

Not settled yet: questions the Home Office has yet to answer about EU citizens' status



*EU citizens living in the UK will be able to apply for settled status post-Brexit. **Anne-Laure Donskoy** sets out some of the problems with this plan and the uncertainties that remain.*

At long last, the UK government has published the [document](#) that was supposed to give all 3.6m EU citizens currently living in the UK clarity and certainty about their status post-Brexit. However, the relief stops here: it comes with a big 'but'.

First, the document is a "[statement of intent](#)", and therefore liable to change as the negotiations between the UK and the EU continue, underpinned by the oft-repeated principle that "nothing is agreed until everything is agreed". Second, while this is not the finished article, it still gives a good idea of the direction of travel – which in parts goes against the letter and the spirit of both the [December 2017 Joint Report](#) and the [draft Withdrawal Agreement](#) of March of this year.



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The statement raises a number of concerns, including:

- It confirms that settled status is Indefinite Leave to Remain (ILR), bringing EU citizens closely in line with non-EU citizens, even though we have come here under a totally different legal framework and rules. By forcibly bringing us under ILR, there is no way we will be able to conduct our lives as we have done until now, as promised. Only free movement legislation can.
- Settled status comes at a cost to the applicant, whereas the EU has asked that this should be free. Low income families will struggle to find the money to cover everyone.
- Immigration rules will govern settled status. This means secondary legislation, which is very worrying since immigration rules are liable to frequent changes in any year. During her tenure at the Home Office, Theresa May brought forward seven new pieces of immigration legislation and an estimated 45,000 changes to immigration rules. This raises the question: what guarantee is there that the rules governing settled status will not simply be scrapped or amended in the future, especially when the European Court of Justice no longer has oversight?
- The statement says nothing about the independent authority that will oversee appeals, its setup or actual powers.
- While the process of applying for settled status is meant to be simple, it is obvious to us that many will fall at the first hurdle and not be able to meet the evidence requirements. This could easily lead to the criminalisation of

undocumented migrants. They may be homeless people, victims of trafficking and domestic violence with no ID documents, persons with disabilities, carers, people who do not engage with officialdom, EU children in care, people who are totally unaware of the proposed scheme and that they will have to apply, people who did not have a right of residence, often because they were in low paid employment or did not have comprehensive sickness insurance (the requirement has been removed for settled status) and who may be asked to go through even further hoops.

This shows that, contrary to the government's claim, there is no such thing as "three little steps" to settled status

- It gives EU citizens an electronic status only, rather than a document. This is highly problematic given the current Windrush scandal and how badly the Home Office is capable of performing (a 10% error rate, a habit of losing documents, the [immigration data exemption](#) – which means that any citizen who wishes or needs to will not have the automatic right to access the data the Home Office holds about them). The government has backtracked on the idea of a physical document ([CM 9464](#), June 2017) without addressing the very real potential for discrimination on the part of employers and landlords who may not want to spend energy and time, or may not have the manpower, to check someone's status through a digital portal. This means that a property or a job could easily be given to someone else if that means they don't have to perform extra checks, and even more so if the political sentiment of the day sends strong signals that UK nationals should be given clear preference over EU citizens (including fining companies).
- We do not know either what will happen to those who miss the application deadline. Again, many of them, probably in the tens of thousands, are amongst the most vulnerable and at risk of removal.

Many questions remain unanswered – concerning children, family members and access to services, benefits and so on. In fact, the statement makes [the3million's proposal](#) for a citizens' rights protocol attached to the Withdrawal Agreement even more important to ensure that the rights of EU citizens are properly secured. In a poll the3million has just run, 9 out of 10 participants said they did not feel reassured by the statement. After two years of being in limbo, we do not just want clarity, we want legally binding guarantees to ensure that the rights of EU citizens are properly secured.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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