



House of Commons
Home Affairs Committee

EU Settlement Scheme

Fifteenth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 14 May 2019*

Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Contents

Summary	4
1 Introduction	6
2 The EU Settlement Scheme	7
EU citizens' entitlement to permanent residence	7
The EU Settlement Scheme	7
Eligibility	8
Rights	8
Application process	9
Relationship with Brexit and future immigration policy	11
The Settlement Scheme in a 'no deal' scenario	11
Post-Brexit immigration	12
3 Has the Government learned from the Windrush scandal?	15
Citizens at risk under a constitutive system	16
The Home Secretary's response	17
A declaratory system	20
Documentation	21
4 Issues with the EU Settlement Scheme	25
People at risk of being left out	25
Barriers to application	30
Technical difficulties	30
The app	33
Document scanning	35
Not getting the status to which they are entitled	36
Reliance on automatic checks	40
Tracking the eligibility of EU citizens	42
Home Office capacity and management	44
Results of the pilot phases	45
Home Office record	47
Interactions with the Home Office	48

Conclusions and recommendations	51
Formal minutes	60
Witnesses	61
Published written evidence	62
List of Reports from the Committee during the current Parliament	63

Summary

The EU Settlement Scheme aims to establish the immigration status of EU citizens legally residing in the United Kingdom when the UK leaves the European Union. It will grant eligible individuals rights of legal residence depending on their length of residency in the UK. Individuals granted 'settled' or 'pre-settled' status will have rights to work, travel, use education and health services and to access public benefits broadly similar to those they have thus far enjoyed.

The Government has rightly said that it wants EU citizens who are resident in the UK to stay and have continued rights to live and work here after Brexit. So it is vital that the Home Office gets the detail of the Settlement Scheme right: failing to do so will run the risk of another Windrush scandal. EU citizens—who may have been legally resident in the UK for many years and have made this country their home—could be left in an uncertain situation regarding their rights and eligibility to remain in the UK. The hardship and injustice experienced by some members of the Windrush generation has been shameful, and lessons must be learned to avoid similar consequences befalling EU citizens.

Despite the Home Office's pledge that it will be looking for reasons to accept applications to the Settlement Scheme rather than to refuse, and that it will take a flexible approach which exercises discretion in the favour of the applicant, we have serious concerns that the detailed design of the Scheme means that many EU citizens currently resident in the UK are at risk of being left out.

Technical issues have blighted the application process, with applicants struggling to navigate the online system without assistance from the Home Office. Many others will fail to apply successfully, either because they are unaware that the Scheme applies to them or because they are unable adequately to evidence their entitlement to status. There remain too many gaps and ambiguities in the Government's guidance—including what will happen to individuals who do not apply before the deadline and how it will ensure that citizens are not disadvantaged in the case of a no deal Brexit—and we remain doubtful as to the Home Office's ability to handle the number and complexity of applications it will receive over the lifetime of the Scheme.

The Government has chosen to implement a system which does not grant status to eligible people but requires them to apply for it, and the Home Secretary told us that EU citizens are only entitled to the status which they are able to evidence. We disagree with this. We believe that EU citizens legally resident in the UK before its departure from the European Union should have their rights protected and their entitlement to remain enshrined in law.

We therefore call on the Government to protect in law the rights of EU citizens in the UK. The Government should guarantee in law that any EU citizens living in the UK before Brexit (and who would be eligible for status under the Settlement Scheme) are legal residents of the UK and are able to continue to live and work as they have done until now. The Settlement Scheme should operate in addition to provide them with proof of their entitlement to remain. This would mean that EU citizens in the

UK are protected post-Brexit from the difficulties and uncertainties which blighted the Windrush generation. EU citizens are our friends, colleagues and valued members of UK society: it is only right that the Government should give them certainty and security.

1 Introduction

1. Once the United Kingdom leaves the European Union, EU citizens will no longer be automatically entitled to live and work in the UK. This is because the right to free movement between European states is derived from EU law, to which the UK will no longer be subject. This change will affect all people who are here through exercise of the Treaty right to freedom of movement and who have not taken British citizenship or been granted indefinite leave to remain (as distinct from permanent residence under EU law), and will include citizens who have been resident in the UK for many years, and those who were born here and have never lived anywhere else.

2. The Government has proposed an EU Settlement Scheme to establish the immigration status of EU citizens legally residing in the UK when the UK leaves the EU. This would grant individuals rights of legal residence depending on their length of residency in the UK: with settled or pre-settled status, the individual would have rights to work, travel, use education and health services and to access public benefits which would be broadly similar to those they have thus far enjoyed. Unlike permanent residence, a status granted under the Settlement Scheme is not an automatic right: both settled and pre-settled status must be applied for by individual EU citizens and granted by the Government. Those who do not successfully access the Scheme and confirm their eligibility to remain may no longer have a legal right to live in the UK after the UK leaves the EU.

3. We held a short inquiry on this issue because the smooth and successful operation of the Settlement Scheme is vital to reassure UK-resident EU citizens that they will continue to be free to live and work here. Following the Windrush scandal—which has seen thousands of people from Commonwealth countries, who came to the UK after the Second World War, denied rights and threatened with deportation due to Home Office mishandling of their cases—it is also essential for public trust in the Home Office that it gets this scheme right. The prospect of a Windrush-style catastrophe happening to over three million EU citizens who have made the UK their home in good faith is deeply troubling.

4. We took evidence from individuals who have supported groups of EU citizens in applying to the Scheme, and from a range of experts and commentators on immigration and citizenship issues. We discussed this issue further with the Home Secretary, Rt Hon Sajid Javid MP, and the Permanent Secretary to the Home Office, Sir Philip Rutnam KCB, when they appeared before us on 27 February 2019. We also benefited from a demonstration of the application process by Home Office officials.

5. The Settlement Scheme will affect all European nationals living in the UK, whether they are from a nation which is one of the constituent members of the European Union (excluding the UK and Ireland), the European Economic Area or Switzerland. The Government has announced that EU, EEA and Swiss citizens will be able to apply to the Settlement Scheme to continue living in the UK. For consistency throughout this report we have generally referred to “EU” citizens, except where quoting or citing individuals or official guidance.

2 The EU Settlement Scheme

EU citizens' entitlement to permanent residence

6. In 2017 there were estimated to be 3.8 million EU citizens living in the UK.¹ Under current EU law² EEA nationals³ and eligible family members⁴ acquire an automatic right of permanent residence in host member states in which they have legally resided for a continuous five-year period.⁵ During this time they must have been exercising their rights under the Treaty on the Functioning of the European Union as a qualified person under free movement.⁶ As this is an automatic right, there is no need for EEA nationals to apply for permanent residence in countries such as the UK and there is no fee required to obtain the status. There is also no requirement in the UK to obtain a registration certificate, as is the case in some EEA member states. EEA nationals can apply for a permanent residence document which confirms their status, but this document does not itself confer status.

The EU Settlement Scheme

7. Under the UK's Withdrawal Agreement, free movement would continue until the end of the transition period on 31 December 2020. After that, the legal status of EU citizens residing in the UK will derive from a status granted by the Government's proposed EU Settlement Scheme, which opened on 30 March 2019. The Scheme provides new immigration categories of 'settled status' and 'pre-settled status' for EU nationals and their family members lawfully residing in the UK. The Government would provide a statutory basis to the EU Settlement Scheme through the expected Withdrawal Agreement Bill.

8. Settled status is available to EU citizens who have accrued five years of continuous residence in the UK prior to 31 December 2020.⁷ Those who moved to the UK prior to 31

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- 1 Migration Observatory, ['EU Migration to and from the UK'](#), 1 December 2018. Home Office internal analysis estimates that the total number of EEA citizens and their family members resident in the UK by the end of the planned implementation on 31 December 2020, and eligible to apply for the EU Settlement Scheme, is likely to be between 3.5 million and 4.1 million; [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 20 March 2019
 - 2 Council Directive [2004/28/EC](#), the Citizens' Rights Directive (also referred to as the Free Movement Directive), implemented in domestic UK immigration law in the [Immigration \(European Economic Area\) Regulations 2016](#).
 - 3 An EEA national is a national of a member state of the EU (other than the UK) or of Liechtenstein, Iceland, Norway or Switzerland, who is not also a British citizen; [Immigration \(European Economic Area\) Regulations 2016](#), Article 2(2)
 - 4 Eligible family members who are given the same rights of entry and residence to their family member's host state regardless of their country of citizenship are outlined in Article 2(2) of the Citizens Directive and regulation 7 of the EEA Regulations. These include: a spouse or registered partner; children or grandchildren of either the EEA national or their spouse/partner, who are either under 21 or dependent; parents or grandparents of either the EEA national or their spouse/partner, who are dependent; Council Directive [2004/58/EC](#); EEA Regulations, ['The Immigration \(European Economic Area\) Regulations 2016—Revised Version'](#)
 - 5 The continuous five-year period is not affected by temporary absences not exceeding six months per year and other exceptions found in Article 16(3) of the Citizens Directive and regulation 3 of the EEA Regulations; Council Directive [2004/58/EC](#); EEA Regulations, ['The Immigration \(European Economic Area\) Regulations 2016—Revised Version'](#)
 - 6 This includes as a worker, self-employed person, self-sufficient person or student, or an eligible dependent. For those not working or who are self-employed, there is also a requirement to hold comprehensive sickness insurance; Council Directive [2004/28/EC](#), Article 7
 - 7 This means that for 5 years in a row the individual has been in the UK for at least 6 months in any 12-month period, except for one period of up to 12 months for an important reason (for example, childbirth, serious illness, study, vocational training or an overseas work posting) or compulsory military service of any length.

December 2020 (or the date of the UK's departure from the EU in the case of a 'no deal' scenario) but who have not yet lived in the UK for five years may be eligible for pre-settled status.

9. Appearing before us in February 2019 the Home Secretary, Rt Hon Sajid Javid MP, emphasised that the Government wished to provide:

reassurance and confidence for all the EU citizens that are here in the UK that we not only want them to stay, we want to make it as easy as possible, we want to protect their rights. We will do all we can to do that and communicate that as much as we can.⁸

He later added that "We want them all to stay".⁹

Eligibility

10. Individuals need to apply to the EU Settlement Scheme if they are EU citizens or a family member of an EU citizen (unless they have Indefinite Leave to Remain, distinct from permanent residence under EU law, or have British citizenship). This includes people who were born in the UK who are not British citizens, and those who are from the EU but married to a British citizen. Individuals from outside the EU can apply if they are in a relationship with an EU citizen as their spouse, civil partner or unmarried partner. They can also apply if they are related to an EU citizen, their spouse or civil partner as their child, grandchild or great-grandchild (under 21 years old), dependent child (over the age of 21), or dependent parent, grandparent or great-grandparent. Individuals will not usually be eligible to apply if they are from outside the EU and married to a British citizen.¹⁰

11. Irish citizens and those with indefinite leave to remain are able to stay in the UK without applying (although those with permanent residence documents do need to apply as these documents will not be valid after 31 December 2020¹¹), and the UK has reached agreements with Norway, Iceland, Liechtenstein and Switzerland.¹² In March 2019 it was announced that resident citizens of these nations, and their family members, will be able to apply for UK immigration status under the Scheme, in line with the earlier agreements.¹³

Rights

12. If the draft Withdrawal Agreement is completed, an individual with settled status will be able to stay in the UK for as long as they like, apply for British citizenship (if eligible), work in the UK, use the NHS, enrol in education or continue studying, access public funds such as benefits and pensions (if eligible), travel in and out of the UK, and

8 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q755

9 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q767

10 Gov.uk, '[Settled and pre-settled status for EU citizens and their families](#)'

11 Gov.uk, '[Apply for a permanent residence document if you're from the EU, EEA or Switzerland](#)'

12 These agreements mean that UK and EEA EFTA citizens living in each other's countries at the end of the implementation period will be able to continue enjoying broadly the same rights as they do now, including arrangements on residency, healthcare, pensions and education, social security coordination and mutual recognition of professional qualifications. The agreements largely mirror the Withdrawal Agreement agreed with the EU; Department for Exiting the European Union, '[EEA EFTA Separation Agreement](#)', 20 December 2018

13 HC Deb, 7 March 2019, [HCWS1387](#)

bring close family members to the UK after 31 December 2020.¹⁴ Any child born in the UK to a citizen with settled status would automatically be a British citizen, and individuals with settled status should be able to spend up to five years in a row outside the UK without losing the status (although this allowance to individuals with settled status is subject to approval by Parliament).

13. Individuals granted pre-settled status would retain many of the same rights but would only be able to spend two years in a row outside the UK without losing the status. Any children born to such an individual in the UK after they received pre-settled status would only be a British citizen (at birth) if they qualified for it through their other parent, though they would be automatically eligible for pre-settled status. An individual can stay in the UK for a further five years from the date of receiving pre-settled status, but they must apply again and get settled status if they want to stay for longer. Applying to change status from pre-settled to settled status can be done as soon as the individual has five years' continuous residence.¹⁵

14. The3million, an organisation which campaigns for EU citizens' rights in the UK, has compiled a list of 181 (initially 162) questions to the Home Office about various aspects of the qualifications for and functioning of the EU Settlement Scheme.¹⁶ Many of these are yet to be answered by the Home Office and have not, according to the3million, been satisfactorily resolved by information published in any Government documents. These include questions on the criteria and eligibility for settled status applications, reasons for loss of settled status, the consequences of rejected applications, the rights of citizens with settled status, and the functioning of the Independent Authority (the non-departmental public body which will be established to receive complaints and take action in the case of failures within the Scheme).

15. The EU Settlement Scheme is now live, but there remains a lack of clarity over many aspects of the Scheme. The Home Office must provide full responses to the questions posed by the3million regarding the Settlement Scheme. It is disappointing that it has not yet done so, as some of these questions were first raised almost a year ago. EU citizens in the UK need certainty, and the Government should give it to them. We address some of these concerns specifically in this report.

Application process

16. Following a number of test phases, the EU Settlement Scheme opened on 30 March 2019. Under the draft Withdrawal Agreement the deadline to apply for settled status is 30 June 2021. Applicants can apply online and will need to prove their:

- identity (through passports or identity cards, and the submission of a facial photograph which will be checked against the biometric data in these documents);
- eligibility (by providing their National Insurance number, which will be checked against HMRC and DWP records to verify their residence in the UK); and

14 If both of the following apply: the relationship began before 31 December 2020 (if the relationship began after 31 December 2020 the family member will be able to come on a family visa), and they are still in the relationship when they apply.

15 Gov.uk, '[Settled and pre-settled status for EU citizens and their families](#)'

16 the3million, '[Questions for the Home Office on 'Settled Status'](#)', 27 February 2019

- suitability (by declaring any criminal convictions: EU citizens with serious or unspent convictions, or who have been subject to deportation or exclusion orders are likely to be refused status).

The Government has said that it expects most applicants to receive a decision within two weeks.

17. The Government initially outlined that the fee to apply for settled status would be £65 for adults, and £32.50 for those under 16. However, on 21 January 2019 the Prime Minister announced that the Government would waive the application fee “so that there is no financial barrier for any EU nationals who wish to stay”,¹⁷ and on 7 March 2019 the Home Secretary laid the relevant statutory instrument before Parliament.¹⁸ The Home Secretary told the House of Lords’ EU Justice Sub-Committee on 17 April 2019 that the Home Office had processed all customer refunds and that they would reach customer accounts in the following days.¹⁹

18. However, it has emerged that some applicants are still having to pay in the course of their application. Recent media reporting has revealed that calls to the EU Settlement Resolution Centre, the official Home Office helpline available to support EU citizens in making an application to the Settlement Scheme, cost up to 10p a minute from landlines and up to 40p per minute from mobiles²⁰ (although the Home Secretary explained that the Home Office does not charge or receive revenue for this service, and that the costs would be limited to those charged by network and service providers²¹). During the second pilot test phase the EU Settlement Resolution Centre received 15,000 calls and emails, and the 3million has said that some applicants have had to make several 20-minute calls to the helpline in the course of their application.²² Home Office staff were unable to provide inspectors from the Independent Chief Inspector of Borders and Immigration (ICIBI) with information on average call length but worked on the understanding that “a call takes as long as it takes”.²³ As discussed later in this report, fees are also payable if individuals need to use designated application centres to upload documents.

19. *The Government must make calls to the EU Settlement Resolution Centre free to applicants. The goodwill extended to EU citizens through the Government’s scrapping of the application fee will be undermined if they are charged to access advice and guidance about their application.*

17 The Guardian, ‘[May drops £65 fee for EU nationals seeking post-Brexit settled status](#)’, 21 January 2019

18 HC Deb, 7 March 2019, [HCWS1387](#)

19 [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 17 April 2019

20 PoliticsHome, ‘[EXCL Anger as EU citizens forced to pay call charges for post-Brexit rights hotline](#)’, 18 March 2019; PoliticsHome, ‘[EXCL Cross-party pressure on Sajid Javid to end call charges for EU citizens’ post-Brexit rights hotline](#)’, 20 March 2019

21 [Letter from the Home Secretary](#), 14 May 2019

22 PoliticsHome, ‘[EXCL Anger as EU citizens forced to pay call charges for post-Brexit rights hotline](#)’, 18 March 2019

23 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p27

Relationship with Brexit and future immigration policy

The Settlement Scheme in a 'no deal' scenario

20. The Government has stated that, in the event of 'no deal', EU citizens and their family members already resident in the UK will be welcome to stay "and we want them to do so",²⁴ adding that "the Home Office will be looking to grant status, not for reasons to refuse".²⁵ The Home Secretary similarly told a House of Lords Committee, "I want everyone to stay. I want to make it as easy as possible".²⁶

21. Government guidance has confirmed that, in the case of a 'no deal' Brexit, the operation of the EU Settlement Scheme will remain the same. The timeframe will, however, be shortened. Under a 'no deal' scenario, settled status would only be available for EU citizens resident in the UK before the UK leaves the EU, rather than 31 December 2020. Those who qualified would then have only until 31 December 2020 to put in their application to the Settlement Scheme. The ICIBI reported that Home Office officials recognised that the earlier cut-off date following a 'no deal' Brexit would place additional pressures on Settlement Scheme casework.²⁷

22. Steve Peers, Professor of Law at the University of Essex, has noted that while the Settlement Scheme for EU citizens will work in much the same way after a 'no deal' Brexit, this would not be an international law obligation. This means that the UK Government would be free to change the details at some later date: it could have stricter rules on what happens when workers become unemployed, could make the definition of 'worker' more restrictive, or change the qualification criteria for permanent residence. The Government has said that it does not intend to do so, stating that the basis for qualification would remain the same in a 'no deal' Brexit as under the planned scheme.²⁸ The 'Costa' amendment which achieved cross-party support during 'meaningful vote proceedings' sought to oblige ministers to seek to ring-fence the citizens' rights provisions of the draft withdrawal agreement, so that these rights would be underpinned by international law, even if there was no agreement on other aspects of withdrawal.

23. The3million voiced concern over the shortened deadline, as it gives more than three million people less than two years to apply for a new immigration status with no grace period.²⁹ Free Movement has also highlighted that, in a 'no deal' scenario, citizens would have no right of appeal to an immigration judge. Instead, there would be an internal administrative review or judicial review to challenge a refusal of settlement under the scheme. The draft Withdrawal Agreement enshrines a right of appeal before a judge and an "independent authority" to police breaches of citizens' rights, but without an Agreement these provisions would be lost.³⁰

24 Home Office, 'Immigration from 30 March 2019 if there is no deal', 28 January 2019

25 Department for Exiting the European Union, [Citizens' Rights—EU citizens in the UK and UK nationals in the EU](#), December 2018, p3

26 Oral evidence taken before the House of Lords Select Committee on the European Union Justice Sub-Committee, [Brexit: citizens' rights](#), 22 January 2019, Q33

27 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p31

28 EU Law Analysis, ['Staring into the Abyss: Citizens' Rights after a No Deal Brexit'](#), 6 December 2018

29 the3million ([ESS0001](#))

30 Free Movement, ['Government to water down EU citizens' rights if no Brexit deal'](#), 6 December 2018

24. EU citizens with settled status would be able to be joined in the UK, by 29 March 2022, by existing close family members such as children, spouses and partners, parents and grandparents living overseas at exit, where the relationship existed by the date of the UK's departure from the EU (or where a child was born overseas after this date) and continued to exist when the family member applied. After 29 March 2022, such family members would be able to join EU citizens here by applying through the applicable UK Immigration Rules. EU citizens with settled status would be able to be joined by future spouses and partners (where the relationship was established after exit) and other dependent relatives until 31 December 2020, after which point the UK Immigration Rules would apply to such family reunion. This would bring the rights of EU citizens into line with the rights of UK nationals from 30 March 2022.

25. The Government's plans for a 'no deal' scenario would leave EU citizens less than two years to apply under the Settlement Scheme. After this point, there would be considerable uncertainties about their status in the UK. Given this risk, there is no reason why the timeframe for applications should be curtailed compared to the circumstance of the UK leaving the EU with a deal. We also see no reason why an appeal right should only be available in the event of a withdrawal agreement being reached. Such an appeal should also be available if there is 'no deal'. The same applies to the independent monitoring authority. We also call on the Government to redouble efforts to seek a ring-fenced agreement on citizens' rights, and to update Parliament on what progress it is making and what obstacles remain.

Post-Brexit immigration

26. If the UK agrees a deal with the EU, "EU citizens and their family members will be able to move to the UK during the implementation period on the same basis as they do today [...] there will be no new constraints on working or studying in the UK in the implementation period". If they wish to stay for longer than three months they will be required to register with the Government, in advance of the implementation of the UK's new immigration framework (the details of which are yet to be confirmed).³¹

27. If the UK leaves the EU without a deal, the Government has outlined that the UK will not be bound by the implementation period arrangements set out in the draft Withdrawal Agreement and will seek to end free movement as soon as possible.³² EU citizens and their family members arriving in the UK after a 'no deal' Brexit and the ending of free movement will be admitted under UK Immigration Rules and will require permission (leave to enter or to remain): those who wish to stay longer than three months will need to apply to the Home Office for leave to remain within three months of arrival. Subject to identity, criminality and security checks, leave to remain will be granted for 36 months which will include permission to work and study. This will be non-extendable temporary leave, and those who wish to stay longer will need to apply in due course under the

31 HM Government, [Policy Statement: EU citizens arriving in the UK during the implementation period](#), 28 February 2019

32 Through the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, introduced to Parliament in December 2018, which will repeal the Immigration (European Economic Area) Regulations 2016, which currently implement free movement in UK law; Home Office, ['Immigration from 20 March 2019 if there is no deal'](#), 28 January 2019

future border and immigration system arrangements. Individuals who do not hold valid immigration permission to be in the UK will be here unlawfully and may be liable to enforcement action.³³

28. However, there remain several points of ambiguity. A ‘no deal’ scenario would require EU citizens who wish to stay in the UK for longer than three months to apply to the Home Office for leave to remain, and then again when their 36-month grant has expired. Yet it is unclear what would happen, or how the Home Office would know, if they did not do so.

29. It is also unclear how, in the event of a ‘no deal’ Brexit, employers, landlords and other agencies are to differentiate between different groups of EU citizens. Those already resident in the UK who apply to the Settlement Scheme early will be able to evidence their status, and new arrivals who have registered with the Government will similarly be able to demonstrate their entitlement to remain in the UK. However, it will be impossible for employers, landlords and others to tell the difference between long-term residents who are yet to apply to the Settlement Scheme and recent arrivals in the UK who have not registered with the Government. This was acknowledged by the Immigration Minister, Rt Hon Caroline Nokes MP, when giving evidence to us on the Government’s preparations for a ‘no deal’ Brexit.³⁴ The Government has emphasised that employers will not have to carry out additional checks on prospective workers after Brexit, and “will not be expected to differentiate between resident EU citizens and those arriving after exit”.³⁵

30. The ability to tell the difference between long-term residents who are yet to apply and recent arrivals in the UK is an important distinction. The former (if they meet the criteria for settled status) will be entitled to live and work in the UK with largely the same rights as they currently possess, while the latter may not be eligible to remain in the UK long-term, particularly if they have deliberately failed to complete the mandatory registration and to apply for leave to remain. If it is impossible to differentiate between these groups, the prospect is raised of EU citizens being discriminated against in areas such as employment or housing. This is because, under ‘hostile/compliant environment’ measures, employers and landlords can be penalised for employing or renting property to an unlawful resident and may therefore seek to avoid engaging with individuals who for any reason are unable to prove their status.³⁶

31. Given the prospect of such penalties, the situation could also arise whereby an EU citizen who has been legally resident in the UK for decades is disadvantaged (in a job application or when attempting to rent a property for example) relative to an EU citizen

33 Home Office, ‘[Immigration from 30 March 2019 if there is no deal](#)’, 28 January 2019; Gov.uk, ‘[Staying in the UK for longer than 3 months if there’s no Brexit deal](#)’, 26 February 2019

34 Oral evidence taken on 30 October 2018, [Government Preparations for Brexit: Border and Security Operations](#), HC 1674, Q12

35 The Guardian, ‘[Employers to have transition period before EU right-to-work checks](#)’, 1 November 2018; The Independent, ‘[Brexit: Immigration minister u-turns after falsely claiming employers would have to check EU workers’ status after no-deal](#)’, 1 November 2018

36 The 2014 and 2016 Immigration Acts introduced civil and criminal penalties for employers who knew, or had reasonable cause to believe, that they were employing an illegal worker, and for landlords or agents who rent property to a person knowing or having reasonable cause to believe that they were in breach of the Immigration Rules. This formed part of what has become known as the ‘hostile’ or ‘compliant environment’; Free Movement, ‘[Briefing: what is the hostile environment, where does it come from, who does it affect?](#)’, 1 May 2018

who has only recently arrived in the UK but who has completed the mandatory registration with the Government and who can therefore evidence their entitlement to remain in the UK.

32. The spectre of the ‘hostile environment’ and tough immigration enforcement policies is a serious concern for EU citizens in the UK, despite the Home Secretary stating that there would be a “sensible transition period” for EU citizens should an agreement not be reached between the UK and EU.³⁷ Nicole Masri, legal officer for the group Rights of Women, feared that “the full force of the hostile environment will fall down upon people who fail to secure status under the scheme by the deadline”.³⁸

33. There are notable gaps in the Government’s immigration proposals. The determination of the Government to end free movement on the date of departure if the UK leaves the EU without a deal could lead to a situation where long-term EU residents of the UK are, in the period between exit and the closure of the Settlement Scheme, disadvantaged and discriminated against in areas such as employment or housing if they are not able to evidence their entitlement to remain.

34. The Government appears to hope that all EU citizens resident in the UK prior to exit day will apply to the Settlement Scheme right at the beginning, and that all later arrivals will register with the Government when they are required to. Given that this is highly unlikely—we discuss many of the reasons why individuals may struggle or fail to register later in this report—the Government must clarify how it intends to ensure that EU citizens in the UK, many of whom are entitled to live and work in the UK and who may have been residing here for many years, do not suffer any detriment in the event of a ‘no deal’ Brexit. Government ministers have alluded to a “sensible transition period”: both EU citizens and those that wish to engage and interact with them post-Brexit, such as employers and landlords, need detail and certainty on this point.

35. The Government must also clarify if, how and when hostile/compliant environment measures will be applied to EU citizens living in the UK. It is currently unclear, for example, whether the Home Office would contact, inform or pass data on to any agency, Government department or individual (such as an employer or landlord) following an applicant’s unsuccessful application to the Settlement Scheme.

37 The Guardian, ‘[Employers to have transition period before EU right-to-work checks](#)’, 1 November 2018; The Independent, ‘[Brexit: Immigration minister u-turns after falsely claiming employers would have to check EU workers’ status after no-deal](#)’, 1 November 2018

38 [Qq5, 68–9](#)

3 Has the Government learned from the Windrush scandal?

36. The Windrush scandal, which we reported on in July 2018,³⁹ saw thousands of UK residents, who had moved to the UK from Commonwealth countries, treated as illegal immigrants and detained, deported or made destitute. This was through no fault of their own. Several experts and commentators have raised concerns that the EU Settlement Scheme could result in citizens living in the UK becoming similarly undocumented and vulnerable. Maike Bohn, founder of the3million, stated that “The Windrush people trusted the Home Office and many of them got deported because they were citizens but couldn’t prove it”, the Institute for Government announced that “the EU Settlement Scheme has the potential to create a situation with similar hallmarks to the Windrush scandal—but on a much bigger scale”,⁴⁰ and Jill Rutter said that:

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 [...] Get it wrong and the consequences are dire.⁴¹

The Justice Sub-Committee of the House of Lords European Union Committee wrote that there are “several major risks” in the Scheme which “could plunge the UK’s immigration policy into another entirely avoidable scandal”.⁴²

37. The difference between the respective situations for EU citizens and the Windrush generation is in the Government’s approach to assuring their legal right to reside in the UK. For the Windrush generation, the Immigration Act 1971 confirmed the legal right of Commonwealth citizens who were already present and settled in the UK when the Act came into force on 1 January 1973 to stay indefinitely in the UK. The Act also recognised the right of wives and children to join them. The difficulties these citizens have encountered in recent years stemmed from a lack of documentation evidencing their entitlements under the 1971 Act, rather than because there was any doubt about the legal rights of the group as a whole.

38. Under the EU Settlement Scheme, the Government is stating that people who have settled in the UK through exercise of European free movement rights may stay indefinitely, and benefit from associated entitlements, but this right will be conferred upon them individually through their successful completion of the time-limited Settlement Scheme. As stated by Nicole Masri in evidence to us in February 2019, the Government has chosen to make citizens’ rights conditional on the Settlement Scheme:

This is not a scheme that is conferring status on eligible individuals. This is a scheme that requires an individual to take an active step and apply in order to secure their future status in the UK.⁴³

39 Home Affairs Committee, Sixth Report of Session 2017–19, *The Windrush generation*, HC 990, 3 July 2018

40 Institute for Government, *Managing migration after Brexit*, March 2019, pp12–3

41 The Guardian, ‘EU citizen registration in UK could become ‘new Windrush’, say migration experts’, 21 January 2019

42 Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary, 27 February 2019

43 [Q5](#)

39. The consequence of this approach, which is known as a constitutive system, is that anyone within this class of individuals who, for whatever reason, does not acquire formal settled status—whether because they do not apply or because they are unable to comply with the Scheme’s requirements for evidence of status—may become unlawfully resident and lose the accompanying rights. Giving evidence to the Committee considering the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, Professor Stijn Smismans, Director of the University of Cardiff’s Centre for European Law and Governance, stated that “The main flaw of the design is its basic principle [...] the practical consequences can be dire under a constitutive system”.⁴⁴

Citizens at risk under a constitutive system

40. The Government has made the commitment that “once granted, status under the scheme is secure”.⁴⁵ However, given the Windrush scandal, this statement may not carry the weight the Government wishes it did, and there remain serious fears that EU citizens are at risk of losing their rights and their legal status in the UK.

41. The deadline for applying to the EU Settlement Scheme is 30 June 2021 (or 31 December 2020 in the case of a ‘no deal’ exit from the European Union). The Home Secretary told a House of Lords Committee in January 2019 that “We are confident that there is enough time for people to register”, and that “there has to be a cut-off period for everyone’s benefit, not least because as a country we can start our new immigration system on time”.⁴⁶

42. The Withdrawal Agreement stated that:

where the deadline for submitting the application [...] is not respected by the persons concerned, the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline.⁴⁷

However, there has been no explanation as to what will be considered as “reasonable grounds”,⁴⁸ nor has there been any official information or guidance on what will happen to citizens who, for many possible reasons, fail to apply to the Scheme and successfully confirm their status by this time. We explore those who may be at risk of being left out in Chapter 4.

43. Colin Yeo, a specialist in immigration law, told us that, as it is inevitable that there will not be full take-up of the Scheme, “there could be hundreds of thousands of people in that position, and we don’t know anything about how you would bring yourself back or regularise your position if you have missed the deadline”.⁴⁹

44 Oral evidence taken by the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 14 February 2019, [col 132](#)

45 Department for Exiting the European Union, [Citizens’ Rights—EU citizens in the UK and UK nationals in the EU](#), December 2018

46 Oral evidence taken before the House of Lords Select Committee on the European Union Justice Sub-Committee, [Brexit: citizens’ rights](#), 22 January 2019, Q33

47 [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 25 November 2018](#), p30

48 [the3million, Questions for the Home Office on ‘Settled Status’](#), 27 February 2019, p84

49 [Q70](#)

44. Witnesses also outlined to us that eligible citizens who fail to apply to the Settlement Scheme before the deadline could become unlawfully resident. Colin Yeo said that while it is not clear that continued residence after the deadline expires would constitute an immediate criminal offence, returning to the UK after an absence would be, and individuals who become unlawfully resident could also end up committing a range of other ancillary criminal offences: for example, it would be illegal for them to work or to drive on public roads. Under measures introduced in the Immigration Acts of 2014 and 2016 as part of the then ‘hostile environment’ for illegal immigrants, employers and landlords could be penalised for employing or renting property to an unlawful resident,⁵⁰ and the individual would be prevented from receiving free medical treatment.⁵¹

45. The fact that hundreds of thousands of EU citizens could become unlawfully resident, and therefore at risk of criminalisation, is a heightened issue because, as Dr Adrienne Yong highlighted to us, there is a presumption in the current Immigration Rules towards automatic deportation of foreign criminals.⁵² Colin Yeo told us that he was surprised with how tough the criteria were on criminality: individuals will be considered for deportation if they have had any prison sentence, however short, in the last five years, or any one-year prison sentence in the UK at any point.⁵³

The Home Secretary’s response

46. The Home Secretary asserted that “No one is interested in anyone losing their rights”,⁵⁴ and attempted to reassure us that EU citizens would not lose their rights if they did not secure their status by the Settlement Scheme’s deadline:

it is my intention, my view, that if someone for good reason—there will be exceptional cases—has missed a deadline, they do not lose their rights. [...] I want to be clear. I do not want to see anyone, who may have some good reason for why they have missed the deadline, feel in any way that they are unwelcome.⁵⁵

47. He told us that “I don’t think in any way they should be considered unlawful”, and was reluctant to use the term unlawful “because their status will clearly be very different to someone who has illegally entered the country”.⁵⁶ However, he did accept that “If they haven’t registered in the scheme prior to the deadline it would be against the immigration rules”.⁵⁷

50 The 2014 and 2016 Immigration Acts introduced civil and criminal penalties for employers who knew, or had reasonable cause to believe, that they were employing an illegal worker, and for landlords or agents who rent property to a person knowing or having reasonable cause to believe that they were in breach of the immigration rules. This formed part of what has become known as the ‘hostile’ or ‘compliant environment’; Free Movement, [‘Briefing: what is the hostile environment, where does it come from, who does it affect?’](#), 1 May 2018

51 [Qq69–70, 74](#)

52 [Q69](#); The Conversation, [‘Settled status for EU citizens—Q&A with law expert on what it does and doesn’t guarantee’](#), 22 January 2019; Department for Exiting the European Union, [‘Citizens’ Rights—EU citizens in the UK and UK nationals in the EU’](#), December 2018, pp3–5

53 [Q95](#)

54 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q768

55 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q804

56 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq773–6

57 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q772

48. When we questioned him on outcomes for those who miss the deadline, the Home Secretary failed to offer any concrete confirmation or reassurance. Instead, he alluded to a future process for supporting these individuals:

We need to make sure that we have a system also in place that if someone has missed that deadline for good reasons that we have a common sense, proportionate, sensible approach.

[...]

Although they would have missed the deadline, you would want to have a system in place where they would still have the right to register under the EU Settlement Scheme.⁵⁸

However, this prospective system remains unconfirmed and vague: the Home Secretary told us that the Home Office has “not developed what would exactly happen beyond the deadline”.⁵⁹

49. He later elaborated that this process might involve keeping part of the Settlement Scheme open beyond the deadline:

Although the scheme would have generally closed at the end of the deadline, aspects of the scheme or a version of it would have to be kept open for those kinds of situations

[...]

There is a system in place that allows them to continue to protect their rights. That, for me, means keeping the EU Settlement Scheme open for those cases in a way that continues to protect their rights.⁶⁰

50. The Institute for Government called on the Home Office to:

recognise that there will be a large number of EU citizens who are covered by the Withdrawal Agreement, or the Government’s ‘no deal’ commitments, but who will not have gone through the Settlement Scheme and will not be able to prove their entitlement. This group may not have a legal right to be in the UK, but most people in the UK would recognise that they have a moral right.

[...]

The Home Office will therefore have to think about its approach to enforcement, ensuring that it deals with this problem in a way that commands public support. Every wrong-seeming decision that the Home Office makes will open it up to scrutiny and criticism. If the department does not get this right, the fallout could be significantly bigger than the fallout over the Windrush scandal.⁶¹

58 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq768, 776

59 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q770

60 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq776, 804

61 Institute for Government, [Managing migration after Brexit](#), March 2019, pp12–3

51. The Government has chosen to establish a constitutive system of registration for EU nationals who are currently resident in the UK and wish to retain their rights of residence after the UK leaves the EU. This places the responsibility on each individual to engage with the Government and to prove their entitlement to remain. The Government has also set a deadline for EU nationals to comply with this requirement.

52. It is therefore unacceptable that, having chosen this approach, the Government has failed to clarify what will happen to EU citizens in the UK who fail to confirm their immigration status through the Settlement Scheme before the deadline. In giving evidence to us the Home Secretary himself appeared unsure what their status and rights would be, only alluding to a vague system that the Home Office “would want” to have in place to support those who might need assistance after the deadline.

53. The Home Secretary’s prevarication over the word ‘unlawful’ with regards to the legal rights and status of EU citizens in the UK who fail successfully to apply to the Settlement Scheme before the deadline will not have reassured the UK’s estimated 3.8 million EU citizens. Whether they are resident legally or illegally will have serious consequences for their ability to live, work, and exercise associated rights in the UK, without risk of criminalisation and the possible consequences that might flow from criminalisation, including deportation.

54. *EU citizens residing in the UK before Brexit are right to expect to be able to continue to reside in the UK. We believe Government action is necessary to avoid consequences similar to those experienced by some members of the Windrush generation. The hardship and injustice experienced by those citizens, which we discussed in previous reports, is disgraceful. The right lessons must be learned. The Home Office must therefore:*

- *clarify the legal rights and status of EU citizens who, for whatever reason, fail to confirm their immigration status through the Settlement Scheme by the deadline. It should do so at least a year before the closure of the Settlement Scheme;*
- *outline what will be considered reasonable grounds for a late submission to the Settlement Scheme;*
- *confirm the details of its proposed process to enable EU citizens to establish their status in the UK retrospectively; and*
- *clarify the legal standing of EU citizens, in the period between Brexit and the deadline, who have not yet applied to or completed the Settlement Scheme. It is vital that their rights and entitlements are clear and widely understood so that, compared with those who either have confirmed their status or who are not required to use the Scheme, they are not disadvantaged in employment, housing or medical treatment. The Government must state what their rights are, how they are to be evidenced, and what recourse individuals will have in cases of disadvantage.*

A declaratory system

55. Witnesses outlined to us that “there is another way forward”, similar to how Commonwealth citizens in the UK had their immigration status legalised in the 1970s: as Colin Yeo said, “you just pass a law saying, “You are lawful. We will sort out the difficulties later, as and when they arise””.⁶²

56. A declaratory system would operate on the presumption that EU citizens residing in the UK before a certain date (which could alter depending on whether the UK leaves the EU with or without a deal) have a legitimate and recognised residency status and just need to be provided with a document to prove it. This would, according to Luke Piper, legal adviser to the3million, “secure and protect and limit the damage” that people might otherwise experience as a consequence of the operation of the compliant environment against individuals with uncertain status.⁶³ Colin Yeo added that under the terms of the withdrawal agreement the Government “can go as light touch as they want and there is an opportunity here and a possibility that there could be a fairer and safer way to register EU citizens in the UK”.⁶⁴

57. When we asked the Home Secretary why the Government had decided not to take such an approach, by enshrining the rights of EU citizens in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, he responded, “In a word: Windrush”.⁶⁵ He claimed that a declaratory approach “would lead to terrible problems”:

The challenge is this: you could push me, the Government today could take the easy route out, which sounds good, which is change the law and say, “We declare that you have all got your rights”. I guarantee to you if that happened 10 years from now there would be a Select Committee sitting there with a Home Secretary here and it would be Windrush all over again. We have to learn the lessons of Windrush and there is no point in parliamentarians saying, “Let’s learn the lessons of Windrush” and not doing anything about it.

[...]

No one wants what has happened to the Windrush generation to happen to anyone else. That is the reason why you have to have a system that eventually leads to some sensible way of documenting to be able to protect their rights, not to take them away.⁶⁶

58. However, 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,⁶⁷ the National Audit Office,⁶⁸ or the Joint Committee on Human Rights.⁶⁹

62 [Q68](#)

63 [Q69](#)

64 [Q75](#); the3million ([ESS0002](#))

65 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q759

66 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq767–8

67 Home Affairs Committee, Sixth Report of Session 2017–19, [The Windrush generation](#), HC 990, 3 July 2018

68 National Audit Office, [Handling of the Windrush situation](#), HC 1622, Session 2017–2019, 5 December 2018

69 Joint Committee on Human Rights, Sixth Report of Session 2017–19, [Windrush generation detention](#), HC 1034, 29 June 2018

59. During debate on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, the Immigration Minister, Rt Hon Caroline Nokes MP, repeated that “a declaratory system is not the answer”, arguing that “requiring EEA nationals to apply for and receive a formal grant of status via the settlement scheme is key to ensuring that life continues smoothly for them in the future”.⁷⁰ The Home Secretary had similarly previously suggested to us that a declaratory system would not work in this instance because, as the Government does not know how many EU citizens there are in the UK nor who they are, the Government requires them to self-identify.⁷¹

60. The Immigration Minister also claimed that a declaratory system for the resident population would provide them with less of an incentive to apply for status.⁷² However, it has been argued that a declaratory system need not necessarily discourage people from applying, as individuals would still require the proof of their status obtained through application to the Settlement Scheme.⁷³ Official documentation or records of confirmation would be necessary to distinguish the individual as someone entitled to certain rights as resident in the UK prior to its departure from the European Union, as opposed to someone who arrived in Britain after the deadline, and would be required when applying for a job, renting property or accessing other benefits.

61. Witnesses acknowledged that a basic declaratory system could risk people being left undocumented as, if their rights are secured, many may not feel the need to apply for documents until they are needed, which could cause problems down the line. Both Colin Yeo and Luke Piper however agreed that this chance of being undocumented would be a lesser issue than being left illegally resident and without rights.⁷⁴ The option of a compromise process—whereby a declaratory system confirming citizens’ rights in statute is combined with the requirement on citizens to apply to the Scheme to obtain proof of those rights—remains open to the Government.

62. A declaratory system which protects EU citizens’ rights in primary legislation would also give reassurance to citizens and increase confidence in the Government’s approach, as it is more difficult to change primary legislation: such changes would require further Parliamentary scrutiny and agreement. Currently, the Settlement Scheme functions as an amendment (Appendix EU) to the Immigration Rules, which set out immigration-related policy and practice. However, British Future reported that the Home Office has made more than 5,700 changes to the Immigration Rules since 2010, often with little or no explanation.⁷⁵

Documentation

63. Part of the Home Secretary’s rationale for pursuing a constitutive system over a declaratory alternative was the Home Office’s previous experience of the Windrush scandal, and he emphasised the malign effects of the failure of government to adequately keep and preserve records and documentation for the Windrush generation:

70 Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 359–60](#)

71 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q767

72 Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 359–60](#)

73 Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 5 March 2019, [col 360–1](#)

74 [Q90](#)

75 British Future, [Getting it right from the start: Securing the future for EU citizens in the UK](#), January 2019, p9

A lack of documentation became an increasingly important issue [...] When someone from that generation was not documented right at the beginning in the early 1970s it became increasingly harder for them to prove their residency and so forth.⁷⁶

64. It is therefore highly surprising that the Government has decided not to provide successful applicants to the Settlement Scheme with official physical confirmation of their status. EU citizens who secure their status receive only online confirmation and a digital code, while non-EU citizens who are family members of EU citizens receive a biometric residence card. The digital code— “a secure and permanent record held by the Home Office that is accessible to the holder at any time”⁷⁷—must be passed on to employers and landlords, who will be required to input the code into a Home Office website to confirm the individual’s immigration status.

65. Our colleagues on the Exiting the European Union Committee raised this issue in a report in July 2018. They outlined that this system risks being confusing, increases the workload on employers and landlords, relies on their goodwill and engagement with this new and unfamiliar process, requires individuals and employers to have the necessary electronic hardware, and could result in individuals not employing or renting to someone due to the confusion and difficulties involved in proving status.⁷⁸ The Justice Sub-Committee of the House of Lords European Union Committee added that a failure of the electronic system “could leave EU/EEA nationals in limbo, unable to assert their rights”.⁷⁹

66. The digital system will also be unfamiliar to citizens. Marianne Lagrue, Policy Manager for the Coram Children’s Legal Centre’s Migrant Children’s Project, told us that:

We saw lots of problems with people thinking they had not had a response within a month, where actually they had not recognised that the e-mail that they received from the Home Office was actually a decision.⁸⁰

Many applicants will be similarly confused by the fact that the emailed ‘confirmation’ they receive from the Home Office is not actually confirmation of their status. This is just notification of the decision; the status is only confirmed when they log into the online portal.

67. The Home Office has said the digital code system will be less resource intensive, reduce fraud and be simple to use, and is “part of moving the UK’s immigration system to digital by default, introducing a simpler and more convenient system for conducting immigration checks that is accurate, secure and reliable”. It believes that it is an improvement on hard documents which can be lost, stolen, or become out of date, is easier for visually impaired and dyslexic users, and provides more space for explanatory information than a physical card.⁸¹ It also claimed that “the service has been well-received by both migrants

76 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq761–2

77 Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 5 March 2019, [col 362](#)

78 Exiting the European Union Committee, Eighth Report of Session 2017–19, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), HC 1439, 23 July 2018, [paras 46–9](#)

79 [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 27 February 2019

80 [Q19](#)

81 Exiting the European Union Committee, Eighth Special Report of Session 2017–19, [The progress of the UK’s negotiations on EU Withdrawal: The rights of UK and EU citizens: Government Response to the Committee’s Eighth Report](#), HC 1872, 11 January 2019, p5; Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 363](#);

[Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 17 April 2019

and employers”.⁸² However, we believe that the majority of EU citizens would prefer also to possess a hard document, passport endorsement, or other form of tangible official certification, as recommended by the Exiting the European Union Committee and the House of Lords’ EU Justice Sub-Committee.⁸³

68. The Government has not provided sufficient justification for its decision not to take a declaratory approach in establishing citizens’ rights after the UK leaves the EU. The response of ‘Windrush’ does not stack up; the Immigration Minister’s assertion that “a declaratory system is not the answer” is not convincing; the requirement of citizens to apply to the Scheme so as to formally identify as an EU citizen in the UK is entirely for the benefit of the Home Office, not the individual; and a declaratory system is not incompatible with accurate documentation. If a lesson is to be learned in this case from the example of Windrush, it should be that providing adequate documentation should be considered a vital part of any such status-giving process, whether declaratory or not.

69. The Government could easily have afforded EU citizens certainty over their rights and secured their legal status by stating at the outset and in legislation that all who were here legally at the time of Brexit would remain so. They would then have been required to apply to the Settlement Scheme to obtain formal, physical confirmation of their status. Thus far, the Government has failed to mitigate the risk of thousands of EU citizens being left in an insecure legal position after Brexit, but there is still time for the Government to set this right.

70. *We call on the Government to confirm in primary legislation the rights of EEA nationals who are resident in the UK at the time of its exit from the EU. These rights include the right to remain in the UK, and to retain the associated rights they have thus far been afforded. No-one should be left without rights because they have not completed the scheme. Individuals need certainty and should not be left reliant on the goodwill of a future Government to uphold non-statutory rights. Individuals should, however, be required to apply to the Settlement Scheme for documents to evidence their rights.*

71. *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, 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.*

72. *We also recommend that the Government provide all citizens who successfully apply to the Settlement Scheme with hard copy confirmation of their status. This need not replace the digital system but would complement it. The Government cannot suddenly impose a ‘digital first’—indeed, ‘digital only’—system upon people without giving them, employers and landlords time to adapt. People can have the best of both worlds: a more secure and forward-thinking digital system in parallel with the more familiar and*

82 [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 20 March 2019

83 Exiting the European Union Committee, Eighth Report of Session 2017–19, *The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens*, HC 1439, 23 July 2018, para 49; [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 27 February 2019; [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 3 April 2019

reassuring hard copy. We would hope to see new applicants being routinely provided with physical certification of their Settlement Scheme status by the end of the year, with documents provided retrospectively to those who have already completed the process.

4 Issues with the EU Settlement Scheme

73. The EU Settlement Scheme will be mandatory, and witnesses were keen to stress the importance to EU citizens of applying to the Scheme and confirming their status. Colin Yeo said that not to do so would be “disastrous”; Luke Piper said that the consequences are “dire”. However, we have heard that there are several issues which are preventing EU citizens from accessing and successfully gaining status under the Settlement Scheme.

74. The Institute for Government stated that “No similar system internationally has ever succeeded in reaching 100% of those eligible and there is no chance that the UK Government will either”.⁸⁴ A report by British Future stated that, while 70% of EU citizens in the UK will have correct information about the scheme and will be able to submit applications with ease, research suggests about 30% of EU citizens risk being left out.⁸⁵ This would equate to over one million people.

People at risk of being left out

75. Many EU citizens may not apply because they do not know about it, do not realise it applies to them, or do not realise that it is mandatory. Reports by British Future⁸⁶ and the Migration Observatory⁸⁷ have highlighted groups at particular risk, including:

- the children of EU citizens in the UK (727,000);
- EU citizens born in the UK but not registered as British citizens (323,000);
- Elderly EU citizens who are long-term residents in the UK (284,000 EU citizens resident in the UK for more than 20 years);
- EU citizens already granted permanent residence (401,519 between 2004 and 2017) who may be unaware they will need to reapply;
- Non-EU family members of EU citizens (283,000 permits issued 2005–2016);
- Those with limited literacy or fluency in English (288,000 EU citizens reported not speaking English well or at all in the 2011 census);
- Isolated individuals or groups with fewer social links;
- Derivative rights holders, such as Zambrano, Teixeira, Chen and Ibrahim carers;⁸⁸ and
- Those who choose not to apply because they fear rejection. This could include the 85,000 people previously refused permanent residence, those with minor or spent criminal convictions, those who have been homeless at some point in their time in the UK and those involved in cash-in-hand work.

84 Institute for Government, *Managing migration after Brexit*, March 2019, p12

85 British Future, *Getting it right from the start: Securing the future for EU citizens in the UK*, January 2019, pp18–31

86 British Future, *Getting it right from the start: Securing the future for EU citizens in the UK*, January 2019

87 Migration Observatory, ‘Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?’, 12 April 2018

88 For further information on these groups see paragraph 80.

76. Danny Mortimer, Chief Executive of NHS Employers and Co-Convenor of the Cavendish Coalition of health and social care organisations, told us that a survey of its EU members by the British Medical Association in November 2018 found that more than one third were unaware of the Settlement Scheme.⁸⁹ Jill Rutter, from British Future, said that in the absence of clear guidance and wider public understanding numerous unscrupulous advisers have set up, advertising on social media and charging extortionate prices.⁹⁰

77. The Justice Sub-Committee of the House of Lords European Union Committee highlighted awareness of the Scheme as one of its principal concerns, calling the Home Office’s initial advertisements on social media “ill-judged and objectionable” and emphasising that online advertising will not be a suitable way of engaging vulnerable and harder-to-reach citizens. It stated that it is “paramount that the Home Office commits to a wide-ranging campaign to reach out to all EU/EEA citizens living in the UK”, recommending that the Government increase its advertising in publicly accessible locations and engage with local authorities and national organisations such as the Citizens’ Advice Bureau.⁹¹

78. The Home Secretary told the Sub-Committee that the Home Office had “put in place a comprehensive plan to communicate about the scheme through a broad range of channels”:

- The Home Office has allocated £3.75 million for the first phase of a UK-wide public information campaign, which will be highly visible throughout the UK and use public advertising, radio and TV, and social media. The Home Secretary claimed that the campaign “has been tested extensively with EEA citizens from a range of backgrounds to ensure it is both welcoming and clear”;
- As employers are a key channel for reaching EU citizens, the Government has developed an engagement and information-sharing programme and published an ‘employer toolkit’, and is collaborating with other departments to ensure employers receive information on the Scheme;
- A “comprehensive engagement and collaborative working programme” has been set up with local authorities, which will be provided with marketing materials and communications resources;
- The Home Secretary said that “No-one will be left behind”, and the Home Office is working with representatives of vulnerable groups “to make sure we reach everyone”.⁹²

79. The Government must improve public awareness and understanding of the EU Settlement Scheme, and of the importance of applying. Too many people are at risk of failing to apply, and this will have serious ramifications for their future in the UK. We welcome the Government’s plans for a concerted national advertising and awareness campaign to accompany the full roll-out of the Settlement Scheme, which is not only

89 [Q58](#)

90 [Qq68, 81, 83](#)

91 [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 27 February 2019

92 [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 20 March 2019

digital but also accessible to those who may not have an online presence. In addition to this, we recommend that the Government works with local and national community and support groups, to ensure that information reaches hard-to-reach groups.

80. When we took evidence in February 2019 we were told that one group at particular risk of being left out of the Settlement Scheme was derivative rights holders—citizens whose rights to live and work in the UK come from wider EU law rather than the freedom of movement directive. While some derivative rights holders—such as Teixeira, Chen and Ibrahim carers⁹³—were protected by the Withdrawal Agreement, we were told that at that point Zambrano carers⁹⁴ “had no answer at all to what their continuing rights are going to be under the scheme”.⁹⁵ The Government had said in May 2018, in its response to our report on Home Office delivery of Brexit, that “Domestic policy proposals relating to Zambrano carers will be set out in due course”,⁹⁶ but such guidance for this cohort did not materialise until March 2019 when the Immigration Minister stated that the Settlement Scheme “will be open to others lawfully resident in the UK by virtue of a ‘derivative right’ to reside”, including Zambrano carers.⁹⁷

81. 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 afforded to this group, but it is unacceptable that these citizens were left in limbo for so long.

82. Vulnerable people appear to be especially at risk of being left out.⁹⁸ Children in care are one such group, who may not have passports or other identifying documentation. Abigail Adieze, Head of the Families and Home Directorate at Waltham Forest Borough Council, told us that several of the young people she works with have no formal proofs of identity, and she had not therefore been able to progress their applications during the private beta pilot.⁹⁹ Similarly, Marianne Lagrue from Coram Children’s Legal Centre said that the documents required by the scheme as proof of identity are generally those that only an adult would hold (such as bills or payslips), with documents for children (like school, medical or care records) not easy to access.¹⁰⁰ Others may need to seek parental consent to obtain documentation, which could place them at risk in situations where there is or has been domestic abuse.¹⁰¹

93 A Chen carer is a primary carer of a self-sufficient EEA national child (who is under the age of 18 and has sufficient resources to prevent them becoming a burden on the social assistance system). Ibrahim and Teixeira cases involve either the child of an EEA national worker/former worker where that child is in education in the UK or the primary carer of a child of an EEA national worker/former worker where that child is in education in the UK, and where requiring the primary carer to leave the UK would prevent the child from continuing their education in the UK.

94 A Zambrano carer is the non-EEA national primary carer of a British citizen who is residing in the UK, and who has a right to reside if their removal from the UK would require the British citizen child to leave the UK and the EU.

95 [Qq34–8](#)

96 Home Affairs Committee, Sixth Special Report of Session 2017–19, [Home Office delivery of Brexit: immigration: Government Response to the Committee’s Third Report of Session 2017–19](#), 25 May 2018, HC 1075, p12

97 HC Deb, 7 March 2019, [HCWS1387](#)

98 The Government appeared to recognise the unique issues vulnerable groups may face, and included some local authorities and third sector organisations which work with vulnerable groups in the second pilot phase of the Scheme.

99 [Qq2–3](#); The Coram Children’s Legal Centre added that some countries require the consent of both parents to obtain a passport or other nationality identification; [Q47](#) [Marianne Lagrue]; Coram Children’s Legal Centre ([ESS0004](#))

100 [Q5](#); Coram Children’s Legal Centre ([ESS0004](#))

101 Coram Children’s Legal Centre, [EU Settlement Scheme—Concerns & Recommendations](#), August 2018

83. Similarly, many victims of domestic abuse and violence against women and girls (VAWG), may not have access to their records and documents if these are controlled by another person (such as an abusive current or ex-partner). Nicole Masri from the group Rights of Women, which supported vulnerable women in their applications during the pilot phases, gave the example of one young woman who was not able to obtain settled status because she was not applying at the same time as her parent,¹⁰² from whom she was estranged because of abuse. Another was ineligible because she left an abusive relationship before accruing five years of continuous residence.¹⁰³ Ms Masri added that Rights of Women had asked the Government to accept a duty to undertake reasonable inquiries on behalf of some applicants where they cannot demonstrate that they meet the eligibility criteria on their own, but that “the Home Office has consistently not made any comment on whether it is willing to do that”.¹⁰⁴

84. In his inspection report on the Settlement Scheme, the ICIBI echoed this recommendation, as he emphasised that the Home Office needs to show that it “recognises and accepts that it remains responsible for ensuring the EU Settlement Scheme meets the needs of everyone who is eligible and this includes making ‘reasonable inquiries’ on behalf of those (for example, ‘looked after’ children) who find it difficult to prove their eligibility”.¹⁰⁵

85. In March 2019, the Home Office announced a number of changes to the application process for the Settlement Scheme. As well as stating that people will be able to use a wider range of documents to prove identity and nationality, some applicants will be able to apply using a paper form (rather than the online application process) when “approved by the SRC [Settlement Resolution Centre] on an individual basis in light of the exceptional circumstances of the case”.¹⁰⁶ There will also be:

scope for the Secretary of State to accept alternative evidence of identity and nationality where the applicant is unable to provide the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.¹⁰⁷

86. *The Government must acknowledge the difficulties that will be experienced by many vulnerable groups when attempting to apply to the Settlement Scheme. A degree of understanding will be required so as not to disadvantage these individuals, together with a willingness by the Home Office to consider special circumstances and make exceptions to the process when circumstances dictate. Caseworkers should be trained in how to support and assist vulnerable groups.*

87. *We welcome the Home Office’s recent announcement that alternative evidence will be accepted as proof of identity and nationality, and that exceptional circumstances*

102 During the pilot phases children under the age of 21 with a parent eligible for settled status were able to apply for settled status but only if they applied at the same time as their parent. This is no longer the case, but the Government’s website says that “You’ll probably get a decision more quickly if you apply at the same time or after your family member applies”; Gov.uk, [‘Apply to the EU Settlement Scheme \(settled and pre-settled status\)’](#)

103 [Qq5–6, 26](#)

104 [Qq5, 8](#)

105 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p27

106 The Home Secretary informed us in May 2019 that to date approximately 650 paper application forms had been issued; [Letter from the Home Secretary](#), 14 May 2019

107 [Letter from the Immigration Minister](#), 7 March 2019

will be taken into consideration. However, the issue for vulnerable people is often not in proving their identity but in finding and accessing historical documents (such as bank statements or employment payslips) which may be required to demonstrate continuous residence. The willingness to accept alternative evidence also still places the onus on the applicant to find and provide documentation, potentially from a time of trauma or abuse. The Government must not place vulnerable people in danger by requiring them to approach an abusive or estranged partner or parent for access to their records. The Government should therefore commit to undertake reasonable inquiries on behalf of applicants in instances where they are unable to prove eligibility or qualification due to circumstances beyond their control.

88. Marianne Lagrue told us in evidence that “fundamentally it [the Settlement Scheme] is still a scheme that is designed with the lives of someone who is working in the UK in mind”.¹⁰⁸ Such people would find it easy to provide proof of identity and continuous residence through payslips and tax records, and would be more likely to have access to the technology required for registration: indeed, we heard that these individuals found the application process “fairly straightforward”.¹⁰⁹ However, for individuals in different circumstances, or who have any form of vulnerability, we were told that “things quickly spiral into being immensely complex”.¹¹⁰ Other witnesses agreed that the Government had chosen to “value certain people” and “offer more favourable provisions to some categories of individual”.¹¹¹

89. The ICIBI reported concerns from those involved in the second private beta (PB2) phase’s ‘vulnerability cohort’ that “the Home Office was significantly underestimating the practical challenges with the process, as well as other obstacles, that vulnerable applicants were likely to face, and that PB2 had done little to correct this. Underlying some of these concerns was a sense that the Home Office did not fully understand the nature and extent of the issues”. The Home Office told inspectors that it was “implementing a comprehensive vulnerability strategy, to ensure we deliver a scheme which is accessible, and which handles marginalised or at risk customers with sensitivity and flexibility, according to their needs”.¹¹²

90. The issue of large numbers of people being at risk of missing out on access to the Settlement Scheme is exacerbated by the fact that the Home Office does not know how many people are eligible or should be applying. The Home Secretary told us that, because of freedom of movement, “We don’t know who they are. There is no way we could know who they are [...] I wish we did”.¹¹³ This is true even for particularly vulnerable cohorts, such as children in care: local authority data does not record nationality for children in care and is often incomplete.¹¹⁴ Marianne Lagrue said that “The onus is on the applicant

108 [Q4](#)

109 [Q68](#) [Dr Adrienne Yong]

110 [Q4](#) [Marianne Lagrue]

111 [Qq38](#), [87](#) [Nicole Masri, Dr Adrienne Yong]

112 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p22

113 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q767

114 Coram Children’s Legal Centre ([ESS0004](#))

to identify themselves”,¹¹⁵ and Colin Yeo told us that “We simply will not know how many people have not applied and the Home Office is not doing any work, as far as we know, despite being urged to, to monitor take-up of the scheme”.¹¹⁶

91. We are very concerned by the fact that large numbers of EU citizens are at risk of being left out by the EU Settlement Scheme. We understand that, due to the functioning of free movement, the Government cannot be expected to know exactly how many people are eligible or should be applying to the Settlement Scheme. However, we believe that the Government needs to take additional action, beyond general awareness and publicity campaigns, to ensure that extra support is targeted towards children and vulnerable people to mitigate the risk of them being left out and potentially jeopardising their future in the UK.

92. *To ensure that children and young people do not encounter difficulties in the future (for example, when applying for a passport or benefits), the Government must do the following:*

- *Introduce a stage in the application process which prompts applicants to apply on behalf of any eligible children;*
- *Work with schools and local authorities to provide guidance and advice to parents who are EU citizens, explaining the circumstances in which they will be required to submit an application to the Settlement Scheme on behalf of their child/children;*
- *Require local authorities to undertake enquiries into how many EU citizen children are in care in their areas, and who may be required to apply to the Settlement Scheme;*
- *Provide additional support and guidance to local authorities regarding the applications of EU citizen children in their care, including directing them to where they can access legal aid and/or advice. Local authority employees cannot be expected to provide expert legal advice or services, especially as many cases for children and young people in care will involve complex circumstances.*

93. *The Government must work with as broad a range of public service providers and others as possible to enable them to provide reliable and acceptable evidence in support of settled status applicants who may only have a limited range of evidence available to prove eligibility.*

Barriers to application

Technical difficulties

94. Numerous technical difficulties have proven to be an issue for applicants during the pilot phases. Witnesses told us that the system regularly shut down,¹¹⁷ and the Home Office reported that a technical disruption during one of the pilots resulted in the service

115 [Qq61–5](#)

116 [Q68](#)

117 [Q13](#) [Marianne Lagrue]

being temporarily suspended.¹¹⁸ Rights of Women told us that they were forced to suspend participation in the pilot because of all the technical problems they were experiencing (the organisation only supported 16 applications).¹¹⁹ Different naming conventions or use of accents or symbols (e.g. German umlauts or hyphens) meant that some names could not be matched or processed,¹²⁰ and in the first pilot phase 4% of EU citizens found their data could not be matched against existing Government records (for example, because names on passports did not match those held by HMRC).¹²¹ If the same percentage of the estimated 3.8 million were to have a similar experience, this would scale up to over 150,000 of all eligible citizens.

95. Disappointingly, technical difficulties continued to be an issue for applicants after the Scheme publicly opened. Media reports highlighted that many people encountered error messages when attempting to use the online service and had to repeatedly call Home Office helplines for assistance. One man said that the experience left him on the verge of tears: “I was about to break down, I started to think it was a deliberate act to make me suffer. It has affected me mentally really badly”. The Settled Status Advice Service, a campaign group set up to help applicants with the process, said technical issues “blight the system” and are a “major issue” for EU nationals.¹²²

96. It has also been revealed that the Home Office accidentally shared the personal email addresses of hundreds of applicants to the Settlement Scheme in what the department called an “administrative error”. This happened when a Home Office employee failed to use the ‘blind CC’ option when contacting applicants who had experienced technical problems to ask them to resubmit their information. A Home Office spokesman said that the department had apologised personally to the applicants involved and had improved systems and procedures to stop this occurring again.¹²³ This follows a similar Home Office data breach when launching the Windrush Compensation Scheme.¹²⁴

97. In response to our raising of the technical difficulties being experienced by applicants to the Scheme, the Home Secretary wrote to us that “In a programme of this scale some user interactions and difficulties requiring technical changes are to be expected”, but that less than a quarter of one per cent of applicants were known to be experiencing technical issues. He wrote that fixes for 90% of affected cases would be deployed by mid-May 2019, with the final 10% deployed by the end of the month.¹²⁵

98. The Home Secretary told the Justice Sub-Committee of the House of Lords Committee on the European Union that one of the reasons the Home Office focused on a largely electronic system was because “we have been learning lessons from the past”, highlighting Windrush (see Chapter 3).¹²⁶ However, there will be many applicants who will find the online application process too difficult to navigate, and therefore struggle or fail to apply. This will include those with low levels of literacy, limited English, limited

118 Home Office, *EU Settlement Scheme—Private Beta Testing Phase 2 Report*, January 2019

119 [Q58](#)

120 [Q68](#) [Luke Piper]

121 Home Office, *EU Settlement Scheme—Private Beta Testing Phase 1 Report*, 31 October 2018

122 PoliticsHome, [‘EXCL Foreign nationals seeking ‘settled status’ in UK after Brexit hit by computer woes’](#), 10 April 2019

123 BBC News, [‘Brexit: Home Office sorry for EU citizen data breach’](#), 11 April 2019

124 BBC News, [‘Windrush: Home Office admits data breach in compensation scheme’](#), 8 April 2019

125 [Letter from the Home Secretary](#), 14 May 2019

126 Oral evidence taken before the House of Lords Select Committee on the European Union Justice Sub-Committee, [Brexit: citizens’ rights](#), 22 January 2019, Q32

IT skills, and lack of access to IT hardware (such as suitable smart phones and adequate internet access). Sky News interviewed a Romanian man who has lived in the UK for six years, who struggled to use the app:

I don't know how to use a computer, I don't know how to put my personal data into an application, I didn't even know what steps I had to take ... I didn't have any information. It was very stressful.

He was only able to complete the application with help from a local organisation, the Roma Support Group.¹²⁷

99. The Government has extended UKVI's Assisted Digital service to support applicants who lack the access, skills or confidence to use the online application system. This provides support from advisers via telephone and in person, both at home and at centres across the country. During the second private pilot phase only 39 calls were made to the Assisted Digital service, and during the public beta testing phase only around 150 appointments for support were booked at the more than 200 centres established to provide Assisted Digital support.¹²⁸

100. During the second pilot phase, 84% of applicants did not need to submit any additional documentation to prove their UK residency. Giving evidence to the House of Lords Committee on the European Union's Justice Sub-Committee on citizens' rights after Brexit, Glyn Williams, the Home Office's Director General of Borders, Immigration and Citizenship System Policy and Strategy Group, said that compared to the amount of documentation people previously had to send to the Home Office the fact that 84% of applicants did not need to send additional information "is a very big step forward for us and quite a breakthrough for the Home Office, if I may say so".¹²⁹ However, this 16% of applicants who needed to provide further evidence during the second pilot would potentially scale up to 600,000 citizens in the Scheme as a whole, and in the public beta test phase only 73% of applications did not need to provide further information.¹³⁰

101. Witnesses agreed that for most people application was "a fairly straightforward process".¹³¹ However, this was not the case for vulnerable people. Nicole Masri said that the application process was a really resource intensive activity for an organisation like Rights of Women, let alone an individual without technological and personal support,¹³² and Marianne Lagrue reported that, while applications made by the Coram Children's Legal Centre took 1.5–2 hours on average, those with documentary or technical challenges took

127 Sky News, 'Millions of EU citizens can now apply for settled status in UK', 21 January 2019

128 Gov.uk, 'EU Settlement Scheme: Assisted Digital service', updated 8 April 2019; Home Office, *EU Settlement Scheme—Private Beta Testing Phase 2 Report*, January 2019, p10; Home Office, *EU Settlement Scheme: Public Beta Testing Phase Report*, 2 May 2019, pp9–10

129 Oral evidence taken before the House of Lords Select Committee on the European Union Justice Sub-Committee, *Brexit: citizens' rights*, 22 January 2019, Q31

130 Home Office, *EU Settlement Scheme: Public Beta Testing Phase Report*, 2 May 2019, p7

131 [Q68](#) [Dr Adrienne Yong]

132 [Q45](#)

upwards of 10 hours.¹³³ She added that some applicants did not realise that the email they received from the Home Office was actually their final decision, as all documentation—and the guidance and the application process itself—is currently provided in English.¹³⁴

102. We understand why the Government has chosen to pursue a digital-based application process. However, as with the imposition of any new technological service, there will be teething problems, and many applicants will not feel comfortable or confident in using unfamiliar technology, especially for something so important. Given that both we and other Committees have drawn attention to concerns around the technical aspects of the Scheme, it is extremely disappointing that so many EU citizens experienced difficulties when the Scheme was launched. The Settlement Scheme has been open in private beta form since August 2018; this should have given ample time for sufficient technological systems to be devised and implemented.

103. *The Government must, as a matter of urgency, investigate and remedy the technical issues applicants are reporting when attempting to use online Home Office systems.*

104. We welcome the Home Office’s Assisted Digital service, which provides telephone and face to face support to applicants to complete the application form online. 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 app

105. In April 2018 the then Home Secretary, Rt Hon Amber Rudd MP, said that the application process for EU nationals seeking to remain in the UK after Brexit would be “as easy as setting up an online account at LK Bennett”,¹³⁵ and the current Home Secretary told us in May 2019 that the process “has been designed to be straight-forward and user-friendly for applicants”.¹³⁶ However, numerous news and media reports have related testimonies from EU citizens who have encountered difficulties in using the app. These include:

- the process taking several hours and attempts on multiple different phones;
- finding the system cannot confirm their identity or history despite having continuous residency or employment records;
- the app failing to read information despite up-to-date devices and documents.¹³⁷

133 [Q13](#)

134 [Q19](#); The Home Secretary told us that key information, such as application guidance, will be provided in the other 23 official EU languages and in Icelandic, Norwegian and Welsh; [Letter from the Home Secretary](#), 1 May 2019; The Home Office had decided not to release guidance in other languages earlier as the guidance was constantly changing due to lessons learned during the pilot phases; Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p29

135 The Guardian, [‘Rudd says online EU registration will be ‘as easy as shopping at LK Bennett’](#), 23 April 2018

136 [Letter from the Home Secretary](#), 1 May 2019

137 Channel 4 News, [‘Settled status fee for EU nationals waived’](#), 21 January 2019; Metro, [‘This is how frustrating it is for EU citizens to get settled status in the UK’](#), 22 January 2019; LBC, [‘EU Citizen Settled Status Process A Shambles As Thousands Struggle To Apply’](#), 21 January 2019; Politics.co.uk, [‘Warning lights flashing over EU settled status app’](#), 6 February 2019

Some even reported that, in January 2019, the app demanded six months' worth of evidence from 2019.¹³⁸ Several individuals resorted to submitting their documentation by post for manual confirmation. One article concluded that:

Too many people are being given the wrong status, too many are facing demands for extra evidence, and too many are unable to use the app in the first place.¹³⁹

106. Initially, and during the pilot phases, the app only worked on smartphones running a recent update of the Android operating system and was not accessible on Apple devices such as iPhones or iPads. In April 2018 a Home Office spokesperson said, "We're speaking to Apple to try and get this resolved".¹⁴⁰ On 30 October 2018, the Immigration Minister told us that the process could be conducted, and saved, on Apple devices up to the point where the passport chip needed to be checked: the applicant would then have to switch to an Android device. She said:

it is Apple that will not release the upgrade that we need in order for it to function [...] It is accessible via any device, but the chip-checker has not been released by Apple. To try to blame that on the Home Office is very unfair of you.¹⁴¹

107. In addition to this, many applicants have had difficulties in using the scanner function within the Android phone, on which the process relies to read biometric data in the passport chip, reporting that it can freeze the app for several days following a failed attempt. The app also did not initially work overseas,¹⁴² but the Government announced in March 2019 that citizens would be able to apply from outside the UK from 9 April 2019.¹⁴³ Official advice from the Home Office for anyone having difficulty is currently to travel to one of the centres around the country that can perform document authentication (see below), or to use a friend's device.¹⁴⁴ Some universities and health sector employers involved in the pilot phases bought or made up-to-date Android devices available to their employees to enable them to complete an application.¹⁴⁵

108. In March 2019 the Immigration Minister sought to "put to bed the allegation that people will not be able to use their iPhones to apply", and stated that individuals will be able to use any desktop, laptop or mobile device¹⁴⁶ to make an application, or use a paper application form in some circumstances.¹⁴⁷ An Apple version will still not be available for a number of months after the Scheme opens, however.¹⁴⁸ Now that the Scheme is fully

138 [@MartinaAndretta](#) tweet, 6 February 2019; Politics.co.uk, '[Warning lights flashing over EU settled status app](#)', 6 February 2019

139 Politics.co.uk, '[Warning lights flashing over EU settled status app](#)', 6 February 2019

140 The Guardian, '["Beyond belief": Brexit app for EU nationals won't work on iPhones](#)', 24 April 2018

141 Oral evidence taken on 30 October 2018, [Government Preparations for Brexit: Border and Security Operations](#), HC 1674, Qq51–5

142 The Times, '[Settled status plan 'risks new Windrush'](#)', 21 January 2019

143 HC Deb, 7 March 2019, [HCWS1387](#)

144 GOV.UK, '[Settled and pre-settled status for EU citizens and their families](#)'; The Guardian, '[EU nationals highlight multiple bugs in Home Office Brexit app](#)', 8 December 2018

145 [Q32](#); The Guardian, '[EU nationals highlight multiple bugs in Home Office Brexit app](#)', 8 December 2018

146 The report of the public test phase said that 987 devices from 92 manufacturers had successfully used the app; Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p6

147 Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 358](#); HC Deb, 7 March 2019, [HCWS1387](#)

148 Information provided by Home Office officials.

live use of the app is “entirely optional” as applicants are able to verify their identity by post or face to face at an application centre. There is also additional digital support, and a dedicated telephone advice and support service.¹⁴⁹

109. It should be considered an error of judgement that the Home Office has so far based a system as vital as the Settlement Scheme on technology which is not easily accessible to vast numbers of applicants. Accessing the Scheme has required applicants to rely on friends or family to lend them a device, or to spend hundreds of pounds buying a new smartphone themselves.

110. We therefore welcome the announcement by the Immigration Minister that citizens will be able to use a range of devices to make their application. We remain disappointed that an Apple version of the app is still not available. We call on the Government to work to expedite this process, as lack of iPhone and iPad accessibility will remain a barrier for a large number of applicants.

Document scanning

111. To assist individuals encountering difficulties in using the app or without a compatible mobile phone, the Government initially set up 13 document scanning centres across the country—in Bath, Belfast, Caerphilly, Edinburgh, Hackney, Hatfield, Hull, Lincoln, Sandwell, Southampton, Southwark, Stockton-on-Tees and Trafford—at which applicants could scan and upload supporting documentation to complete their application.¹⁵⁰

112. However, the3million calculated that on average EU citizens would have to do a 74-mile round trip to visit one of the centres, and that some would have to travel for hundreds of miles. Applicants travelling to one of these centres would then also have to pay £14 to use the service and would not be able to get advice on their application while there. The Home Office stated that the centres were for ID checking only and applicants with questions should contact the EU Settlement Resolution Centre. The3million claimed that the 13 centres were “nothing more than a token gesture”.¹⁵¹

113. The Home Office subsequently said that this guidance only applied to the test phase of the Settlement Scheme, and that other ways to apply would be available once the Scheme rolled out fully. As outlined in the Immigration Minister’s letter to us, there will be “at least 50” identity checking locations across the UK, and applicants will also be able to verify their identity by posting their identity documents to the Home Office.¹⁵²

114. The Government website currently lists 56 locations offering ID document scanning. However, applicants are not informed how much using these services may cost: the website says only that “You may be charged to use this service. The service provider you use will tell you how much you’ll need to pay”. It adds that some applicants may need to attend further appointments or may still need to send identification documents to the Home Office for an application to progress. Applicants will not be entitled to a refund in such a situation.¹⁵³

149 Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 358](#)

150 Home Office, ‘[Locations offering ID document scanning](#)’, 24 January 2019

151 [@the3million](#) Twitter thread, 24 January 2019

152 [Letter from the Immigration Minister](#), 7 March 2019

153 Gov.uk, ‘[Locations offering ID document scanning](#)’, 26 April 2019

115. The difficulties experienced in attempting to navigate the application process have placed immense strain and stress on EU citizens. The Guardian reported that many are experiencing insomnia and panic attacks, profiling one woman who went to work in tears every morning after attempting to apply:

I tried everything but I get to a certain point, and on the screen there is just a wheel going round and round. I can't make my application. I have tried 12 different PCs, my phone, another friend's. None of these work.

It's humiliating. To have to go through all this feels like a punch in the face. If it doesn't work and I overnight become illegal, what's going to happen?

This morning I just could not stop crying when I was at work. I can't plan anything—my career, my home. It's become unbearable. There isn't a day I can push it away. You can't stop thinking about it. That's why I cry every morning on my way to work because I'm thinking, 'What's going to happen, what if this doesn't work?' This is my life.¹⁵⁴

116. We welcome the Government's provision of additional locations to support EU citizens in making an application to the Settlement Scheme. However, we are disappointed that applicants are still charged for using these services, and that there does not appear to be a standard charge, meaning that some applicants may have to spend more than others to complete the same process. We call on the Government to scrap the fees currently charged to applicants using one of the ID document scanning centres and to reimburse local authority centres for any costs they may have incurred in providing these services for the Government.

Not getting the status to which they are entitled

117. Under the Settlement Scheme, settled status is open to citizens who have resided in the UK for at least six months in five consecutive years, with pre-settled status available to those who will not have reached that threshold by 31 December 2020 (or the date of departure in the case of a 'no deal' Brexit). During the online application process, individuals are offered the status to which they are entitled according to automatic look-ups against records held by the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC). If they believe they are entitled to a different status to the one which they are offered, applicants can submit additional documentary evidence (for example, employment records to demonstrate continuous residence) or apply for an administrative review of the decision.

118. The report on the first pilot phase stated that all applicants were granted the leave that they expected.¹⁵⁵ This measure was absent from the report on the second pilot phase, and so we wrote to the Home Secretary asking for clarification on how many of the 8,106 applicants who received pre-settled status during the second pilot phase received the status they would have expected. On 27 February he replied that "Excluding the admin review

154 The Guardian, 'Insomnia, panic attacks, constant worry—the life of Britain's EU citizens', 27 January 2019

155 Home Office, [EU Settlement Scheme—Private Beta Testing Phase 1 Report](#), 31 October 2018

cases [...] all cases granted pre-settled status were on the basis that they did not have five years' continuous residence in the UK".¹⁵⁶ Citizens without five years' continuous residence could only be eligible for pre-settled status.

119. During our evidence session on 27 February, we questioned the Home Secretary and the Permanent Secretary on these results as, given the difficulties and issues highlighted by many applicants and commentators in finding full and correct documentation and proving continuous residence, it was surprising to hear that not one single applicant in the second pilot phase was eligible for settled status but found themselves unable to prove it. Our concerns on this point were strengthened because the letter also stated that 14% of the applicants who were granted settled status were initially offered pre-settled status and had to submit additional information to obtain that to which they were entitled.¹⁵⁷

120. The Home Secretary appeared to be unaware of the content of the letter his department had sent to us that morning, but he expressed confidence in the detail provided:

This is what has come from my officials who are running the scheme, the people who run the scheme. I have absolute confidence in them and if this is what they are reporting as the results of the testing of the scheme.¹⁵⁸

121. The Permanent Secretary to the Home Office, Sir Philip Rutnam, acknowledged that "There will be cases exactly as you say where people are unable to get documentation, including ... we are particularly concerned about domestic abuse situations for example".¹⁵⁹ He went on to explain that:

What is not included in the letter is information about the further help we have provided in order to help people establish either their pre-settled status or their settled status.

[...]

If the concern is that they may have it but have not proved it, what we need to show to you is the effort and the results of that effort that we have gone to.¹⁶⁰

122. The Home Secretary also expanded on this:

There may be other issues with the system where people do not quite have the proof or the information that might be required. That is why we set up a process with a task force and phone lines and so on. There will be more of these situations when the process is formally rolled out, because when you are dealing with three million people, there will be some difficult issues to deal with; not everyone is going to go as smoothly as you might want. In those situations, we will work with those people.¹⁶¹

123. The Home Secretary further clarified the situation for applicants in this position in a letter subsequently sent to us in May. He stated that "applicants are successfully

156 Home Office ([ESS0003](#))

157 Home Office ([ESS0003](#))

158 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q781

159 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q786

160 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Qq787, 791

161 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q802

being granted the status they qualify for” because of the Home Office’s “flexible overall approach”. Caseworkers will accept a wide range of evidence, applicants can “rely on any evidence available to them, reflecting their personal circumstances”, and the Home Office will “exercise discretion in the applicant’s favour”. However, the Home Secretary still asserted that “The ‘correct’ immigration status is the status for which the applicant demonstrates that they qualify”.¹⁶²

124. The ICIBI recommended that the Home Office provide caseworkers and Settlement Resolution Centre staff with clear guidance about evidential flexibility in relation to applications to the Settlement Scheme, so that it is widely understood and applied consistently. This approach was outlined in the Government’s Statement of Intent in June 2018,¹⁶³ but the ICIBI reported that some caseworkers have been incorrectly applying this guidance.¹⁶⁴

125. The Home Secretary sought to minimise fears surrounding the offering of a status other than that which was expected by the applicant by emphasising that those with pre-settled status can still end up with settled status (after accruing five years residence and meeting requirements). He also stated that applicants who are offered what they consider to be an ‘incorrect’ status are able to remedy this situation by applying again and providing additional evidence or by submitting an application for administrative review.

126. The administrative review process enables applicants to challenge the status granted to them under the Scheme. By 16 April 2019, 128 applications for administrative review had been received and processed by the Home Office, with a further 46 pending. 17 applications were rejected, but in 99 of the remaining 111 cases (89%) the Home Office’s original offer was overturned, giving the applicant settled status instead of pre-settled status after the applicant submitted additional evidence.¹⁶⁵

127. The Government’s Statement of Intent for the Settlement Scheme stated that citizens’ rights are to be monitored by a new Independent Monitoring Authority (IMA), created through primary legislation.¹⁶⁶ British Future reported that, coming into operation from January 2021,¹⁶⁷ the IMA will have the power to receive complaints from citizens and take appropriate action if it believes there has been a failure on the part of the authorities to implement the terms of the Withdrawal Agreement. It will also, like the Equality and Human Rights Commission, have the power to hold formal inquiries and launch legal action if it believes that there have been systematic failures with the EU Settlement

162 [Letter from the Home Secretary](#), 1 May 2019

163 “A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens”; Home Office, [EU Settlement Scheme: Statement of Intent](#), 21 June 2018, p8

164 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, pp7, 20–1;

165 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p8

166 Home Office, [EU Settlement Scheme: Statement of Intent](#), 21 June 2018, p6

167 Until the Independent Monitoring Authority is set up, the implementation of the new scheme will be monitored by the Independent Chief Inspector of Borders and Immigration, who will present a report on the EU Settlement Scheme early in 2019; British Future, [Getting it right from the start: Securing the future for EU citizens in the UK](#), January 2019, p15

Scheme.¹⁶⁸ Under the draft Withdrawal Agreement, the IMA will remain in place for at least eight years after the end of the transition period, when it may be abolished if the UK and EU agree that it is no longer required.¹⁶⁹

128. However, the Government has provided little public information on how the Independent Monitoring Authority is to be structured or function in practice. The3million said that it was concerned about this lack of detail, given that the draft Withdrawal Agreement said that the IMA should be operational by the end of the transition period.¹⁷⁰ It is therefore unclear what safeguards there are to be within the Settlement Scheme process, what recourse EU citizens will have for failures within the Scheme, and how accountability will be ensured. It has also not been explained how citizens' rights will be ensured in the case of a 'no deal' Brexit, as the IMA would not be established in this event (as its purpose is to monitor the Citizens' Rights part of the Withdrawal Agreement, which will not be in place). The ICIBI noted in his report that Settlement Scheme staff were not aware of how to recognise complaints or how to direct individuals who wished to make a complaint.¹⁷¹

129. We welcome the changes the Home Office has implemented to give more support to EU citizens making an application to the Settlement Scheme and its intention to exercise discretion in the applicant's favour. We hope that this approach will limit the number of cases in which an applicant receives a status under the Scheme which is not that which they expected.

130. However, we are concerned by the Home Office's confident belief that all applicants are being granted the correct status. We would be highly surprised if it is the case that none of the thousands of people who have been offered pre-settled status under the Settlement Scheme so far are technically eligible for settled status but unable to prove it. As we have outlined throughout this report, there are many reasons why an applicant may not be able to provide sufficient evidence, despite the Home Office's pledge of a flexible and understanding approach.

131. We are particularly disappointed by the Home Secretary's assertion that "The 'correct' immigration status is the status for which the applicant demonstrates that they qualify". This statement strikes us as callous, and rigid enforcement of this line would not be fair or just, as it would allow for the possibility of long-term EU residents of the UK—who, for whatever reason, are unable to evidence their eligibility for settled status—being granted a lesser status than that to which they are rightfully entitled.

132. We believe that the correct status for an EU citizen who has been legally resident in the UK for more than five years is settled status, regardless of whether they have complete documentary evidence to prove this fact. The implementation of a declaratory system, which automatically grants rights and status to individuals entitled to them, would be a fairer and more accurate way of attributing immigration status to EU citizens residing in the UK. We therefore repeat our recommendation that the Government amend the Immigration and Social Security Co-ordination (EU Withdrawal) Bill so as to provide

168 British Future, *Getting it right from the start: Securing the future for EU citizens in the UK*, January 2019, p15

169 Independent Chief Inspector of Borders and Immigration, *An inspection of the EU Settlement Scheme*, May 2019, p9

170 the3million, *Questions for the Home Office on 'Settled Status'*, 27 February 2019, pp91–2, 100

171 Independent Chief Inspector of Borders and Immigration, *An inspection of the EU Settlement Scheme*, May 2019, pp10, 27

for the automatic granting of settled or pre-settled status in the UK to anyone who would, under current Government proposals, 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.

133. *There will be cases when an individual who is applying for documentary proof of their status will have a gap in their record for which, through no fault of their own, they are unable to provide evidence. The Home Secretary told us that the Home Office will offer a flexible approach, will exercise discretion in the applicant's favour, and will look for reasons to grant status rather than to refuse. In cases where the balance of probability suggests entitlement to status but the evidential record is unable unequivocally to prove this, the Government should commit to exercise its discretion compassionately and confirm status to such individuals.*

134. *The Home Office should act on the recommendation of the ICIBI and ensure that all caseworkers and staff involved in processing or assisting with applications to the Settlement Scheme fully understand how the Government's promise of flexibility and discretion in favour of the applicant is to be applied in practice. The approach of evidential flexibility, which we welcome, must be applied fairly and consistently.*

135. We acknowledge that many EU citizens granted pre-settled status—correctly or incorrectly—will go on to qualify for settled status. However, this does not mitigate this issue. Applying for the Settlement Scheme is already a stressful process for many EU citizens as their rights and entitlement to remain in the country which is their home are conditional upon it. Forcing them into a further period of uncertainty until they are able to demonstrate to the satisfaction of the Home Office their eligibility for long-term leave to remain is unfair. It may also leave them at a disadvantage in interactions with employers or landlords, who may show preference for the security of a settled status designation.

136. We are glad that the Home Office has provided applicants with the ability to challenge a decision they feel is incorrect. However, we remain concerned that there may be many EU citizens applying to the Settlement Scheme who, when offered pre-settled status against an expectation of settled status, may feel obliged to accept this incorrect decision, and fail to challenge it. This may be because they do not understand the administrative review process and are unaware of their ability to challenge an incorrect decision; because they feel unable to prove their eligibility or residence; or most troublingly because, given the legacy of Windrush and the fear of being left without status post-Brexit, they feel the need to accept any status offered to them by the Home Office.

137. *The Government must provide information on how the Independent Monitoring Authority which is to oversee the EU Settlement Scheme will be structured, composed and resourced, and how it will function in practice.*

Reliance on automatic checks

138. The risk of applicants missing out on the status to which they may be entitled arises in part from the absence of any requirement in the application process for applicants to state

when they became resident in the UK or for how long they have been continuously resident. Instead of asking applicants to provide these details, the process relies on automatic checks and references to DWP and HMRC data, based on the identity documentation provided by the applicant. Nicole Masri voiced concern over the extent of reliance on the automatic data-checking system:

The Government do not actually ask applicants how long they have been living here. They never at any stage in the application process ask when a person arrived or when their continuous residence commenced. The whole system is built around the automated checks.¹⁷²

139. In his letter of 1 May 2019, the Home Secretary said that the Home Office had made a conscious decision not to ask applicants when they became resident in the UK because “this is not information that is necessary in order to decide whether the applicant has been continuously resident in the UK for five years”. He added that requiring applicants to provide this information would inconvenience them, as they would have to find documentary records, and could cause “unnecessary concern”.¹⁷³

140. However, the Home Secretary also explained that the Home Office has made improvements to the application process in this regard. While applicants do not have to provide exact dates of arrival or the commencement of residence, they are now specifically asked to confirm that they have been continuously resident for more or less than five years.¹⁷⁴ The public beta phase report added that the page in the application process which provides the applicant with the option to accept or not accept a grant of pre-settled status has been reformatted, to prevent situations in which an applicant may accept the offer of pre-settled status instead of uploading further evidence to support their claim for settled status.¹⁷⁵

141. Other agencies have also questioned the automated data checks. The Immigration Law Practitioners’ Association (ILPA) published a research paper in January 2019 making the case that the Home Office is subject to a number of legal duties related to the Settlement Scheme’s data checks, including:

- the duty to give reasons for the outcomes of checks (to enable legal challenges);
- the requirement to exercise meaningful oversight of the checks (to ensure no errors have occurred); and
- a duty to provide meaningful information on the logic used by the system (to enable applicants and legal practitioners to understand how it may apply to specific cases).

ILPA emphasised the importance of proper oversight, safeguards and transparency when dealing with vulnerable populations and complex decisions such as are involved in the operation of the Settlement Scheme, as:

172 [Q53](#)

173 [Letter from the Home Secretary, 1 May 2019](#)

174 [Letter from the Home Secretary, 1 May 2019](#)

175 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p9

A wrong decision based in part or in whole on an automated system, in the field of immigration, may result in family separation or unlawful deportation.

It feared that, due to the low quality of some Government-held data, “the level of data matching errors is likely to be needlessly high”.¹⁷⁶

142. The Immigration Minister addressed these concerns during debate on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill in March 2019. She pledged to publish the Memorandum of Understanding between the Home Office, HMRC and the Department for Work and Pensions, along with further guidance on the operation of the automated checks, stating that the Home Office “will of course be completely transparent on how those checks work, as it is to everyone’s benefit for us to do so”. However, the Minister claimed that publication of the process employed by the automated checks would be unnecessary as such information is already set out in the Immigration Rules, and that provision of explanations to unsuccessful applicants would increase the risk of fraud and identity abuse. She stated that the Home Office aims to keep the process “simple and quick in providing results”.¹⁷⁷

143. We understand that in many cases it should not be necessary for applicants to provide dates and details for their residency in the UK, as automatic look-ups to DWP and HMRC data should confirm this information. But, for those individuals whose records are incorrect or incomplete, requiring this information to be submitted should highlight an issue before an incorrect status is offered.

144. We therefore welcome the changes recently made to the application process, which ask applicants specifically to confirm whether they have been resident in the UK for more than five years. We hope that this information acts as a fail-safe, highlighting cases in which further information or documentation may be required and taking the onus from the applicant to challenge an incorrect decision.

Tracking the eligibility of EU citizens

145. An additional, longer-term, issue highlighted by the House of Lords European Union’s Justice Sub-Committee is the fact that there does not appear to be a systematic process for moving people from pre-settled status to settled status when they become eligible. The onus is instead on the individual to reapply when their circumstances change and they are able to prove residence. Coram Children’s Legal Centre wrote in evidence to us that unless the Government provides people with information about when their residence is deemed to have begun, and when it should reach five years, people may leave applications for settled status for longer than is necessary. This could then cause a casework bottleneck in five years’ time when the limited leave to remain granted to early applicants is due to expire.¹⁷⁸

146. The Sub-Committee recommended that the Home Office should commit to notify individuals when they are likely to be eligible to move from pre-settled to settled status.¹⁷⁹

176 Immigration Law Practitioners’ Association, [EU Settled Status Automated Data Checks—ILPA Research Piece](#), 30 January 2019

177 Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 5 March 2019, [col 374–6](#)

178 Coram Children’s Legal Centre ([ESS0004](#))

179 [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 27 February 2019

Appearing before us in February 2019, Jill Rutter from British Future agreed: “it is incumbent on the Home Office to have information and processes that channel people through into settled status once they have the required residency”.¹⁸⁰

147. The Home Secretary told the House of Lords’ EU Justice Sub-Committee that the Home Office is currently looking into a system for reminding those who have been granted pre-settled status of the scope to apply in due course for settled status.¹⁸¹

148. A related question arises over how the Home Office will know when and if an individual should lose their status under the Scheme. Under current proposals, individuals with settled status should be able to spend up to five years in a row outside the UK, and those with pre-settled status should be able to be absent for two years. Those that spend more than their respective quota of consecutive years outside of the UK are liable to lose their status.

149. However, the Home Office has not explained how it intends to monitor or ascertain absence from the UK for people who have already gained a status under the Scheme. The situation for individuals with pre-settled status is clearer, as any absence that renders them ineligible for continued residence will be apparent when they apply to convert to settled status, but for EU citizens with settled status this situation raises the prospect of them having to continuously reapply or re-prove their ongoing residency in the UK to the Government.

150. There is also an ambiguity in Home Office guidance which could affect EU citizens’ entitlement to settled or pre-settled status. Eligibility for status under the Scheme is determined by the applicant’s period of continuous residence in the UK. The official guidance document for Home Office staff states that continuous residence “generally means that the applicant has not been absent from the UK for more than 6 months in total (in a single period of absence or more than one) in any given 12-month period”.¹⁸² However, as highlighted by the3million, it is not clear what would constitute the relevant 12-month period, and whether this is calculated by calendar year, per 12-month segment of the applicant’s qualifying period, or on a rolling basis.¹⁸³ Without clarity on this point, EU citizens could inadvertently invalidate their eligibility under the Scheme.

151. **Individuals granted pre-settled status will be able to apply for settled status in the future once they have accrued—and are able to evidence—five years of continuous residence. However, it is unclear how this process will operate. *The Government must clarify:***

- ***how individuals will apply to graduate from pre-settled to settled status;***
- ***when they will need to apply (e.g. after reaching five years continuous residence, or in a period before reaching that milestone);***
- ***what evidence they will need to provide; and***

180 [Q69](#)

181 [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 20 March 2019; [Letter from the Home Secretary to the Chairman of the EU Justice Sub-Committee](#), 17 April 2019

182 Home Office, [EU Settlement Scheme public beta phase: EU citizens and their family members](#), 21 January 2019, p39

183 the3million, [Questions for the Home Office on ‘Settled Status’](#), 27 February 2019, pp20–22

- *what will happen to individuals who do not apply for settled status after accumulating five years of continuous residence, or who still cannot prove the required residence period of five years.*

152. *In order to minimise the risk of citizens forgetting or failing to apply we recommend that the Government take responsibility for formally notifying individuals with pre-settled status when they may be eligible to apply for settled status. This should be done at least three months before the date at which they will become eligible, to give individuals sufficient time to collect any evidence or documentation they may require. The notice should outline both the process the applicant needs to follow and what, if any, evidence they are required to provide.*

153. *The Home Office also needs to outline how it will determine that an individual should lose their settled status due to an absence of more than five years, and how it will make clear to those granted pre-settled status the conditions under which they may lose the right to apply for settled status later. It should also clarify how absences which may affect an individual's entitlement to settled status are to be calculated—by calendar year, on a rolling 12-month basis, or in any chosen 12-month segment.*

Home Office capacity and management

154. British Future has said that the Settlement Scheme constitutes “one of the largest tasks that the Home Office has ever had to undertake”, costing between £500 million and £600 million,¹⁸⁴ and Colin Yeo called the Scheme “unprecedented” and “a huge experiment in technology and in human behaviour”. He said that “there is no comparator around the world where you have a legally resident population that has been forced to apply for a new status or else become illegal”.¹⁸⁵ Giving evidence to us in February 2019 the Home Secretary agreed that it is “a huge and complex endeavour”.¹⁸⁶ The Government expects up to 3.5 million people to apply to the scheme over the next three years, with Home Office officials expecting to process about 6,000 applications a day.¹⁸⁷

155. There has been considerable Government investment in the EU Settlement Scheme. The Government says that it has invested £175 million in the scheme,¹⁸⁸ including spending nearly £50 million in the development of the digital registration system.¹⁸⁹ However, in March 2019 the Institute for Government claimed that the decision to waive the fee for settled status will leave the Home Office needing to fund a gap of around £180 million in the cost of administering the Settlement Scheme.¹⁹⁰ The ICIBI recommended that the Government clarify the consequences of the decision to remove the fee.¹⁹¹

184 British Future, [Getting it right from the start: Securing the future for EU citizens in the UK](#), January 2019, pp4, 6; An Impact Assessment signed by the Immigration Minister in July 2018 said that the Scheme is expected to cost the Home Office between £410 million and £460 million between 2018–19 and 2021–22; Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p13

185 [Q68](#)

186 Oral evidence taken on 27 February 2019, [The work of the Home Secretary](#), HC 434, Q805

187 Metro, ‘[This is how frustrating it is for EU citizens to get settled status in the UK](#)’, 22 January 2019

188 Sky News, ‘[Millions of EU citizens can now apply for settled status in UK](#)’, 21 January 2019

189 British Future, [Getting it right from the start: Securing the future for EU citizens in the UK](#), January 2019, p5

190 Institute for Government, [Managing migration after Brexit](#), March 2019, p28; The Impact Assessment signed by the Immigration Minister in July 2018 noted that the Scheme was expected to generate between £170 million and £190 million in revenue; Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p13

191 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p7

156. The Home Secretary told us that there will be 1,500 operational staff available to process applications, with a further 280 in the Settlement Resolution Centre to take enquiries from applicants.¹⁹² However, this figure is lower than earlier reports, which cited Home Office officials as suggesting that the Centre would employ 400 staff to deal with issues faced by applicants.¹⁹³ In January the Home Secretary said that “we are confident that the system is designed for the number of applications we expect”.¹⁹⁴

Results of the pilot phases

157. The Government piloted the Settlement Scheme in two beta phases in 2018, initially with EU citizens working for 12 NHS trusts and students and staff from three Liverpool universities between August and October (which saw just over 1,000 applications), and then with a wider pool of citizens across the country working in higher education, health and social care, between November and December. This second pilot phase involved just under 30,000 applications. However, this is only half the number that the Immigration Minister told us she expected to go through the process.¹⁹⁵ The Scheme was also open to a public beta test phase from 21 January 2019, and this saw more than 200,000 applications by 29 March 2019.¹⁹⁶

158. There were several positive results from the test phases. In the most recent public test phase, 79% of applicants who submitted feedback reported that the application was very or fairly easy (up from 77% in the second pilot phase), and most applicants received a decision within four days (on 7 March the Immigration Minister told us that 75% received a decision within three days, up from 69% in the second pilot phase). In addition, 95% of applicants were able to validate their identity using the smartphone app, with 75% completing the process within ten minutes. Online Government guidance, the Settlement Resolution Centre and staff at identity document scanning locations were found to be helpful by over 90% of respondents. Only 11% of applicants said that they would be critical of the application process, a decrease from 20% during the second beta phase.¹⁹⁷

159. However, there are several issues which give cause for concern over the Home Office’s ability and capacity to manage the number of applications that the full roll-out of the Settlement Scheme will involve. Independent research commissioned by the Home Office indicated that 35% of EU citizens could be expected to apply in the first three months of the full launch of the Scheme,¹⁹⁸ and of the near 30,000 applications received during the second pilot phase, over a third were submitted in the last five days of the pilot’s operation.

192 [Letter from the Home Secretary](#), 1 May 2019; [Letter from the Home Secretary](#), 14 May 2019; The ICIBI reported that 1,537 staff were employed as Settlement Scheme caseworkers, with a further 266 in the Settlement Resolution Centre. The Government has confirmed that staff in the Centre work shift patterns of 8am-8pm Monday to Friday and 9.30am-4.40pm at weekends; Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p14; Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p9

193 Metro, [‘This is how frustrating it is for EU citizens to get settled status in the UK’](#), 22 January 2019

194 Oral evidence taken before the House of Lords Select Committee on the European Union Justice Sub-Committee, [Brexit: citizens’ rights](#), 22 January 2019, Q33

195 Oral evidence taken on 30 October 2018, [Government Preparations for Brexit: Border and Security Operations](#), HC 1674, Q49

196 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p3

197 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, pp4, 6; [Letter from the Immigration Minister](#), 7 March 2019; Home Office, [EU Settlement Scheme—Private Beta Testing Phase 2 Report](#), January 2019, p6

198 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p29

If this latter tendency is replicated now the Scheme is fully open, it could mean the Home Office having to handle hundreds of thousands of applications—which will require quick answers, so as to avoid people becoming unlawfully resident—in a very short period of time. On the first weekend of the Scheme going live the Home Office received over 50,000 applications.¹⁹⁹

160. When the report of the second pilot phase was published on 21 January 2019, 29,987 applications had been received and 27,211 decisions made.²⁰⁰ This gap represents almost 10% of all submissions. As of 15 February, there were still over 1,100 outstanding cases from the second pilot phase.²⁰¹ Information provided by the Immigration Minister in March 2019 similarly stated that, of the more than 150,000 applications received since August 2018, 90% had been concluded by the end of February 2019, meaning that 10% of all submissions received by the Home Office during all the pilot phases were then yet to be resolved.²⁰² The report on the public test phase claimed that, by 16 April 2019, 95% of all applications received had been concluded.²⁰³

161. While the fact that the vast majority of cases are processed within a week is positive, the Home Office has not stated how long the remaining cases took to process, and we have heard that some applicants are left waiting an unacceptable length of time. Rights of Women (who supported 16 individuals in their applications) said that half of their vulnerable clients waited three weeks or more for a decision and that 25% were still awaiting a decision on 21 January (one month after the pilot closed), with some individuals waiting more than eight weeks. Rights of Women claimed that it did not recognise the experiences of its clients in the Home Office’s report on the second pilot phase.²⁰⁴

162. The Home Office provides online information about how long applications to the Scheme are currently taking to be processed. As of 25 April 2019, applications were taking between five and nine days, where no additional information is required.²⁰⁵ However, the Home Secretary did not answer our specific question as to how long the current backlog of applications was.²⁰⁶

163. It should also be noted that during the second pilot phase, which saw almost 30,000 applications, the Settlement Resolution Centre received over 15,000 calls and emails from applicants asking questions about their application.²⁰⁷ Colin Yeo pointed out that “This is the best informed and simplest group of people who have so far applied”, since most were employed people who followed the news and were aware of the scheme. Many of the participants who would be classed as having some form of vulnerability were supported by community and charitable groups. He questioned what would happen now that the

199 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p13

200 Home Office, [EU Settlement Scheme—Private Beta Testing Phase 2 Report](#), January 2019

201 Written evidence received from the Home Secretary outlined that of these cases, 90 were waiting for the applicant to submit their passport, 75 were awaiting further evidence of residence, and 65 were awaiting technical updates to the caseworking system or were subject to other clarifications. 900 cases were being held until the fee changes announced by the Prime Minister are formally implemented through statutory instruments, as the applicant had bypassed initial fee payment by erroneously claiming valid permanent residence status or indefinite leave to remain. If the Home Office were to process these cases before then they would need to charge a fee for the application to be valid; Home Office ([ESS0003](#))

202 HC Deb, 7 March 2019, [HCWS1387](#)

203 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p2

204 [@rightsofwomen](#) Twitter thread, 21 January 2019

205 Home Office, [‘EU Settlement Scheme: current expected processing times for applications’](#), updated 25 April 2019

206 [Letter from the Home Secretary](#), 14 May 2019

207 Home Office, [EU Settlement Scheme—Private Beta Testing Phase 2 Report](#), January 2019

Scheme is to be “scaled up massively”, as “the pilot has been very small and the results have not been all that encouraging”.²⁰⁸ British Future’s Jill Rutter voiced concern that difficult cases would be “parked” by the Home Office with pre-settled status, leaving people in “a kind of legal limbo”.²⁰⁹

164. The system does already appear to be under strain. One applicant forced to call the Home Office for assistance reported that the “lines seem to be constantly busy”.²¹⁰

165. The Home Office’s report on the public beta testing phase, which saw 200,000 applications, revealed that the Centre handled 62,261 calls and 14,596 emails. The Immigration Minister told us in March 2019 that all were responded to within agreed service levels (calls answered within 30 seconds, emails responded to within five days).²¹¹

166. In his report of the inspection of the Settlement Scheme during the second private beta phase, the Independent Chief Inspector of Borders and Immigration stated his belief that “compared with other areas of BICS [the Borders, Immigration and Citizenship System] [...] the EU Settlement Scheme stands out as having been afforded the preparation time, resources and organisational priority to succeed”. However, he also stated that “It is questionable [...] whether the Scheme has been properly tested”. He noted that the objectives of the private beta phases were deliberately limited in their scope, and that the number of applications received during the private phases “fell well short” of the Home Office’s assumptions. Further, there were no attempts to investigate why this was the case. The ICIBI concluded that it is therefore unclear whether the private beta phases were “sufficient [...] to serve as robust tests of the relevant systems and processes”. Low workloads meant that the capacity of staff had not been fully tested (some were loaned to other Home Office departments, such as the lack of work during the pilot phases of the Scheme), and elements such as the document scanner location option and the postal route for applications could not be said to have been tested at scale.²¹²

167. The Home Secretary wrote to us that the Home Office will publish quarterly official statistics publications on the progress of the Settlement Scheme and the work of the Settlement Resolution Centre from August 2019, alongside the department’s quarterly Immigration and Transparency statistics.²¹³

Home Office record

168. Concern around the Home Office’s ability smoothly and successfully to manage the number of applications the Settlement Scheme will attract, and to handle the complexity of some of the cases, has been partly prompted by many people’s past experience in applying to the Home Office on immigration and citizenship related issues. The Home Office already handles around seven million passport applications and around three million visa applications a year.²¹⁴

208 [Q85](#)

209 [Q69](#)

210 PoliticsHome, [‘EXCL Foreign nationals seeking ‘settled status’ in UK after Brexit hit by computer woes’](#), 10 April 2019

211 Home Office, [EU Settlement Scheme: Public Beta Testing Phase Report](#), 2 May 2019, p9; [Letter from the Immigration Minister](#), 7 March 2019

212 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, pp5–6, 16–19, 28

213 [Letter from the Home Secretary](#), 14 May 2019

214 Home Office, [Annual Report and Accounts 2017–18](#), July 2018, pp6, 26

169. The Home Office is already having to process a number of immigration and citizenship queries and applications which involve complex cases, many of which include issues with documentation or a lack of official records. The most recent update on the work of the Windrush Taskforce shows that 18% of cases took longer than two weeks (the Government’s target timeframe) to reach a decision.²¹⁵ The Home Office’s migration transparency data, which shows the progress of applications made from within the UK since 2014, also shows that while the majority of “straightforward” cases were resolved within the Customer Service Standard, there were nonetheless hundreds of straightforward cases in a backlog which were not concluded within the service standard timescale (with 29% of cases in this backlog taking more than 12 months), and more than 20,000 “non-straightforward” workable cases which took more than six months. 11% (5,277 cases) took more than a year to resolve.²¹⁶

170. A report by the Institute for Government (IfG) on post-Brexit management of migration stated that “As things stand, the Home Office is not ready or able to meet the Brexit challenge on immigration”. It raised concerns over unrealistic targets and the lack of a clear strategy, the disconnect between what politicians and officials think happens in the system and what actually happens on the front line, and the fact that the Home Office is run on decades-old information technology systems. The IfG suggested that the Cabinet Secretary might wish to assess whether the Home Office is still the right place to locate immigration policy.²¹⁷

171. During his inspection of the Settlement Scheme the ICIBI noted that there were system-wide problems with the Home Office’s IT—staff were temporarily unable to send emails or save documents—which highlighted the Scheme’s dependency on the Home Office’s general IT infrastructure. In March 2019, following reporting by a consumer group on the requirement for UK citizens to renew their passports before the UK leaves the EU, the website of the Passport Office crashed after a surge of applications.²¹⁸ The ICIBI also concluded that the Scheme’s customised IT system was not yet capable of producing the necessary management information and data.²¹⁹

Interactions with the Home Office

172. Danny Mortimer, Chief Executive of NHS Employers, told us that the experience of interacting with the Home Office during the pilots had been “a positive one”, with good communication and responsiveness to comment, adding that this had been a “pleasant surprise”.²²⁰ Luke Piper agreed that the Home Office team behind the Scheme “have been very communicative [...] and very welcoming to speak to”.²²¹ Nicole Masri also welcomed the invitation to stakeholders to have sustained conversations on behalf of vulnerable groups.²²² In addition, the Institute for Government reported that the Home Office’s use of “user groups, trial stages, and a willingness to adjust and learn, are very positive

215 [Letter from the Home Secretary to the Chair of the Committee](#), 19 March 2019

216 UK Visas and Immigration, [In-country migration data: November 2018](#), 29 November 2018, Table InC_05

217 Institute for Government, [Managing migration after Brexit](#), March 2019, pp5–7

218 Daily Mail, [‘Passport Office website crashes after warning that 3.5 million holidaymakers could be stopped from entering EU countries by a No Deal Brexit’](#), 8 March 2019

219 Independent Chief Inspector of Borders and Immigration, [An inspection of the EU Settlement Scheme](#), May 2019, p6–7, 27

220 [Qq7](#), 52

221 [Q68](#)

222 [Q8](#)

improvements to usual practice”,²²³ the House of Lords European Union Committee wrote that it was impressed by the organisation and resourcing of the EU Settlement Resolution Centre, and by the positive ethos at the Centre,²²⁴ and the ICIBI praised Settlement Scheme staff, saying that interactions with applicants were “professional and engaging” and that “Without exception, they were enthusiastic about their work and morale was obviously high”. He added that it will be important to maintain staff morale and customer service levels when workloads become more challenging.²²⁵

173. The Home Office made several changes to the application process following the results of the pilots and based on the experiences of applicants. These included updated communications and guidance material; increasing the size of file an applicant can upload in support of their application; allowing applicants to change their email address should a verification email from the Home Office be blocked; introducing technical safeguards against any disruption in the automated checks of HMRC or DWP data in the event of a system outage; and inserting a new screen within the application process to help applicants check whether they hold a valid permanent residence document.²²⁶

174. Giving evidence to us on behalf of British Future, Jill Rutter stated that “it is definitely working in the right direction [...] there is a very welcome cultural change in the Home Office”. However, she added that “there are still things that are not being done right”.²²⁷ Abigail Adieze said that she did not believe the Home Office was listening to her concerns about the difficulties experienced by young people in care,²²⁸ and Dr Adrienne Yong reported that many citizens were reluctant to send away their passports for identity checks (instead of using the app) because of the lingering feelings of mistrust and a lack of faith in the Home Office.²²⁹

175. Given the legacy of Windrush, the Home Office knows that it has much work to do to regain the trust and confidence of citizens when it comes to establishing and confirming their legal status in this country. Witnesses have so far been largely positive about their interactions with the Home Office during the pilot phases, and we welcome this. However, the Home Office has only had to deal with a very small cohort so far: now that the Settlement Scheme is fully open the department will be faced with over one hundred times more applications than it handled during the private pilot phases.

176. The concerns raised by the Institute for Government and the Independent Chief Inspector of Borders and Immigration, and the recent failure of the Passport Office website when faced with a surge of applications, do not give confidence as to the resilience of Home Office systems. In addition, if the ratio of one query for every two applications seen during the pilot phase were maintained throughout the duration of the Settlement Scheme, we would have serious concerns over the ability of the Home Office to handle and satisfactorily resolve every issue without increasing its staffing and technological capacity.

223 Institute for Government, *Managing migration after Brexit*, March 2019, p45

224 [Letter from the Chairman of the EU Justice Sub-Committee to the Home Secretary](#), 27 February 2019

225 Independent Chief Inspector of Borders and Immigration, *An inspection of the EU Settlement Scheme*, May 2019, pp6, 11, 16

226 Home Office, [‘EU Settlement Scheme private beta testing phase 2 report’](#), 21 January 2019

227 [Q91](#)

228 [Q9](#)

229 [Q80](#)

177. *The Home Office must ensure that it has sufficient human and technological capacity to handle the workload of applications and inquiries that the Settlement Scheme will attract. This will require robust digital systems and the hiring of more caseworkers, with extra surge capacity for the inevitable rush both now at the start and towards the end of the Scheme. They must be adequately and appropriately trained, particularly on the issues likely to be experienced by vulnerable applicants, so that they are able to handle inquiries in a sensitive and timely manner. This is important to prevent a backlog of cases and further delay and uncertainty for EU citizens. Almost 10% of cases were outstanding a month after the close of the second pilot phase, and many vulnerable applicants waited many weeks for a decision. A repeat of this for the whole cohort of EU citizens would not be acceptable and would further damage public perceptions of and confidence in the Home Office.*

178. *The Home Office must ensure that its IT system is capable of producing comprehensive management information and data, as recommended by the ICIBI. Regular reports on how the Scheme is performing—including the number of applications, their outcomes, how long they are taking to process and resolve and details on applicant satisfaction, as well as lessons learned and proposed improvements—will be essential for building public confidence that the Scheme is working as intended for both EU citizens and the Home Office. We appreciate the reports which have been made available covering the private and public test phases and we believe that similar reports should be produced and published at regular intervals now that the Scheme is under way. We are pleased that the Government has committed to provide regular statistical updates.*

Conclusions and recommendations

The EU Settlement Scheme

1. *The EU Settlement Scheme is now live, but there remains a lack of clarity over many aspects of the Scheme. The Home Office must provide full responses to the questions posed by the 3 million regarding the Settlement Scheme. It is disappointing that it has not yet done so, as some of these questions were first raised almost a year ago. EU citizens in the UK need certainty, and the Government should give it to them. We address some of these concerns specifically in this report. (Paragraph 15)*
2. *The Government must make calls to the EU Settlement Resolution Centre free to applicants. The goodwill extended to EU citizens through the Government's scrapping of the application fee will be undermined if they are charged to access advice and guidance about their application. (Paragraph 19)*
3. *The Government's plans for a 'no deal' scenario would leave EU citizens less than two years to apply under the Settlement Scheme. After this point, there would be considerable uncertainties about their status in the UK. Given this risk, there is no reason why the timeframe for applications should be curtailed compared to the circumstance of the UK leaving the EU with a deal. We also see no reason why an appeal right should only be available in the event of a withdrawal agreement being reached. Such an appeal should also be available if there is 'no deal'. The same applies to the independent monitoring authority. We also call on the Government to redouble efforts to seek a ring-fenced agreement on citizens' rights, and to update Parliament on what progress it is making and what obstacles remain. (Paragraph 25)*
4. *There are notable gaps in the Government's immigration proposals. The determination of the Government to end free movement on the date of departure if the UK leaves the EU without a deal could lead to a situation where long-term EU residents of the UK are, in the period between exit and the closure of the Settlement Scheme, disadvantaged and discriminated against in areas such as employment or housing if they are not able to evidence their entitlement to remain. (Paragraph 33)*
5. *The Government appears to hope that all EU citizens resident in the UK prior to exit day will apply to the Settlement Scheme right at the beginning, and that all later arrivals will register with the Government when they are required to. Given that this is highly unlikely—we discuss many of the reasons why individuals may struggle or fail to register later in this report—the Government must clarify how it intends to ensure that EU citizens in the UK, many of whom are entitled to live and work in the UK and who may have been residing here for many years, do not suffer any detriment in the event of a 'no deal' Brexit. Government ministers have alluded to a "sensible transition period": both EU citizens and those that wish to engage and interact with them post-Brexit, such as employers and landlords, need detail and certainty on this point. (Paragraph 34)*
6. *The Government must also clarify if, how and when hostile/compliant environment measures will be applied to EU citizens living in the UK. It is currently unclear, for*

example, whether the Home Office would contact, inform or pass data on to any agency, Government department or individual (such as an employer or landlord) following an applicant's unsuccessful application to the Settlement Scheme. (Paragraph 35)

Has the Government learned from the Windrush scandal?

7. The Government has chosen to establish a constitutive system of registration for EU nationals who are currently resident in the UK and wish to retain their rights of residence after the UK leaves the EU. This places the responsibility on each individual to engage with the Government and to prove their entitlement to remain. The Government has also set a deadline for EU nationals to comply with this requirement. (Paragraph 51)
8. It is therefore unacceptable that, having chosen this approach, the Government has failed to clarify what will happen to EU citizens in the UK who fail to confirm their immigration status through the Settlement Scheme before the deadline. In giving evidence to us the Home Secretary himself appeared unsure what their status and rights would be, only alluding to a vague system that the Home Office “would want” to have in place to support those who might need assistance after the deadline. (Paragraph 52)
9. The Home Secretary’s prevarication over the word ‘unlawful’ with regards to the legal rights and status of EU citizens in the UK who fail successfully to apply to the Settlement Scheme before the deadline will not have reassured the UK’s estimated 3.8 million EU citizens. Whether they are resident legally or illegally will have serious consequences for their ability to live, work, and exercise associated rights in the UK, without risk of criminalisation and the possible consequences that might flow from criminalisation, including deportation. (Paragraph 53)
10. *EU citizens residing in the UK before Brexit are right to expect to be able to continue to reside in the UK. We believe Government action is necessary to avoid consequences similar to those experienced by some members of the Windrush generation. The hardship and injustice experienced by those citizens, which we discussed in previous reports, is disgraceful. The right lessons must be learned. The Home Office must therefore:*
 - *clarify the legal rights and status of EU citizens who, for whatever reason, fail to confirm their immigration status through the Settlement Scheme by the deadline. It should do so at least a year before the closure of the Settlement Scheme;*
 - *outline what will be considered reasonable grounds for a late submission to the Settlement Scheme;*
 - *confirm the details of its proposed process to enable EU citizens to establish their status in the UK retrospectively;*
 - *clarify the legal standing of EU citizens, in the period between Brexit and the deadline, who have not yet applied to or completed the Settlement Scheme. It is vital that their rights and entitlements are clear and widely understood so that, compared with those who either have confirmed their status or who are not required to use the Scheme, they are not disadvantaged in employment, housing or*

medical treatment. The Government must state what their rights are, how they are to be evidenced, and what recourse individuals will have in cases of disadvantage. (Paragraph 54)

11. The Government has not provided sufficient justification for its decision not to take a declaratory approach in establishing citizens' rights after the UK leaves the EU. The response of 'Windrush' does not stack up; the Immigration Minister's assertion that "a declaratory system is not the answer" is not convincing; the requirement of citizens to apply to the Scheme so as to formally identify as an EU citizen in the UK is entirely for the benefit of the Home Office, not the individual; and a declaratory system is not incompatible with accurate documentation. If a lesson is to be learned in this case from the example of Windrush, it should be that providing adequate documentation should be considered a vital part of any such status-giving process, whether declaratory or not. (Paragraph 68)
12. The Government could easily have afforded EU citizens certainty over their rights and secured their legal status by stating at the outset and in legislation that all who were here legally at the time of Brexit would remain so. They would then have been required to apply to the Settlement Scheme to obtain formal, physical confirmation of their status. Thus far, the Government has failed to mitigate the risk of thousands of EU citizens being left in an insecure legal position after Brexit, but there is still time for the Government to set this right. (Paragraph 69)
13. *We call on the Government to confirm in primary legislation the rights of EEA nationals who are resident in the UK at the time of its exit from the EU. These rights include the right to remain in the UK, and to retain the associated rights they have thus far been afforded. No-one should be left without rights because they have not completed the scheme. Individuals need certainty and should not be left reliant on the goodwill of a future Government to uphold non-statutory rights. Individuals should, however, be required to apply to the Settlement Scheme for documents to evidence their rights. (Paragraph 70)*
14. *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, 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. (Paragraph 71)*
15. *We also recommend that the Government provide all citizens who successfully apply to the Settlement Scheme with hard copy confirmation of their status. This need not replace the digital system but would complement it. The Government cannot suddenly impose a 'digital first'—indeed, 'digital only'—system upon people without giving them, employers and landlords time to adapt. People can have the best of both worlds: a more secure and forward-thinking digital system in parallel with the more familiar and reassuring hard copy. We would hope to see new applicants being routinely provided with physical certification of their Settlement Scheme status by the end of the year, with documents provided retrospectively to those who have already completed the process. (Paragraph 72)*

Issues with the EU Settlement Scheme

16. *The Government must improve public awareness and understanding of the EU Settlement Scheme, and of the importance of applying. Too many people are at risk of failing to apply, and this will have serious ramifications for their future in the UK. We welcome the Government's plans for a concerted national advertising and awareness campaign to accompany the full roll-out of the Settlement Scheme, which is not only digital but also accessible to those who may not have an online presence. In addition to this, we recommend that the Government works with local and national community and support groups, to ensure that information reaches hard-to-reach groups. (Paragraph 79)*
17. *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 afforded to this group, but it is unacceptable that these citizens were left in limbo for so long. (Paragraph 81)*
18. *The Government must acknowledge the difficulties that will be experienced by many vulnerable groups when attempting to apply to the Settlement Scheme. A degree of understanding will be required so as not to disadvantage these individuals, together with a willingness by the Home Office to consider special circumstances and make exceptions to the process when circumstances dictate. Caseworkers should be trained in how to support and assist vulnerable groups. (Paragraph 86)*
19. *We welcome the Home Office's recent announcement that alternative evidence will be accepted as proof of identity and nationality, and that exceptional circumstances will be taken into consideration. However, the issue for vulnerable people is often not in proving their identity but in finding and accessing historical documents (such as bank statements or employment payslips) which may be required to demonstrate continuous residence. The willingness to accept alternative evidence also still places the onus on the applicant to find and provide documentation, potentially from a time of trauma or abuse. The Government must not place vulnerable people in danger by requiring them to approach an abusive or estranged partner or parent for access to their records. The Government should therefore commit to undertake reasonable inquiries on behalf of applicants in instances where they are unable to prove eligibility or qualification due to circumstances beyond their control. (Paragraph 87)*
20. *We are very concerned by the fact that large numbers of EU citizens are at risk of being left out by the EU Settlement Scheme. We understand that, due to the functioning of free movement, the Government cannot be expected to know exactly how many people are eligible or should be applying to the Settlement Scheme. However, we believe that the Government needs to take additional action, beyond general awareness and publicity campaigns, to ensure that extra support is targeted towards children and vulnerable people to mitigate the risk of them being left out and potentially jeopardising their future in the UK. (Paragraph 91)*
21. *To ensure that children and young people do not encounter difficulties in the future (for example, when applying for a passport or benefits), the Government must do the following:*

- *Introduce a stage in the application process which prompts applicants to apply on behalf of any eligible children;*
 - *Work with schools and local authorities to provide guidance and advice to parents who are EU citizens, explaining the circumstances in which they will be required to submit an application to the Settlement Scheme on behalf of their child/children;*
 - *Require local authorities to undertake enquiries into how many EU citizen children are in care in their areas, and who may be required to apply to the Settlement Scheme;*
 - *Provide additional support and guidance to local authorities regarding the applications of EU citizen children in their care, including directing them to where they can access legal aid and/or advice. Local authority employees cannot be expected to provide expert legal advice or services, especially as many cases for children and young people in care will involve complex circumstances. (Paragraph 92)*
22. *The Government must work with as broad a range of public service providers and others as possible to enable them to provide reliable and acceptable evidence in support of settled status applicants who may only have a limited range of evidence available to prove eligibility. (Paragraph 93)*
23. We understand why the Government has chosen to pursue a digital-based application process. However, as with the imposition of any new technological service, there will be teething problems, and many applicants will not feel comfortable or confident in using unfamiliar technology, especially for something so important. Given that both we and other Committees have drawn attention to concerns around the technical aspects of the Scheme, it is extremely disappointing that so many EU citizens experienced difficulties when the Scheme was launched. The Settlement Scheme has been open in private beta form since August 2018; this should have given ample time for sufficient technological systems to be devised and implemented. (Paragraph 102)
24. *The Government must, as a matter of urgency, investigate and remedy the technical issues applicants are reporting when attempting to use online Home Office systems. (Paragraph 103)*
25. We welcome the Home Office's Assisted Digital service, which provides telephone and face to face support to applicants to complete the application form online. 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. (Paragraph 104)
26. It should be considered an error of judgement that the Home Office has so far based a system as vital as the Settlement Scheme on technology which is not easily accessible to vast numbers of applicants. Accessing the Scheme has required applicants to rely on friends or family to lend them a device, or to spend hundreds of pounds buying a new smartphone themselves. (Paragraph 109)

27. We therefore welcome the announcement by the Immigration Minister that citizens will be able to use a range of devices to make their application. We remain disappointed that an Apple version of the app is still not available. *We call on the Government to work to expedite this process, as lack of iPhone and iPad accessibility will remain a barrier for a large number of applicants.* (Paragraph 110)
28. We welcome the Government's provision of additional locations to support EU citizens in making an application to the Settlement Scheme. However, we are disappointed that applicants are still charged for using these services, and that there does not appear to be a standard charge, meaning that some applicants may have to spend more than others to complete the same process. *We call on the Government to scrap the fees currently charged to applicants using one of the ID document scanning centres and to reimburse local authority centres for any costs they may have incurred in providing these services for the Government.* (Paragraph 116)
29. We welcome the changes the Home Office has implemented to give more support to EU citizens making an application to the Settlement Scheme and its intention to exercise discretion in the applicant's favour. We hope that this approach will limit the number of cases in which an applicant receives a status under the Scheme which is not that which they expected. (Paragraph 129)
30. However, we are concerned by the Home Office's confident belief that all applicants are being granted the correct status. We would be highly surprised if it is the case that none of the thousands of people who have been offered pre-settled status under the Settlement Scheme so far are technically eligible for settled status but unable to prove it. As we have outlined throughout this report, there are many reasons why an applicant may not be able to provide sufficient evidence, despite the Home Office's pledge of a flexible and understanding approach. (Paragraph 130)
31. We are particularly disappointed by the Home Secretary's assertion that "The 'correct' immigration status is the status for which the applicant demonstrates that they qualify". This statement strikes us as callous, and rigid enforcement of this line would not be fair or just, as it would allow for the possibility of long-term EU residents of the UK—who, for whatever reason, are unable to evidence their eligibility for settled status—being granted a lesser status than that to which they are rightfully entitled. (Paragraph 131)
32. *We believe that the correct status for an EU citizen who has been legally resident in the UK for more than five years is settled status, regardless of whether they have complete documentary evidence to prove this fact. The implementation of a declaratory system, which automatically grants rights and status to individuals entitled to them, would be a fairer and more accurate way of attributing immigration status to EU citizens residing in the UK. We therefore repeat our recommendation 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, 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.* (Paragraph 132)

33. *There will be cases when an individual who is applying for documentary proof of their status will have a gap in their record for which, through no fault of their own, they are unable to provide evidence. The Home Secretary told us that the Home Office will offer a flexible approach, will exercise discretion in the applicant's favour, and will look for reasons to grant status rather than to refuse. In cases where the balance of probability suggests entitlement to status but the evidential record is unable unequivocally to prove this, the Government should commit to exercise its discretion compassionately and confirm status to such individuals. (Paragraph 133)*
34. *The Home Office should act on the recommendation of the ICIBI and ensure that all caseworkers and staff involved in processing or assisting with applications to the Settlement Scheme fully understand how the Government's promise of flexibility and discretion in favour of the applicant is to be applied in practice. The approach of evidential flexibility, which we welcome, must be applied fairly and consistently. (Paragraph 134)*
35. We acknowledge that many EU citizens granted pre-settled status—correctly or incorrectly—will go on to qualify for settled status. However, this does not mitigate this issue. Applying for the Settlement Scheme is already a stressful process for many EU citizens as their rights and entitlement to remain in the country which is their home are conditional upon it. Forcing them into a further period of uncertainty until they are able to demonstrate to the satisfaction of the Home Office their eligibility for long-term leave to remain is unfair. It may also leave them at a disadvantage in interactions with employers or landlords, who may show preference for the security of a settled status designation. (Paragraph 135)
36. We are glad that the Home Office has provided applicants with the ability to challenge a decision they feel is incorrect. However, we remain concerned that there may be many EU citizens applying to the Settlement Scheme who, when offered pre-settled status against an expectation of settled status, may feel obliged to accept this incorrect decision, and fail to challenge it. This may be because they do not understand the administrative review process and are unaware of their ability to challenge an incorrect decision; because they feel unable to prove their eligibility or residence; or most troublingly because, given the legacy of Windrush and the fear of being left without status post-Brexit, they feel the need to accept any status offered to them by the Home Office. (Paragraph 136)
37. *The Government must provide information on how the Independent Monitoring Authority which is to oversee the EU Settlement Scheme will be structured, composed and resourced, and how it will function in practice. (Paragraph 137)*
38. We understand that in many cases it should not be necessary for applicants to provide dates and details for their residency in the UK, as automatic look-ups to DWP and HMRC data should confirm this information. But, for those individuals whose records are incorrect or incomplete, requiring this information to be submitted should highlight an issue before an incorrect status is offered. (Paragraph 143)
39. We therefore welcome the changes recently made to the application process, which ask applicants specifically to confirm whether they have been resident in the UK for

more than five years. We hope that this information acts as a fail-safe, highlighting cases in which further information or documentation may be required and taking the onus from the applicant to challenge an incorrect decision. (Paragraph 144)

40. Individuals granted pre-settled status will be able to apply for settled status in the future once they have accrued—and are able to evidence—five years of continuous residence. However, it is unclear how this process will operate. *The Government must clarify:*
 - *how individuals will apply to graduate from pre-settled to settled status;*
 - *when they will need to apply (e.g. after reaching five years continuous residence, or in a period before reaching that milestone);*
 - *what evidence they will need to provide; and*
 - *what will happen to individuals who do not apply for settled status after accumulating five years of continuous residence, or who still cannot prove the required residence period of five years. (Paragraph 151)*
41. *In order to minimise the risk of citizens forgetting or failing to apply we recommend that the Government take responsibility for formally notifying individuals with pre-settled status when they may be eligible to apply for settled status. This should be done at least three months before the date at which they will become eligible, to give individuals sufficient time to collect any evidence or documentation they may require. The notice should outline both the process the applicant needs to follow and what, if any, evidence they are required to provide. (Paragraph 152)*
42. *The Home Office also needs to outline how it will determine that an individual should lose their settled status due to an absence of more than five years, and how it will make clear to those granted pre-settled status the conditions under which they may lose the right to apply for settled status later. It should also clarify how absences which may affect an individual's entitlement to settled status are to be calculated—by calendar year, on a rolling 12-month basis, or in any chosen 12-month segment. (Paragraph 153)*
43. Given the legacy of Windrush, the Home Office knows that it has much work to do to regain the trust and confidence of citizens when it comes to establishing and confirming their legal status in this country. Witnesses have so far been largely positive about their interactions with the Home Office during the pilot phases, and we welcome this. However, the Home Office has only had to deal with a very small cohort so far: now that the Settlement Scheme is fully open the department will be faced with over one hundred times more applications than it handled during the private pilot phases. (Paragraph 175)
44. The concerns raised by the Institute for Government and the Independent Chief Inspector of Borders and Immigration, and the recent failure of the Passport Office website when faced with a surge of applications, do not give confidence as to the resilience of Home Office systems. In addition, if the ratio of one query for every two applications seen during the pilot phase were maintained throughout the duration

of the Settlement Scheme, we would have serious concerns over the ability of the Home Office to handle and satisfactorily resolve every issue without increasing its staffing and technological capacity. (Paragraph 176)

45. *The Home Office must ensure that it has sufficient human and technological capacity to handle the workload of applications and inquiries that the Settlement Scheme will attract. This will require robust digital systems and the hiring of more caseworkers, with extra surge capacity for the inevitable rush both now at the start and towards the end of the Scheme. They must be adequately and appropriately trained, particularly on the issues likely to be experienced by vulnerable applicants, so that they are able to handle inquiries in a sensitive and timely manner. This is important to prevent a backlog of cases and further delay and uncertainty for EU citizens. Almost 10% of cases were outstanding a month after the close of the second pilot phase, and many vulnerable applicants waited many weeks for a decision. A repeat of this for the whole cohort of EU citizens would not be acceptable and would further damage public perceptions of and confidence in the Home Office. (Paragraph 177)*
46. *The Home Office must ensure that its IT system is capable of producing comprehensive management information and data, as recommended by the ICIBI. Regular reports on how the Scheme is performing—including the number of applications, their outcomes, how long they are taking to process and resolve and details on applicant satisfaction, as well as lessons learned and proposed improvements—will be essential for building public confidence that the Scheme is working as intended for both EU citizens and the Home Office. We appreciate the reports which have been made available covering the private and public test phases and we believe that similar reports should be produced and published at regular intervals now that the Scheme is under way. We are pleased that the Government has committed to provide regular statistical updates. (Paragraph 178)*

Formal minutes

Tuesday 14 May 2019

Members present:

Yvette Cooper, in the Chair

Janet Daby	Stuart C McDonald
Stephen Doughty	Toby Perkins
Kate Green	Douglas Ross
Tim Loughton	

Draft Report (*EU Settlement Scheme*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 178 read and agreed to.

Resolved, That the Report be the Fifteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 15 May at 4.45 pm.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 12 February 2019

Abigail Adieze, Head of Service, Families and Home Directorate, Waltham Forest Borough Council, **Marianne Lagrue**, Policy Manager–Migrant Children's Project, Coram Children's Legal Centre, **Nicole Masri**, Legal Officer (Immigration & Asylum), Rights of Women, **Danny Mortimer**, Co-Convenor, Cavendish Coalition and Chief Executive, NHS Employers

[Q1–66](#)

Luke Piper, Solicitor, South West Law and Adviser, the3million, **Jill Rutter**, Director of Strategy and Relationships, British Future, **Colin Yeo**, Barrister, Garden Court Chambers and Founder and Editor, Free Movement, **Dr Adrienne Yong**, Lecturer in Law, City University of London

[Q67–99](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

ESS numbers are generated by the evidence processing system and so may not be complete.

- 1 Coram Children's Legal Centre ([ESS0004](#))
- 2 Home Office ([ESS0003](#))
- 3 the3million ([ESS0001](#))
- 4 the3million ([ESS0002](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Home Office delivery of Brexit: customs operations	HC 540 (HC 754)
Second Report	Immigration policy: basis for building consensus	HC 500 (HC 961)
Third Report	Home Office delivery of Brexit: immigration	HC 421 (HC 1075)
Fourth Report	UK-EU security cooperation after Brexit	HC 635 (HC 1566)
Fifth Report	Windrush: the need for a hardship fund	HC 1200 (HC 1558)
Sixth Report	The Windrush generation	HC 990 (HC 1545)
Seventh Report	UK-EU security cooperation after Brexit: Follow-up report	HC 1356 (HC 1632)
Eighth Report	Policy options for future migration from the European Economic Area: Interim report	HC 857
Ninth Report	Domestic Abuse	HC 1015
Tenth Report	Policing for the future	HC 515
Eleventh Report	Policy options for future migration from the European Economic Area: Interim report: Government Response to the Committee's Eighth Report	HC 1663
Twelfth Report	Home Office preparations for the UK exiting the EU	HC 1674 (HC 1985)
Thirteenth Report	Asylum accommodation: replacing COMPASS	HC 1758 (HC 2016)
Fourteenth Report	Immigration detention	HC 913
First Special Report	The work of the Immigration Directorates (Q1 2016): Government Response to the Committee's Sixth Report of Session 2016–17	HC 541
Second Special Report	Asylum accommodation: Government Response to the Committee's Twelfth Report of Session 2016–17	HC 551
Third Special Report	Unaccompanied child migrants: Government Response to the Committee's Thirteenth Report of Session 2016–17	HC 684

Fourth Special Report	Home Office delivery of Brexit: customs operations: Government Response to the Committee's First Report	HC 754
Fifth Special Report	Immigration policy: basis for building consensus: Government and Office for National Statistics Responses to the Committee's Second Report	HC 961
Sixth Special Report	Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report	HC 1075
Seventh Special Report	The Windrush generation: Government Response to the Committee's Sixth Report	HC 1545
Eighth Special Report	Windrush: the need for a hardship fund: Government Response to the Committee's Fifth Report	HC 1558
Ninth Special Report	UK-EU security cooperation after Brexit: Government Response to the Committee's Fourth Report	HC 1566
Tenth Special Report	UK-EU security cooperation after Brexit: Follow-up report: Government Response to the Committee's Seventh Report	HC 1632
Eleventh Special Report	Home Office preparations for the UK exiting the EU: Government Response to the Committee's Twelfth Report	HC 1985
Twelfth Special Report	Asylum accommodation: replacing COMPASS: Government Response to the Committee's Thirteenth Report	HC 2016
Thirteenth Special Report	Domestic abuse: Government Response to the Committee's Ninth Report	HC 2172