UK and EU reach a further agreement, the healthcare cover of citizens from an EEA country or Switzerland may change and they may become chargeable unless they are accessing a service that would be free of charge for all or an exemption category applies.

16. EEA/Swiss citizens lawfully residing in the UK by 31 December 2020 will retain their entitlement to healthcare on the same basis as now, i.e. by being ordinarily resident. They will need to apply to the EU Settlement Scheme in order to secure these rights for the future, and their entitlements will be subject to any future domestic policy changes which apply to UK nationals. Their close family members will also be exempt from charging, even if they arrive after 31 December 2020.

95 CPAG, EU pre-settled status: Fratila and Tanase v SSWP CO/3632/2019
96 Guidance on establishing ordinary residence and a current list of exemptions and reciprocal healthcare arrangements can be found in the Department of Health and Social Care’s Guidance on Implementing the Overseas visitors Hospital Charging Regulations (updated February 2020). Generally, a person will be considered “ordinarily resident” in the UK when that residence is lawful, adopted voluntary, and for settled purposes as part of the regular order of their life for the time being, whether of short or long duration.
17. Irish citizens’ rights are unaffected by these new arrangements. They can continue to come to the UK to live, work and access care as now.

7.3 Education
EU citizens with status under the EUSS have the right to enrol in education and continue studying in the UK.

Only students with home student status are eligible for public student support in the form of loans for fees and maintenance. The criteria for home student status are set out in the Education (Student Support) Regulations 2011 as amended – this states that to be classified as a home student individuals must be settled in the UK, and have been ordinarily resident in the UK for three years before the start of their course.

Under the EU Settlement Scheme eligible individuals may be granted settled status, individuals who receive settled status under this route will be eligible for support on the same basis as other persons with settled status.

7.4 Voting rights
The voting rights of EU citizens in the UK are not determined by settled or pre-settled status.

Currently the right to vote is set out in legislation, principally the Representation of the People Act 1983 (RPA 1983), as amended. This entitles EU citizens resident in the UK to vote in local elections. There are no immediate plans to amend the legislation for local elections in England or Northern Ireland and any changes will not affect citizens of Ireland, Malta or Cyprus. Nationals of these countries who are resident in the UK will retain their full voting rights. Resident Cypriot and Maltese citizens will qualify by virtue of being Commonwealth citizens. Resident Irish citizens will qualify as a result of long held rights to vote in UK elections that pre-date EU membership.

Scotland and Wales are to allow all foreign nationals, not just EU citizens, legally resident in those countries to vote in local and devolved elections (see below).

Before 1995, EU citizens living in the UK had no right to register to vote in local elections. In 1995 EU countries agreed a reciprocal arrangement where EU citizens resident in another EU state could register to vote and stand for local elections, which was implemented in 1996.

The UK Government had wanted to make reciprocal voting rights part of the formal Withdrawal Agreement with the EU but these were not included. Instead the UK is seeking bilateral agreements with individual EU states. As of February 2020, agreements have been reached with Spain, Portugal and Luxembourg.

Although the UK has now left the EU, amending the voting rights contained in the RPA 1983 would require legislation. The Government has indicated that it has no immediate plans to do so. When
announcing the first bilateral agreement with Spain in January 2019, the Government said:

To provide certainty while we pursue these agreements, we do not anticipate making any changes to the current primary legislative framework for candidacy and voting rights of EU citizens living in the UK in the immediate future.97

During the current transition period following Brexit, the Government recently clarified that Brexit will not affect the rights of EU nationals to stand for and vote in scheduled local government elections due in England in May 2020, including in London:

The UK Government has been clear that the issue of local voting rights of EU citizens living in the UK needs to be considered alongside the rights and interests of British expats living abroad.

The rights of EU citizens to vote and stand in local elections will not immediately change on exit from the EU. We are seeking reciprocal bilateral agreements to maintain this right. The Government has already signed reciprocal bilateral agreements with Spain, Portugal and Luxembourg to guarantee local voting and candidacy rights for UK nationals in those states. Together these three voting rights treaties protect the rights of a third of UK nationals living in EU Member States.

In that context the Government can confirm that resident EU citizens will be able to vote and stand in the May 2020 local elections in England (including London Assembly elections) and the May 2020 Police and Crime Commissioner elections in England and Wales. Those elected to office will be able to serve their full term and this will also apply to those elected before 2020.98

Scotland and Wales

Responsibility for the franchise for local and devolved elections in Scotland and Wales is now devolved to the governments in Edinburgh and Cardiff. Both administrations are extending local and devolved election voting rights to all legally resident foreign nationals, regardless of nationality or EU citizenship.

The Scottish Parliament passed the Scottish Elections (Franchise and Representation) Act on 20 February 2020. This now entitles all foreign nationals legally resident in Scotland with leave to remain (or who do not require such leave) to vote in all local elections in Scotland and to elections for the Scottish Parliament. This includes those granted refugee status. Foreign nationals with indefinite leave to remain, and those with pre-settled status, will also be able to stand for election.

The next scheduled elections in Scotland are Scottish Parliamentary elections in May 2021 and local elections in May 2022.

In Wales, similar provisions are being implemented. The National Assembly for Wales passed the Senedd and Elections (Wales) Act 2020 at the end of 2019, which received Royal Assent on 15 January 2020. The Act applies only to Senedd elections and grants voting rights to

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98 WPQ 1802 [EU Nationals], 29 January 2020
foreign nationals legally resident in Wales on a similar basis to those in Scotland.

The Welsh Government has introduced legislation to make the same provisions for local government elections in Wales. The *Local Government and Elections (Wales) Bill* was introduced on 18 November 2019.

The next scheduled elections for the Senedd are May 2021 and for Welsh local elections are in May 2022.

**Northern Ireland**

Voting rights are an excepted matter under the *Northern Ireland Act 1998*, as amended.\(^99\) Responsibility for the franchise for elections in Northern Ireland remains with ministers in the UK Government.

This means that, as with local elections in England, there are no immediate plans to change the eligibility of EU nationals to vote in local and devolved elections in Northern Ireland. The next scheduled elections in Northern Ireland are Assembly elections in 2022 and local council elections in 2023.

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\(^99\) *Schedule 2* of the Act lists excepted matters.
8. Monitoring of the EUSS

Under Article 159 of the WA, the Government agreed to set up an independent authority to monitor the implementation of the EU Settlement Scheme.

Article 159 of the Withdrawal Agreement states:

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. The Authority shall also have the right, following such complaints, to bring a legal action before a competent court or tribunal in the United Kingdom in an appropriate judicial procedure with a view to seeking an adequate remedy...

The Joint Committee shall assess, no earlier than 8 years after the end of the transition period, the functioning of the Authority. Following such assessment, it may decide, in good faith, pursuant to point (f) of Article 164(4) and Article 166, that the United Kingdom may abolish the Authority.100

The Government have said the Independent Monitoring Authority’s (IMA) powers will have effect from the end of the transition period. Before this the EU Settlement Scheme is monitored by the Independent Chief Inspector of Borders and Immigration (ICIBI).

The ICIBI published its first report on the EU Settlement Scheme on 2nd May 2019. The inspection found areas for improvement and made seven recommendations, all of which the Home Office has accepted.101

On 17 February 2020 the i reported that the ICIBI sent the result of further inspection to the Home Office on 30 September 2019.102 The publication reported:

The Home Office is formally committed to releasing the chief inspector’s reports within eight weeks of their being submitted. He has not been told why the investigation is still awaiting publication and has not been given a timescale for its release.103


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100 GOV.UK, Withdrawal Agreement, Article 159
101 Independent Chief Inspector of Borders and Immigration, An inspection of the EU Settlement Scheme, November 2018-January 2019
102 ‘Priti Patel delays publication of independent reports on EU citizens and anti-terror laws which were sent to her months ago’, the i, 17 February 2020
103 ‘Priti Patel delays publication of independent reports on EU citizens and anti-terror laws which were sent to her months ago’, the i, 17 February 2020
9. Issues and criticism

British Future published a report in January 2019, ‘Getting it right from the start: Securing the future for EU citizens in the UK’. The report identified several potential problems with the scheme, including information barriers, literacy and language barriers, and evidence barriers. The report concluded:

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.104

Jill Rutter, co-author of the report, told The Guardian:

The Home Office must invest in getting the EU settlement scheme right from the start. Failure to do so could cause massive problems in years to come, on a far bigger scale than the ‘Windrush scandal’.

The application system should work simply and efficiently for the vast majority of EU citizens. But there will always be more complex cases where people find it harder to navigate the system or to prove their residency – and the sheer scale of this task means even a low rate of failure equates to tens of thousands of people.105

The University of Oxford’s Migration Observatory has also identified that applications may be more difficult for people who are already vulnerable or have reduced autonomy.106 For instance, it has been noted that victims of domestic abuse, particularly those who rely on a partner for evidence, could face significant barriers.

9.1 Nature of the scheme

The EUSS has attracted criticism for forcing EU citizens to apply to reside in the UK, with some feeling settled status should have been granted automatically, or through a declaratory scheme, instead of the constitutive system which is in place.

The Home Affairs Select Committee’s report on the EU Settlement Scheme made this point, arguing the Government should grant settled or pre-settled status automatically to eligible people resident in the UK before ‘exit day’. The Committee report also proposes the EUSS should continue to function in its current form for those arriving in the UK after exit day:

We recommend that the Government amend the Immigration and Social Security Co-ordination (EU Withdrawal) Bill so as to provide for the automatic granting of settled or pre-settled status in the UK to anyone who would, under current Government proposals,

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104 British Future, Getting it right from the start: Securing the future for EU citizens in the UK, January 2019
105 The Guardian, EU citizen registration in UK could become ‘new Windrush’, say migration experts, 21st January 2019
106 The Migration Observatory, Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? 12th April 2018
be entitled to that status under the EU Settlement Scheme on the
day on which the UK ceases to be a member of the European
Union. The Settlement Scheme would function as currently
proposed by the Government for people who arrive in the UK
after this date.107

The issue has also been raised by Alberto Costa MP who proposed that
the EUSS should be a declaratory scheme, and British citizenship should
be granted for free to EU citizens who were present in the UK before
the referendum. Under this proposal, there would reportedly be no
need to supply proof to the EUSS, and there would be a presumption of
the right to remain.108

In response to a question from Caroline Lucas MP (Brighton Pavilion) in
February 2019 about this issue, then Prime Minister Theresa May said:

We have put forward a sensible and reasonable scheme. We have
said that we will guarantee rights for EU citizens here in the UK,
even in the event of no deal, so this would not only pertain in the
event of a deal. As the hon. Lady will know, no fee will be
required on the full roll-out of the settlement scheme, and we will
reimburse any fees that have been paid in the pilots. However,
we retain the right to ensure that it is possible for this
country to determine that individuals who perhaps have a
particular criminal record are not in this country, and that is
a right that we will look at across the board. The sort of
situation that the hon. Lady suggests is therefore not right.
We have a good scheme that is easy to use and for which there
will be no charge.109

The Home Affairs Select Committee report also notes that when asked,
the then Home Secretary said a declaratory approach would “lead to
terrible problems” and would create problems similar to those
experienced by the Windrush generation.110 The Home Affairs Select
Committee dispute this assertion, and state:

…this assertion that the problems encountered by the Windrush
generation were derived from the declaratory approach taken in
the 1970s does not tally with the evidence heard and published
by this Committee, the National Audit Office, or the Joint
Committee on Human Rights.111

9.2 Proof of status

There have been concerns raised about the digital nature of the proof of
immigration status. No physical documents are to be provided, with the
proof of status instead accessed via an online service.

A number of Lords and Commons Select Committees have raised this
issue. The House of Lords EU Justice Sub-Committee stated:

Having no physical proof of status will not only disadvantage
those without access to online technology, but would leave all EU

107 Home Affairs Select Committee, EU Settlement Scheme report, 30th May 2019, 3.71
108 The Guardian, Michael Gove to pledge free UK citizenship for 3m EU nationals, 27th
May 2019
109 Hansard, HoC debate, Leaving the EU, Column 751, 12th February 2019
110 Home Affairs Select Committee, EU Settlement Scheme report, 30th May 2019, 3.57
111 Home Affairs Select Committee, EU Settlement Scheme report, 30th May 2019, 3.58
nationals in limbo in the event of a breakdown of the electronic system.112

Indeed, in a letter to the Home Secretary dated 27 February 2019, the Committee drew parallels between the Windrush scandal and the lack of physical proof of status to be provided under the EU Settlement Scheme:

> Without physical proof of status, EU/EEA nationals living in the UK could find it hard in some circumstances to access services; and in the worst case they could find it difficult to prove their status in a future dispute with the Home Office. Given the clear parallels with lack of documents contributing to the Windrush scandal, and the fear that this causes for EU/EEA citizens, the Home Office must provide physical documentation.113

In response, the then Home Secretary’s letter dated 20 March 2019 made clear that the proof of status will be online only, and this was reinforced by then Immigration Minister Caroline Nokes in response to a Parliamentary Question asked by Patrick Grady MP (Glasgow North):

> The Home Office will not issue a physical document to EU citizens granted status under the EU Settlement Scheme. Those granted status under the scheme will be given a digital status, as part of moving the UK immigration system to digital by default. The future border and immigration system will make use of the latest digital technology to improve customer experience, increase security and detect abuse.

> EU citizens granted status under the scheme can access information about their immigration status and entitlements via a secure online service. Individuals will control who they wish to share this with to demonstrate their status and to exercise their rights under the Withdrawal Agreement. With online services, we can ensure that checkers see only the information that is relevant and proportionate to their need. Using a physical document as evidence of status, as has been the practice to date, does none of this.

> It can also cause significant problems when documents are lost, stolen, damaged, expired or in the process of being renewed. Physical documents are also far more open to forgery and fraud, something we must seek avoid. Additionally, there are individuals whose documents are controlled by others – for examples, in cases of domestic violence, modern slavery and human trafficking. Moving to an online status is a step forward in tackling those who seek to control others. A digital status is also much easier to use for visually impaired and dyslexic users who may have difficulty reading a physical document.

The Home Affairs Select Committee have also reiterated concerns about the digital only nature of the status and recommended applicants receive a hard copy confirmation of their status in addition to the digital status.114

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112 Parliament.uk, Committee expresses concerns to Home Secretary about EU Settlement Scheme, 27th February 2019
113 Parliament.uk, Letter to Rt. Hon. Sajid Javid from Baroness Kennedy of The Shaws, Chairman of EU Justice Sub-Committee, 27 February 2019
114 Home Affairs Select Committee, EU Settlement Scheme report, 30th May 2019, 3.72
9.3 Prevalence of pre-settled status grants

The scheme has come under criticism for granting pre-settled status to EU citizens who have been in the UK for longer than 5 years. The Guardian reported in August 2019 that immigration experts were concerned about stories where applicants had been wrongly granted pre-settled status. There has been media attention on EU citizens who were granted pre-settled status despite living in the UK for a long time.

On 3 December 2019 the Public Law Project (PLP) published figures on administrative reviews on EUSS decisions which show that “89.5% of initial decisions reviewed were overturned”. The PLP proposed various reasons for the high success rate, including the suggestion that “it could also indicate that the automated data checks and initial decision makers are getting things wrong more frequently”, and the suggestion that the applicant provided new evidence on review, among other potential reasons.

The Home Office response was reported by several media outlets. For example, The Independent reported:

A Home Office spokesperson said the majority of overturned decisions were not caseworker error but where an applicant provides new information, and that the overall number of administrative reviews was low compared to the number of people who had been granted status.

9.4 Technological issues

Digital exclusion

The online nature of the application process means that issues surrounding digital exclusion are especially important. According to the Migration Observatory, an estimated 2% of non-Irish EU citizens in the UK reported they had never used the internet in 2017, which is around 64,000 people. Whilst the UKVI’s Assisted Digital Service has been put in place to help people who do not have the “access, skills or confidence” to complete an online application process, it is unclear what the take-up of this service has been. It is also unclear how effectively the existence of this service will be communicated to groups facing digital exclusion.

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115 ‘Rise in EU citizens not getting UK settled status causes alarm’, The Guardian, 30 August 2019
116 See, for example, ‘French chef’s struggle to get settled status after 31 years in UK’, The Guardian, 30 August 2019 and ‘EU national who had lived in UK for twenty years was “denied” settled status’, ITV News, 12 September 2019
117 ‘Admin review & EU settlement scheme: what does the 89.5% success rate show?’, Public Law Project, 3 December 2019
118 ‘Admin review & EU settlement scheme: what does the 89.5% success rate show?’, Public Law Project, 3 December 2019
119 ‘Nine out of 10 appeals challenging Home Office over EU settlement scheme successful, figures show’, The Independent, 4 December 2019
120 The Migration Observatory, Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? 12th April 2018
On 30 May 2019 the Home Affairs Select Committee recommended that “the Home Office must ensure that this service is adequately staffed so that it is available to all who need it, and also that applicants are adequately aware of this service, as take-up has so far been very low.”

The ‘EU Exit: Identity Document Check’ app previously only worked on Android devices. This was widely reported in the media, with the Government coming under criticism due to the app not being available on Apple devices.

The app now works on iPhone 7 and newer Apple models.

9.5 Failure to apply to EUSS

Confusion around existing immigration status

There has been concern that EU citizens with permanent residence documents may be unaware they have to apply to the EUSS. Permanent residence documents will no longer be valid after the 31st December 2020, and as such all EU citizens with permanent residence documents will need to apply to the scheme.

There has been a sharp increase in the number of permanent residence documents applied for by EEA nationals in the period following the EU referendum. 168,413 permanent residence documents were issued to EEA nationals in 2017, compared with 18,064 in 2015, which is an almost tenfold increase. Whilst the number decreased in 2018, it remains significantly higher than pre-referendum levels. The Inspection of the EU Settlement Scheme published on 2nd May 2019 noted that the Home Office is unsure why the number of applications increased, as the document will no longer be valid. The report raises the question of whether applicants are mistakenly under the impression that a permanent residence document will suffice as proof of their immigration status in the future.

The report following the Public Beta test phase of the EUSS echoed this, finding there was significant confusion amongst applicants regarding whether they held a permanent residence document or indefinite leave to remain. The report states that:

Around 12,750 applicants in the public beta testing phase mistakenly believed that they had documented PR status or existing ILR.

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121 Home Affairs Select Committee, EU Settlement Scheme, 30 May 2019, HC 1945 2017-19, para 104
122 GOV.UK, ‘Apply to the EU settlement scheme (settled and pre-settled status): What you’ll need to apply’, undated [accessed 3 February 2020]
123 Independent Chief Inspector of Borders and Immigration, An inspection of the EU Settlement Scheme, November 2018-January 2019
124 GOV.UK, Immigration statistics, European Economic Area tables, EEA table ee 02, Issue and refusal of residence documentation (excluding Worker Registration Scheme) to EEA nationals and their family members, by country of nationality, 29th November 2018
The test phase of the EUSS received 200,420 applications, and as such around 6 per cent of applicants mistakenly believed they had permanent residence status or ILR. Whilst this is a relatively small figure, when considering the vast numbers of applications expected, a large number of applicants could face similar issues. Following the test phase, the Government incorporated an additional screen into the application process to demonstrate how a permanent residence document looks.

**Children**

According to Coram Children’s Legal Centre (CCLC), it is estimated that children constitute 32 per cent of eligible applicants to the EUSS. The University of Oxford’s Migration Observatory have highlighted the following children may be at risk of not applying to the EUSS:

Children whose parents do not themselves apply, do not realise that children need to apply, or mistakenly believe that their UK-born children are automatically UK citizens. There are more than 900,000 children of non-Irish EU citizen parents living in the UK, born either here or abroad. This includes an estimated 239,000 UK-born children whose parents report that they are UK citizens, but available data suggest that tens of thousands of these children may not be.

A report by CCLC in March 2019 drew attention to potential obstacles for looked after children applying to the EUSS. It is not compulsory for local authorities to collect information on the nationality of children in their care, and as such there is a risk that eligible children will fail to apply to the scheme. The report referred to research undertaken by CCLC that uncovered, through a series of Freedom of Information requests, that one in three local authorities in England did not know how many children in their care may be directly affected by Brexit.

**9.6 Valid ID requirement**

A valid passport or national ID is required. This means it must not have expired. If it has expired, it must be renewed before the application is made under the EU Settlement Scheme.

The Migration Observatory noted that at the time of 2011 Census in England and Wales, 100,000 or 5% of people born in EU countries did not hold a passport. Some of these people will be British citizens, and thus cannot apply to the EUSS, and some may hold national identity.
documents, however it could be expected that some applicants will struggle to meet the requirement of submitting a valid ID. This was raised in a Parliamentary Question in February 2019 in relation to looked after children, and the then Immigration Minister, Caroline Nokes, confirmed it may be possible for people without a passport or national ID to submit alternative evidence:

All EU applicants, including looked after children, will be able to apply with an ID card or a passport once the scheme is rolled out fully from 30 March 2019. In addition, from that date it will be possible for applicants to submit alternative evidence of their identity and nationality where they are unable to provide a passport or national identity card due to circumstances outside of their control, or for compelling practical or compassionate reasons.134

9.7 Data sharing and retention

The EU Settlement Scheme, and the Home Office, have been criticised on several fronts in relation to data sharing and retention.

Applicants must agree to the privacy policy in order to complete an EUSS application, however some concerns have been raised about the extent to which the policy allows for data sharing. The privacy policy reportedly includes the following sentence:

We may also share your information with other public and private sector organisations in the UK and overseas.135

A Freedom of Information request was made to the Home Office regarding the organisations the data may be shared with, but the request was refused.136 This has raised some concerns.137 In response to a Parliamentary Question related to this in January 2019, the Immigration Minister, Caroline Nokes stated:

The Home Office is the data controller for all data processed within the EU Settlement Scheme, this includes where organisations are contracted to act on behalf of the Home Office as the Home Office. No other organisations have access to the personal information of applicants to the EU Settlement Scheme. The Home Office may however share information with other organisations, but only where the information needs to be shared and there is an appropriate legal basis for doing so. Further detail on this is set out in the Borders, Immigration and Citizenship System privacy information notice:


The Home Office takes its data security and data protection obligations extremely seriously. There are processes in place in the Home Office for the capturing and mitigation of risks and

134 Parliament.uk, Immigration: EU Nationals: Written question 222792, 26th February 2019
135 What do they know, Freedom of Information request to Home Office, Settled Status app – Data Privacy, 20th November 2018
136 What do they know, Freedom of Information request to Home Office, Settled Status app – Data Privacy, 20th November 2018
137 Politics.uk, What exactly will the Home Office do with the 3 million’s private data? 31st January 2019
vulnerabilities to ensure appropriate control of our services. I can confirm this is the case for the EU Settlement Scheme.

All Home Office systems including EU Exit applications undergo rigorous cyber assessments prior to launch. This includes independent security testing to ensure they are resilient to external attack. Our IT systems hosting platform include a number of mechanisms to detect and respond to malicious intrusions. All data is encrypted both in transit and at rest. Our IT staff are security cleared and your data will only be accessed by those who have a valid business reason to access it. The Home Office regularly monitors the systems for abuse and misuse.

With this non-exhaustive list of measures, we protect the data of non-UK EU citizens who register under the Settlement Scheme.138

The Data Protection Act 2018 includes an immigration exemption (Schedule 2, paragraph 4). In written evidence submitted by the Open Rights Group and the3million to the Data Protection Bill Public Bill Committee they claimed the exemption would allow the Home Office to “share immigration related data without restraint or safeguards outside of the EU” and “foreign residents, including 3 million EU citizens, would lose the right to access and be informed about what data is being used about them in immigration cases.”139 The Act came into force in May 2018, following which the Open Rights Group and the3million began proceedings for a judicial review.140 The law firm Leigh Day, representing the Open Rights Group and the3million, reported on 17 January 2019 that permission to bring the judicial review had been granted.141

Further concerns have been raised about the ‘opaque manner’ in which the automatic residency check is conducted to produce a decision. The Memorandum of Understanding between HMRC and the Home Office states:

Raw data accessed from HMRC systems will only be available for the duration of the calculation and will not be retained by the Home Office. Instead, the Home Office will apply the relevant business rules for the EU Settlement Scheme to produce a summary of qualifying months HMRC holds records for pertaining to the applicant. This summary will contain either a positive or a negative output for each month in the period assessed. No further details will be retained. This summary will be stored on Home Office systems in line with existing data protection protocols and held for 10 years before secure destruction.142

The Immigration Law Practitioners’ Association’s report on ‘EU Settled Status Automated Data Checks’ suggests the manner in which raw data

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138 Parliament.uk, Immigration: EU Nationals: Written question – 210042, Answered by Caroline Nokes, 28th January 2019
139 Parliament.uk, Data Protection Bill, Written evidence submitted by Open Rights Group and the3million (DPB25), 13th March 2018
140 The Guardian, Data laws could harm EU citizens’ attempts to stay in UK, court told, 17th January 2019
141 ‘Campaign groups granted permission for judicial review of immigration exemption’, Leigh Day, 17 January 2019
142 GOV.UK, Process level Memorandum of Understanding between HMRC and the Home Office, 29th March 2019, page 22
is immediately deleted could cause problems for applicants wishing to challenge a decision. The report states:

> If the Home Office does not retain either the raw data or how the business logic applied to the raw data, then upon deletion of the data it becomes opaque how the system reached its decision. In such a situation, if an applicant asks for a statement of reasons as to why they failed the checks, the Home Office would not be able to provide an answer.\(^{143}\)

The Home Office has also been criticised for a data breach when the email addresses of 240 EUSS applicants were mistakenly shared with other applicants.\(^{144}\) This data breach occurred shortly after the public launch of the scheme, leading some to question whether sufficient procedures were in place. Following the data breach, the Home Office reportedly improved its “systems and procedures to stop this occurring again”.\(^{145}\)

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\(^{143}\) Immigration Law Practitioners’ Association, *EU Settled Status Automated Data Checks – ILPA Research Piece*

\(^{144}\) The Independent, Brexit data breach: Home Office admits sharing details of hundreds of EU citizens seeking settled status, 11th April 2019

\(^{145}\) The Independent, Brexit data breach: Home Office admits sharing details of hundreds of EU citizens seeking settled status, 11th April 2019
10. Annex A: no-deal policy

This Annex contains information on the law and policy in relation to the EUSS that was provided by the Government to prepare for a possible no-deal Brexit. It has been separated from the main briefing and archived as a result of the UK withdrawing from the EU on the 31 January 2020 via the Withdrawal Agreement.

Under a no-deal Brexit free movement would have essentially continued in the UK until the Government legislated to repeal it. This is because of the European Union (Withdrawal) Act 2018, which preserves UK law implementing free movement from ‘exit day’. The Government planned to create a new type of immigration permission after exit day called ‘European Temporary Leave to Remain’ (“Euro TLR”). The purpose of Euro TLR would have been to provide a voluntary immigration status for EU migration to the UK between exit day and the implementation of the future immigration system. This is because EU citizens who arrived after a no-deal exit day would have been ineligible to apply to the EUSS.

The Government confirmed the EUSS would have continued to operate in the event of a no-deal Brexit, and the qualifying conditions would remain the same, with different deadlines. If there was a no-deal, applicants must have been living in the UK prior to 31st January 2020 and the application deadline would have been 31st December 2020.

Aside from deadlines, other aspects of the scheme would have been liable to change. The Government established the EUSS broadly in accordance with the conditions set out in the WA. However, if the WA had not been ratified, the conditions would not be binding and thus could have been changed in future. Without the WA, there would have been no international law obligation for the scheme to remain in its current form. Professor Steve Peers, from the University of Essex, wrote about this, stating that in the event of no-deal:

> the UK government would be free to change the details at some later date. For instance, it could have stricter rules on what happens when workers become unemployed, or otherwise regarding the definition of ‘worker’, or as regards qualification for permanent residence.

EU citizens would have become subject to the current UK thresholds for deportation for non-British citizens. The Immigration, Nationality and Asylum (EU Exit) Regulations 2019, would have come into force on exit day, making the relevant legislative changes.

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146 GOV.UK, ‘No deal immigration arrangements for EU citizens moving to the UK after Brexit’ updated 5 September 2019 [accessed 19 September 2019] [withdrawn]
147 GOV.UK, Apply to the EU Settlement Scheme (settled and pre-settled status), [relevant section withdrawn]
148 Professor Steve Peers, EU Law Analysis, Staring into the Abyss: Citizens’ Rights after a No Deal Brexit, 6th December 2018
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