

Brexit is happening – are EU citizens' rights finally a done deal?

As the UK formally leaves the European Union this week, and enters the transition period, **Alexandra Bulat** assesses the flaws in the EU citizens' Settlement Scheme and argues that it still undermines the fundamental rights of those affected.



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Six months ago, I wrote for the *Democratic Audit* [to explain](#) why the rights of EU citizens were not a done deal. The Withdrawal Agreement Bill [passed](#) all its stages earlier this month. After almost four years of uncertainty, Brexit will happen. Part 3 of the Bill puts the provisions on EU citizens' rights into law. Surely, the debate on EU citizens' rights is done and dusted? Well, not quite. The issues raised by citizens' rights campaigners months ago are largely still unresolved, and this will certainly have consequences.

There is no doubt that EU citizens in the UK will have to apply for the EU Settlement Scheme if they want to stay after Brexit and the 2020 transition period. The EU Settlement Scheme is a far cry from the 'automatic grant' of all existing rights that was [promised](#) by Boris Johnson and others during the Vote Leave campaign, but the application scheme is here to stay. EU/EEA citizens and their family members have until 30 June, 2021 to [apply](#).

Government ministers do not miss any media occasion to say that [2.8 million applications](#) have been made to the scheme so far. However, these large numbers presented without context do not solve the outstanding issues. Most of the problems that have been raised for months still exist and will have a real impact in the near future.

During the debates on the Withdrawal Agreement, two key changes to the scheme were proposed: to change its legal basis to a declaratory registration scheme (as opposed to the current constitutive application system); and to include an option for physical proof of status. The government suffered its [first parliamentary defeat](#) when the amendment on the EU Settlement Scheme was passed by the Lords. Nevertheless, this was voted down when the Bill returned to the Commons.

Why is the EU Settlement Scheme not good enough as it is?

The arguments for a declaratory scheme and physical proof of status seem to be misunderstood by the government. More dither and delay on their part in responding to concerns raised by experts, lawyers and migrant rights groups will not make the problems disappear. Under the current application scheme, those whom the government fails to inform on time that they need to apply will be unlawfully resident in the UK after the deadline. Everyone working on the ground with migrant communities, including myself, is aware that there are still people who do not know about the scheme or think that the scheme does not apply to them, for various reasons. No similar system in the world has reached 100% of its target audience. It is simply inevitable that there will be people who will be left behind by the scheme, in particular more [vulnerable groups](#). We do not have an exact number of EU citizens in the UK and therefore it is impossible to know exactly how many will find themselves without status – estimates range from thousands to hundreds of thousands.

The government has two responses to this concern, both unsatisfactory. First, Ministers claim that there will be [‘no automatic deportation of EU citizens’](#) who do not apply on time. But ‘automatic deportation’ is not the main concern of those campaigning for EU citizens’ rights. This is simply not how the system works. Before even considering someone for removal, the hostile environment policies impact that individual. Those EU citizens who will not have lawful status after the deadline will not be able to work, go to the doctor or rent a home, since all require proof of immigration status.

Moreover, it is not only about the deadline of 30, June 2021. [Over 40%](#) of EU citizens who have applied so far got ‘pre-settled’ status (limited leave to remain), which means they will have to go through the system again before their status expires in five years’ time. There will be around one million individual cliff-edges and EU citizens will need to be informed accurately and on time about their rights.

Second, Home Office spokespeople claim that late applications will be considered if the applicant has a ‘good reason’. But we do not know what these ‘good reasons’ are. Consider this example: Maria was born in the UK. Her parents, both EU citizens, were not permanently resident (or ‘settled’) in the UK when she was born. Therefore, Maria was not born automatically British – but her parents wrongly assumed she is. In ten years from now, Maria gets her first summer job and is asked to prove she is a lawful migrant. She realises her parents had to apply for her status years ago when she was a child. Would ‘My parents did not know they had to apply for me’ be considered a ‘good reason’? A declaratory system would avoid these situations where people become unlawful through no fault of their own.

The calls for physical proof of status have also been widely misrepresented. Having the option of physical proof does not mean scrapping the EU Settlement Scheme. In fact, under the current system, non-EU family members who are granted pre-settled or settled status do receive physical proof of status. It is also not true that EU citizens can simply print their settled status email letter and use it as proof. The PDF attachment clearly states, in bold, that it is not proof of status. EU citizens, as well as those who have to check migrants’ legal status, such as employers and landlords, will have to perform those checks through an [online system](#). Compared to showing a physical document, this involves having some digital skills, more spare time, the right tech and hoping the system will work properly ([which is not always the case](#)).

Organisations like [the3million](#) have warned there will be increased discrimination with a digital-only status. Almost nine in every ten EU citizens in a recent [survey](#) with over 3,000 respondents were concerned about the lack of physical documents. The Residential Landlords Association (RLA) [backed](#) the proposals for physical documents. There is widespread support for this change, yet the government ignores expert advice and has decided to proceed with the system as it is.

What can still be done?

EU citizens need a legal safety net – firm, legally binding guarantees that the consequences of an application process with a strict deadline will not impact the most at risk in our society. A physical proof of status is not only what the vast majority of EU citizens want, but it will also reduce discrimination in right-to-work and rent checks and restore some trust in the system. The largest [survey](#) of EU citizens’ experiences of the EU Settlement Scheme revealed that even after receiving their status, the majority do not trust their status is secure and future-proof.

Trust was broken when the government failed to deliver on the automatic grant of indefinite leave to remain promised in the 2016 campaign. This trust cannot be restored if the government consistently avoids engaging with genuine concerns from migrants' rights organisations and be honest about the issues with the current scheme and the consequences. There is still time for the government to listen and engage with EU citizens, instead of dismissing concerns and pretending citizens' rights is a debate of the past.

This post represents the views of the author and not those of Democratic Audit.

About the author



Alexandra Bulat is completing her PhD studies at the School of Slavonic and East European Studies (SSEES), University College London (UCL). Her academic research focuses on attitudes towards EU migrants in two local authority areas in England – Newham and Tending. Alexandra has been an advocate of EU migrants' rights since 2016 and is currently the chair of Young Europeans, part of the EU citizens' rights organisation [the3million](#). She is also a volunteer with the charity [Settled](#), advising EU citizens on their rights in the UK. Alexandra tweets on migration and citizens' rights [@alexandrabulat](#).

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