

## the3million response to the Home Office's report on the EU Settlement Scheme

The Home Office produced a [document](#)<sup>1</sup> to address the criticism leveled at the EU settlement scheme, under which most EU citizens must apply to remain in the UK after Brexit. the3million, which represents EU citizens having to apply via the scheme, wishes to respond to the document.

### **Securing rights in law**

Most EU citizens **must** apply to stay in the UK via the EU settlement scheme. They will acquire a status at the end of the application process. Under the Government's current plans, those who do not apply by 31 December 2020 will have no lawful basis to remain in the UK. **The current law does not provide protection for those who do not apply.**

This means that they will lose their right to live, work, access housing, benefits and free NHS treatment - the effects of the 'Hostile Environment'. No registration system in the world has ever succeeded in reaching 100% of its target audience. There is a real risk that those who do not apply will fall victim to the Hostile Environment. the3million have long argued that legislation is required to prevent EU citizens from facing this risk - this approach has been endorsed by numerous organisations and many of your parliamentary colleagues. This can all be avoided if the Government reverse their policy and simply declare EU citizens' rights in law without the need for them to apply - a declaratory system.

The Government's criticism of this approach in the document is that it will recreate the problems experienced by the Windrush generation. We disagree.

Those problems were caused by the introduction of the Hostile Environment. People who had had access to healthcare, benefits, housing and work, in some cases for 40 years, without being required to show any proof of their rights now had to start providing that proof. For many, this was difficult to do retrospectively. The Windrush scandal was not the fault of a declaratory system, it was the fault of the Hostile Environment and the lack of documents proving their legally declared rights.

It is important to understand that unless the Government reverse their policy on EU citizens' rights, a larger scale and fundamentally more serious version of Windrush will occur. Whereas those caught up in the Windrush scandal were **legal** but struggled to prove it, EU citizens who do not apply in time (and these will include a disproportionate number of vulnerable citizens) will **not have a legal status**. Only a declaratory system can protect these citizens.

In the absence of substantial changes to the Hostile Environment, any system must allow people to prove their rights to navigate it. **Contrary to what the Government says, a declaratory system can achieve this.** We are not arguing for an abstract, magical declaratory scheme, indeed we acknowledge the need for EU citizens to register their status in order to access services. All substantive recommendations of a declaratory system include a need to register to acquire proof of their status. This is clearly set out in a 'Legislative Proposal for a Declaratory Registration System'<sup>2</sup> by Professor Stijn Smismans.

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<sup>1</sup> <https://homeofficemedia.blog.gov.uk/2019/08/30/rebuttal-media-articles-on-the-eu-settlement-scheme/>

<sup>2</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3433055](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3433055)

### **Issues with acquiring settled status and grants of pre-settled status**

The document states that “not a single person has been refused”. There are two serious issues with this statement.

Firstly, an EU citizen being awarded pre-settled status when entitled to settled status is arguably a refusal of settled status – be it via an inability to provide sufficient evidence or inadvertently accepting the lower status. The Government is unable to provide metrics on whether people are receiving the status they are expecting, because it does not ask people the simple question of how long they have been in the UK. The EU settlement scheme should be changed to include this vital question, both so that this metric can be published and to allow for interventions if citizens make a mistake during the process.

Secondly, there is a very large backlog (90,000) of undecided cases. Some citizens’ applications are decided within days, some months, but others are still waiting. It is not unreasonable to suspect that this backlog is hiding decisions that will tarnish the Government’s ‘no refusal’ mantra.

### **Ending free movement on 1 November 2019**

Should freedom of movement end on 1 November 2019, as recently signaled by the Government, the current law does not address what rights those EU citizens who have **not** yet been granted pre-settled or settled status will have in the interim until 31 December 2020. **If those relying on their free movement rights have no alternative status, they will have no legal basis to remain in the UK.**

There will be no way of distinguishing between those that arrive after the end of free movement and before.

For these reasons further legislation is required to ensure that EU citizens do not become at risk. This can be avoided if the Government adopt a declaratory system as detailed above, while also sticking to its promise of a grace period until 31 December 2020 (in case of no deal) during which no new controls are introduced on EU citizens.

It does not matter how much support is provided to EU citizens to apply under the scheme, people will miss out. The only sensible solution to avoid a more serious version of what was experienced by many of the Windrush generation is to guarantee EU citizens’ rights in law and establish a registration system so they can prove their rights to live in their home: the United Kingdom.