



# EU Rights and Brexit Hub

Research, Advice and Support on EU Citizens' Rights



Economic and Social Research Council



UNIVERSITY of York



## EU Settlement Scheme: Barriers to Accessing Public Services for Vulnerable Adults.

With the UK's withdrawal from the European Union, EU, EEA and Swiss citizens and their family members will face a series of additional barriers to access key social security benefits and public services in the UK due to the implementation of the EU Settlement Scheme [EUSS].

All EU citizens who were resident in the UK before 31 December 2020 must apply to the EUSS by the 30th June 2021 to maintain their right to reside and access public services under the Withdrawal Agreement.<sup>[1]</sup> There are three statuses that EU citizens may hold after the deadline of the scheme, each with different rights to social security and public service provision in the UK:

- **Settled Status:** requires demonstration of five years of continuous residence in the UK which began prior to 31 December 2020, provides equal treatment with UK nationals to access social security and public services.
- **Pre-Settled Status:** requires demonstration of residence in the UK before 31 December 2020. Provides entitlement to directly provided health and social care services, but must potentially demonstrate 'habitual residence' in order to secure financial support, pending the outcome of cases before the European Court of Justice and the Supreme Court. Status expires after five years unless upgraded to settled status.
- **No status:** Those who have not made an application in time or where an application is refused or considered invalid will have no legal right to reside in the UK from 1st July 2021. Health and some social care remains free at the point of delivery, but individuals must pay NHS charges. There is no right to work or rent, no right to financial support from public funds and individuals in this category may be subject to immigration detention and removal from the UK.

We have identified **five barriers to accessing public services and social security** as a result of the EUSS. Specifically:

- the 'cliff edge' approach to the deadline
- the need to justify a late application
- the digital-only status provided by EUSS
- the incorrect allocation of status
- and the need to demonstrate 'habitual residence' for those with 'pre-settled' status

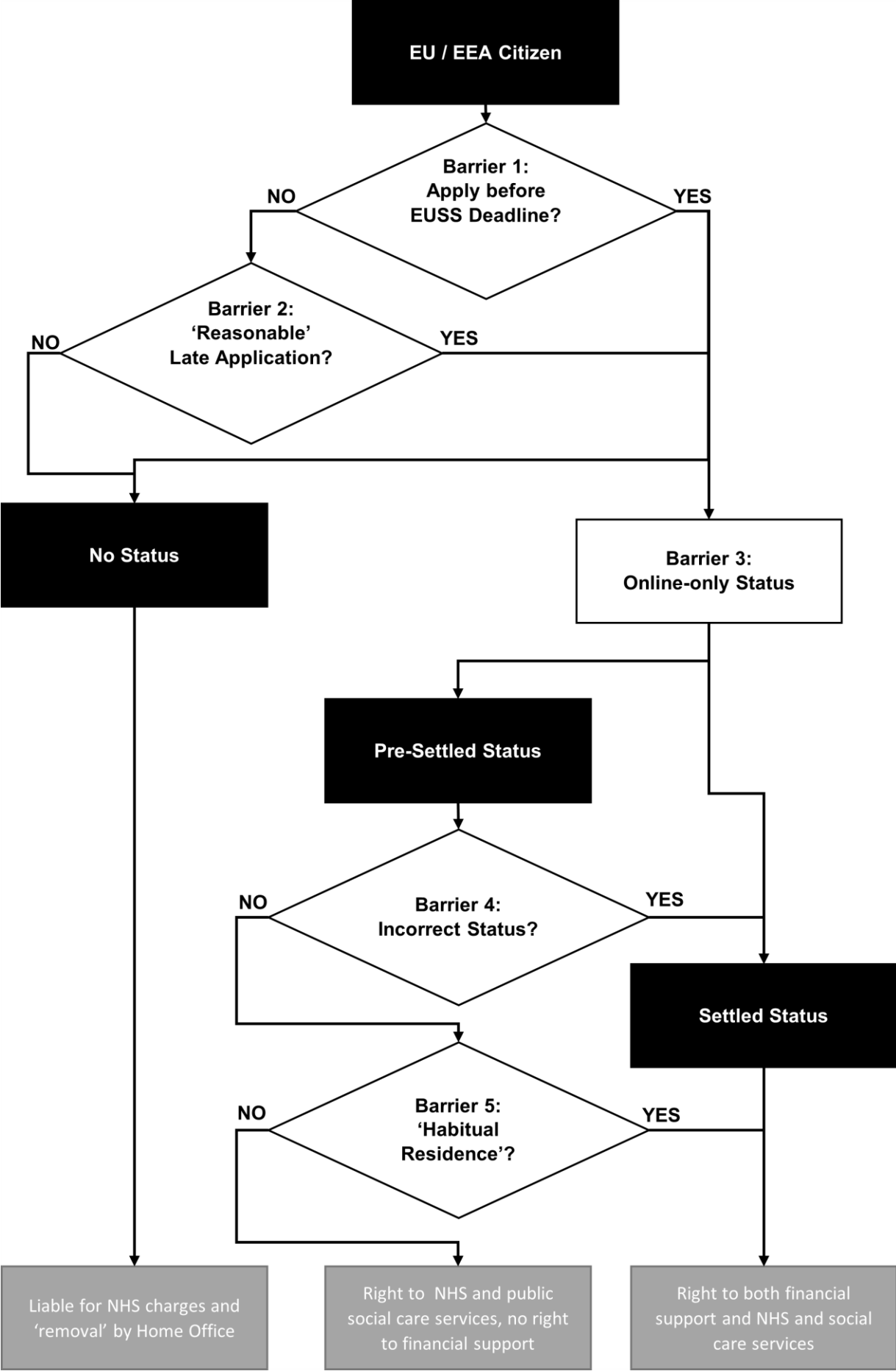
This is of particular concern to vulnerable adults such as the elderly, those with poor physical or mental health, those with limited economic resources or those otherwise socially isolated. These groups will both be more likely to encounter these barriers and are also more likely to require access to social security and public services.

Data on vulnerable adult EEA citizens is limited. Official data estimates that there are 58,000 EU citizens over the age of 75 resident in the UK,<sup>[2]</sup> 280,000 disabled EU citizens living in the UK,<sup>[3]</sup> and 15,000 EU citizens with a mental health condition which limits their daily activity 'a lot' living in the UK.<sup>[2]</sup>

The UK government has made significant progress in reducing barriers for vulnerable children by actively identifying children in care and recent care leavers that need to be registered and in supporting local authorities in making these applications.<sup>[4]</sup> The government has also taken the positive step of allowing any EEA citizen under the age of 18 to apply after the deadline.<sup>[5]</sup>

Vulnerable adults, however, are still exposed to these risks and may lose access to key benefits and services to which they are entitled. As a result of the EUSS vulnerable people may face discrimination, financial hardship or even removal from the UK.

**We urge the government to implement similar measures to those undertaken for vulnerable children in order to identify vulnerable adults, actively ensuring the enrolment of vulnerable adults in the EUSS and guaranteeing their right to make a late application. We also urge the government to take the additional step of guaranteeing that any individual identified as vulnerable is automatically granted settled status to remove as many barriers as possible to vulnerable adults and children accessing their rights.**



### **Barrier 1: Applying to the EUSS.**

The UK has chosen to adopt a 'constitutive' approach to maintaining EU citizens rights after Brexit. This means that an individual must actively register and demonstrate their right to reside by the 30th June 2021.<sup>[6]</sup> Failure to do so will mean that they 'will not have lawful status in the UK'<sup>[7]</sup> and will be subject to the full force of UK immigration policy.

This barrier leaves vulnerable adults exposed to a cliff edge and the hostile/compliant environment as they may be unable to apply to the scheme before the deadline due to social exclusion, language barriers, digital literacy, ability to secure necessary paperwork, illness, disability or cognitive capacity.<sup>[6]</sup>

The UK government has so far allocated £17m in funding to 72 community organisations to provide support for EU citizens applying, of which only nine, are targeting vulnerable populations.<sup>[8]</sup> Two inspections by the Independent Chief Inspector of Borders and Immigration have also recommended that the Home Office is responsible for making 'reasonable inquiries' on behalf of those that face difficulties in proving eligibility<sup>[9]</sup> and gathering data on vulnerable groups that require assistance.<sup>[10]</sup>

From December 2020 Government guidance does allow for those with designated legal authority as well as friends and family to make applications on behalf of some vulnerable adults.<sup>[11]</sup> However, the guidance is inadequate because it also requires friends and family to be registered with the Office of the Immigration Services Commissioner if they are to provide immigration advice.<sup>[11]</sup> More importantly this facility does not ensure that a successful application is actually made to the Home Office.

### **Barrier 2: 'Reasonable' late applications.**

If an EU citizen is unable to apply to the EUSS before the deadline, Art 18(1)(d) of the Withdrawal Agreement requires that late applications with 'reasonable grounds for the failure to respect the deadline' are considered. However there is still no formal guidance as to what would constitute a 'reasonable' late application despite the Home Office stating that it would be published in April 2020.<sup>[7]</sup>

This means that many EU citizens may find themselves denied status, and thus denied access to public services, social security and subject to potential removal, where they are unable to access the scheme in time but do not meet the government's criteria and level of proof required for a 'reasonable' late application.

EU citizens who do make a reasonable late application, potentially through no fault of their own, will still be subject to the full force of UK immigration policy until their status is granted.<sup>[12,13]</sup> This means that they will not be eligible for financial support and may have benefits withdrawn. They will also be unable to pass right to work or rent checks until granted status.<sup>[7]</sup> This will leave vulnerable adults in this position at a significant risk of poverty and homelessness. It can also lead to the withdrawal of any social care paid for from their disability welfare payments.

### **Barrier 3: Online-only Status.**

The EUSS is a prototype online-only scheme initiated as part of a move to a 'digital by default' immigration system.<sup>[14]</sup> This means that applications must be made through an online system and, for EU citizens, residence status is provided in a digital-only format, no physical residence card is issued.<sup>[14]</sup>

This means that in order to demonstrate their status and their right to UK public services, EU citizens and their service providers must complete an additional nine-step process with a stable internet connection using a suitable compatible device. <sup>[6,15]</sup> This creates a significant risk that status checks will be invalidated due to user error, system failure or unwillingness on the part of service providers to engage in digital status checks.<sup>[15,16,17]</sup> Problems with this process could lead to key services and support being withdrawn.

This creates an additional persistent and potentially discriminatory barrier for all EU citizens, especially vulnerable citizens such as the elderly, the homeless, those with limited cognitive capacity, limited digital literacy or limited ability to access digital services - such as those with visual impairment or other disabilities.

### **Barrier 4: Incorrect status.**

While thorough data on the accuracy of decisions under the EUSS has not been made available, statistics on administrative reviews requested for grants of 'pre-settled' status in May 2019 show that 82% are overturned and awarded settled status.<sup>[18]</sup> This implies that EU citizens are being incorrectly denied status or incorrectly awarded pre-settled status rather than settled status.

This failure to correctly award status creates an additional barrier to accessing services as EU citizens, who may already have difficulties accessing the EUSS, must now launch a review request and often

then have to provide additional evidence to receive the correct status (this risks incurring an £80 administrative charge which is only refunded where a decision is overturned on the original evidence).<sup>[19]</sup> Should this avenue for review not succeed, they must then request an appeal, which can be stressful, time consuming and costly.

There is a significant risk that this additional barrier will lead to many EU citizens, in particular vulnerable adults, accepting a status below that to which they are entitled due to the barriers to accessing the scheme or because they are unaware of their right to appeal. As pre-settled status is only temporary and must be upgraded by the individual, there is a risk that vulnerable adults may face an additional cliff edge at a later date and subsequent exposure to the hostile/compliant environment.

A key step to addressing this barrier would be to conduct a review of applicants self-reported time in the UK and compare this to subsequent status awarded. The Home Office never published this data.

#### **Barrier 5: 'Habitual Residence'.**

In 2019, the government introduced regulations which excluded pre-settled status as a route to establish 'habitual residence' for the purpose of accessing a range of welfare benefits including key disability and care benefits (Universal Credit, Personal Independence Payments, Disability Living Allowance, Carer's Allowance, Attendance Allowance and Pension Credit).<sup>[20]</sup> Instead, for those with pre-settled status, an alternative 'qualified right to reside' had to be evidenced to establish habitual residence.

The relevant regulations have been successfully challenged at the Court of Appeal and are to be quashed after 26th February 2021, provided the Secretary of State is not granted permission to appeal to the Supreme Court.<sup>[21]</sup> While this should make EU citizens with pre-settled status eligible for the same access to welfare as those with settled status, the current rules have created, and may continue to create, significant barriers for vulnerable adults with pre-settled status.

There is provisional evidence that cases handled by the EU Rights and Brexit Hub that there is already confusion from decision makers over the rights of those with pre-settled status and alternative ways they could evidence a 'right to reside' for the purpose of establishing habitual residence and eligibility for welfare benefits and housing.

The need to demonstrate habitual residence in addition to pre-settled status creates an administrative barrier to accessing important social security benefits, many of which are necessary to pay for social care provision for vulnerable adults, potentially forcing them into financial precarity or depriving them of necessary support.

#### **Contrast to Vulnerable Children.**

The government has already taken significant measures to reduce some of these barriers for vulnerable children. Specifically barriers 1 and 2 (deadline to apply and the right to late applications) have been reduced by a combination of data collection to ensure that all children in care identified as eligible by local authorities are registered with the scheme<sup>[4]</sup> and by extending a blanket right to apply after the deadline to everyone under the age of 18.<sup>[5]</sup>

The EU Rights and Brexit Hub is however concerned that the government chose not to take the opportunity to automatically guarantee the right to settled status for vulnerable children proposed by the House of Lords<sup>[22]</sup> and we urge them to reconsider their decision as part of a review into the needs of vulnerable adults.

#### **Recommendations.**

We therefore recommend that the government undertake similar measures with reference to vulnerable adults. Specifically that the government:

1. Release the data on EUSS applicants self-reported time in the UK compared to the subsequent status awarded.
2. Conducts a specific data gathering exercise similar to that conducted for vulnerable children, to identify vulnerable EU citizens and ensure that they are EUSS registered. This should be undertaken by conducting a comprehensive survey of local authorities, care providers and primary care trusts.
3. Extend the right to apply after the deadline to anybody identified as a vulnerable adult by an appropriate care provider, local authority or medical body with a similar burden of proof as that for vulnerable children. Namely an official letter identifying them as such.
4. Make anybody identified as vulnerable by an appropriate care provider, local authority or medical body automatically eligible for settled status.

- [1] Home Office. 2020. *EU Settlement Scheme: factsheet*.  
<https://www.gov.uk/government/publications/eu-settlement-scheme-factsheet/eu-settlement-scheme-factsheet>
- [2] Migration Observatory. 2020. *Unsettled Status - 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?* <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>
- [3] Home Office. 2020. *Policy Equality Statement: EU, other European Economic Area and Swiss citizens resident in the UK and their family members*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/936478/EUSS\\_PES\\_November\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936478/EUSS_PES_November_2020.pdf)
- [4] Home Office. 2020. *EU Settlement Scheme – Home Office Looked After Children and Care Leavers Survey, 2020*. <https://www.gov.uk/government/publications/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020>
- [5] Kevin Foster, Minister for Borders and Future Immigration. *Home Affairs Committee Hearing 4 November 2020*. Q66
- [6] Committee on the Future Relationship with the European Union. 2020. *Implementing the Withdrawal Agreement: citizens' rights*.
- [7] Letter from the Home Secretary to the Chair of the Home Affairs Select Committee dated 14 April 2020.
- [8] Specifically the Association of Directors of Adult Social Services, Advice on Individual Rights in Europe, The Children's Society, Ealing Law Centre, Latin American Disabled People's Project, Newport Mind Association, Positive Action in Housing, Rights of Women and SIFA Fireside - Home Office. 2020. *EU Settlement Scheme: community support for vulnerable citizens*.  
<https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>
- [9] Independent Chief Inspector of Borders and Immigration. 2019. *An inspection of the EU Settlement Scheme November 2018 – January 2019*
- [10] Independent Chief Inspector of Borders and Immigration. 2020. *An inspection of the EU Settlement Scheme (April 2019 to August 2019)*
- [11] Home Office. 2020. *EU Settlement Scheme caseworker guidance*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/940843/main-euss-guidance-v8.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940843/main-euss-guidance-v8.0ext.pdf)
- [12] The Baroness Williams of Trafford, Minister of State (Home Office). House of Lords Debate, 20 September 2020. cols.243-4
- [13] Kevin Foster, Minister for Borders and Future Immigration. Written answer to PQ119431, 27 November 2020.
- [14] Home Office. 2021. Government's response to the Committee on the Future Relationship with the European Union report: *Implementing the Withdrawal Agreement: citizens' rights*.  
<https://committees.parliament.uk/publications/4162/documents/41208/default/>
- [15] Tomlinson, J. & Welsh A. 2020. *Digital Immigration Status: A Monitoring Framework*. Public Law Project Research Paper. September 2020.
- [16] Bueltmann, T. 2020. *Experiences and Impact of the EU Settlement Scheme - Report on the 3million Settled Status Survey*.

[17] The3million. 2020. *Poll reveals EU citizens at risk - Business not ready for changes to UK immigration law*. September 2020. <https://www.the3million.org.uk/employers-poll>

[18] Independent Chief Inspector of Borders and Immigration. 2020. *An inspection of Administrative Reviews (May – December 2019)*.

[19] Home Office. 2020. Guidance: EU Settlement Scheme: apply for an administrative review. <https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review>

[20] Social Security (Income Related Benefits) (Updating and Amendment) (EU exit) Regulations 2019

[21] *Fratila and Tanase v Secretary of State for Work and Pensions* [2020] EWCA Civ 1741.

[22] Lords Amendment 3 to Immigration and Social Security Co-ordination (EU Withdrawal) Bill, debated on Monday 5 October 2020. Vol.806 Col.364-367.

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