

Right to Stay, but how to prove it?

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RIGHT
TO STAY

MIGRANTS
**SAVE
LIVES**

LET THEM
STAY

RIGHT
TO STAY



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Summary



The Settled Status scheme was introduced by the UK government in 2019, and since then millions of people have used it. From its inception, the scheme was subject to criticism from charities and campaign groups, who warned that it would place under threat the legal status of many European citizens who have made a home in the UK.

We are now just a few months away from the June 30th application deadline, and at this crucial moment, we have brought together this investigation into the state of play with the Scheme, along with a few illustrative case studies. These case studies are by no means exhaustive, and the problems raised within them represent the experience of many thousands of people. For each story we have included, there are many more which we have not had either the time or the permission to use. On the basis of this investigation, we set out some recommendations, chief among which is that it is time for the UK government to finally commit to an automatic right to stay for EU citizens already resident here.

Findings:

- The existence of the category of pre-settled status breaks the Leave campaign's referendum promise to EU nationals, and places the 1.93 million people who currently hold it at risk of losing their rights in a few years' time.
- There will inevitably be EU nationals who miss the June 2021 deadline for applying for status due to lack of awareness or other circumstances (literacy, digital exclusion, etc.) We still

have no way of estimating how many people are at risk, and the Home Office is not publishing a breakdown of applications that shows the progress of the scheme among those groups which campaigners have warned about (Roma, Gypsy, traveller communities, children and vulnerable people in care, long-term residents, people in precarious housing situations, etc.).

- Recent research points towards a worrying level of confusion among EU nationals about the scheme, even among the working age population, who would not be classified as vulnerable.
- The pandemic has had a dramatic impact on people's employment and housing situations, forcing hundreds of thousands EU nationals to return to their home countries or risk destitution in the UK. This is not taken into account by the Home Office and these people now face losing their right to a permanent right to stay.
- The introduction of the new immigration system while the six month grace period for EU nationals to apply for status is still active has led to confusion among employers and service providers.
- EU nationals are wrongly asked for proof of status to access jobs, education and are being wrongly charged for healthcare, despite official Home Office guidance stating that nothing should change until 1 July 2021.
- Employers in particular are refusing to abide by this guidance. Charities report many EU nationals with pending EUSS applications being turned away by prospective employers, and it is now routine for job ads to state that holding Settled Status is a requirement, in contradiction to Home Office guidance.
- The digital-only system relies on digital literacy and skills, and a stable internet connection, and has already been producing technical errors under the pressure of more regular use. While the government has put in place some provision to assist EU nationals who lack the skills to complete their EUSS applications, no support is given to enable the continuous everyday use of the system by more vulnerable people.

- The digital-only system produces access codes for prospective employers, landlords, service providers and institutions. However, these codes are only valid for 30 days and in the case of National Insurance Number applications, applicants report instances where the code expires before the DWP has begun processing their application, leaving them back on square one. Applicants for Universal Credit are similarly disadvantaged by technical glitches which slow down their applications, adding further delay to the punitive five-week wait built into the system.
- Mere weeks after the end of the transition period there have already been reports of EU nationals held at the border for lack of physical proof of their Leave to Remain, despite the fact that no such physical proof is even issued and that numerous calls for the introduction of a physical EUSS document have been refused by the Home Office. There has also been at least one reported incident of a EU national held in detention over suspicion he intended to look for a job in the UK without a valid working visa.

Recommendations:

- All EEA+ nationals should be automatically granted settled status - a 'Right to Stay'.
- Failing the introduction of an automatic Right to Stay, the 30th June application deadline should be scrapped, giving all those who are yet to obtain their status the opportunity to register at any point.
- All status holders should be given physical documents to prove their Right to Stay.
- The Government should take into account the economic hardship and extraordinary circumstances of the pandemic and re-evaluate its policy on continuous residence and absences.

Have EU citizen rights been protected?

1

The British exit from the EU on the 31st of January 2020 has not brought the Brexit process to an end – far from it. Following the end of the 12-month transition period at the start of this year, the rights and wellbeing of EU nationals in the UK, who continue to face huge uncertainty, remain an ongoing issue. There were multiple, well-publicised promises during the referendum campaign, repeated by government officials many times since, that set out to assure EU citizens ‘nothing will change’ for them. But we now know that is simply not the case. With Britain now having left the EU, there still several major areas of concern for EU citizens rights:

Falling through the cracks. EU citizens that arrived during the transition period should, by law, be treated the same as those living in the UK prior to Britain’s exit from the EU. But sadly we know this is not the case. They are encountering significant obstacles to the recognition and regularisation of the rights that they legally have.

Pre-Settled Status. Contrary to the promises made in 2016, the creation of the category of ‘pre-settled status’ did not afford the same protection of the right to stay for EU nationals as they had under the system of EU freedom of movement.

The un-registered without a right to stay. EU nationals were not granted an automatic right to stay. They had to apply for the pre-settled/settled status (see below). Those that either did not apply or were rejected lost their status. Migrants’ rights organisations warned of the pitfalls of this approach and of the government’s inability to guarantee a 100% success rate of applications. This creates the conditions for a dramatic migrants’ rights crisis, in which

EU nationals who weren't aware of the Settled Status scheme, or couldn't access it for a variety of possible reasons,¹ lose their right to remain overnight.

Pre-settled status vs settled status

On 1 June 2016, the now-Prime Minister Boris Johnson said that: "There will be no change for EU citizens already lawfully resident here. These EU citizens will automatically be granted Indefinite Leave to Remain and will be treated no less favourably than they are at present."

The reality of the EU Settled Status scheme (EUSS) is starkly different.

The Home Office has essentially designed a system that splits the group of 'EU citizens already lawfully resident here' into two – those who apply and are granted Indefinite Leave to Remain (settled status), and those who get the much more precarious Limited Leave to Remain (pre-settled status).

What's more nobody – not even children or vulnerable adults – is automatically granted anything. Each EU national has to submit an application by a deadline to be able to remain in the country lawfully. Each application is reviewed by a Home Office caseworker and each application is, technically speaking, liable to be refused.

¹ See research done by the Migration Observatory: <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

This two-tier system is a far cry from the 'status quo' promised by Johnson. The creation of the category of pre-settled status, in particular, means a significant loss of rights of EU citizens – and it is unclear whether even those with settled status will continue to have the same rights as they did prior to Brexit.

Settled status. This is equivalent to the category of 'indefinite leave to remain'. It does not require re-applying again in the future but can be revoked as a result of a criminal conviction. It confers broadly equivalent rights to live, work and study as those EU nationals had prior to Brexit. To receive this status requires proving five years of continuous residence in the UK.

Pre-settled status. This category involves a clear loss of rights for EU nationals compared to the previous free movement system. It is granted to those that cannot prove five years continuous residence in the UK. In its design it also places limitations on the ability of those with this status to access the welfare system – though the government has lost a judicial review on this question in December 2020.² This decision is being appealed by the Home Office, and the Citizens Advice Bureau warn that applications on the basis of PSS will take longer to process and may be refused.

The 'grace period'. The application to the EU Settled Status scheme has a deadline of the 30 June 2021. In this period, EU nationals that were living in the UK prior to the end of the transition period (1 January 2021), using freedom of movement rights, may apply for

² <https://www.freemovement.org.uk/court-of-appeal-bombshell-eu-citizens-with-pre-settled-status-can-claim-benefits/>

pre or settled status. This period is supposedly put in place to ensure that EU nationals do not ‘fall through the gap’, suddenly losing their right to live and work in the UK overnight. But because it is not automatically granted, they face a complex and difficult application process.

Neither of these statuses offer a right to vote in local elections, as was previously afforded to EU nationals, though at least for the time-being EU nations are able to vote in the upcoming local and devolved assembly elections in the UK. Close to 1.93 million people were granted pre-settled status by the end of December 2020³, and it is likely there will be more in the next couple of months as the deadline in June looms closer. In the context of a pandemic that has hit millions economically, and with migrant workers over-represented in some of the most severely impacted industries⁴ such as hospitality, any curtailment of their access to welfare support is likely to have disastrous consequences. This is a grave injustice for a group of people who were promised that nothing would change for them.

Vulnerabilities and support

The EUSS scheme has been actively running since March 2019 and in this time it has received over 4.88 million applications, with 4.49 million applications concluded (numbers as of 31 December 2020, the latest data available). On the face of it this signifies a

³ <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics#documents>

⁴ <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview/>

1 in 7 EEA care workers didn't know about the EU Settlement Scheme

As many studies have already concluded, 100% coverage in a government scheme over a couple of years is very unlikely to be achieved. We do not yet know what the impact will be of missing out even 1% (a conservative figure) of eligible people. If we assume a rough estimate of 4.6 million, 1% would mean 46,000 people losing their immigration status on 1 July this year. Simple lack of awareness is probably the biggest concern in terms of EU nationals losing their right to a status, but there are also a number of additional factors that may increase this percentage.

Recent research published by JCWI seems to support this. Among care workers - a key worker group containing a large EEA workforce, a shocking 1 in 7 care workers surveyed online didn't know about the EUSS scheme (1 in 3 of the care workers surveyed in-person reported the same), and the overall confusion about the deadlines is also very widespread (1 in 3 care workers didn't know when the deadline was, or didn't know there was one).^{1a} Almost half of those surveyed needed help with their application but 9 out of 10 didn't know where to turn to for help. This is extremely worrying not only because of the care sector reliance on EEA nationals, but also because it points to very real awareness issues even for people who are at work.

^{1a} <https://www.jcwi.org.uk/when-the-clapping-stops-eu-care-workers-after-brexit>

huge success for the scheme. It also, however, points towards one of its biggest weaknesses: the Home Office has no clear idea of the number of people eligible for the scheme and no way of assessing its success in reaching out to all those who are eligible.

There is no registry of EU nationals living in the UK – we only have estimates. And the EUSS allows for close family members of resident EU nationals to also apply. From day one, there has therefore been considerable uncertainty over how many EU nationals would fall through the cracks.

Based on applications submitted by December 2020, the widely circulated estimate of 3 million EU nationals was very inaccurate. Yet it is the number popularised by the press and politicians and it therefore lulls civil society into a false sense of security and ‘mission accomplished’ when it comes to settled status applications. After all, we have well exceeded the 3 million mark by some 50%. But there is no way to measure the veracity of this assumption and if the Government has managed to reach those most vulnerable. Some prospective applicants might not normally be classed as vulnerable such as long-term residents (in the UK over 30+ years, children, people in care etc),⁵ and there is even more doubt as to whether the government has managed to reach these people.

Some long-term resident EU nationals have older forms of identification and registration, they may not even think to check if a new form of immigration status is needed for them.

Many parents wrongly assume their status will automatically be

⁵ <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>

conferred onto their children. Social workers and carers may not be sufficiently familiar with the scheme to assess whether the people they care for are eligible and need to apply.

Indeed the Government's own guidance to employers states they are not obliged to provide information about the scheme, as it is the responsibility of the individual to apply.⁶ This has left many employers as unsure about the details of the EUSS scheme as their employees, whose lives would be completely upturned if they fail to apply.

For those who struggle to apply because of lack of digital skills or language difficulties, submitting the application is only the first hurdle. Settled and pre-settled status holders are expected to use the entirely online system throughout their lives in the UK and to be able to update and prove their status to a wide list of institutions, including hospitals, GP practices and schools, as well as employers, government departments and landlords. They are expected to log in and update their details every time they change address, ID documents, phone number or email. This could prove an impossible task for those who struggle with technology to begin with.

There are currently 1.9 million pre-settled status holders, which means there are close to 2 million EU nationals and family members at risk of losing their right to stay if they do not successfully have their status upgraded to full settled status. Even if those EU nationals who are in precarious housing or employment, in prison, who are victims of domestic violence or modern slavery, or who

⁶ <https://www.gov.uk/government/publications/eu-settlement-scheme-introduction-for-employers/eu-settlement-scheme-introduction-for-employers>

simply don't have a bank account may all be lucky enough to receive support from a third-sector organisation in order to fill in their application for pre-settled status, when it comes to upgrading they will find it impossible to document their residency for 5 years. Many thousands more will be under the false impression that, having obtained a status they don't need to do anything further. The Home Office does not automatically check if someone's length of residence in the UK entitles them to settled status, and neither does it view it as necessary to remind people of the pending expiry of their PSS at 5 years.

With the full combined economic effects of the pandemic and Brexit still to come, thousands of EU nationals will be forced to return home for various periods of time as they cannot afford to live jobless in the UK. Many will inadvertently lose their right to settled status by exceeding the permitted 6-month absence.

To add to the potentially dire picture, unlike the 30 June application deadline, there is no single date after which we will be able to see the impact of the loss of pre-settled status, and neither are we able to raise awareness of a single deadline. Each individual who holds pre-settled status has their own individual deadline. On that deadline, any individual who has not upgraded successfully will lose their leave to remain in the UK.

Combined, all these issues present a very different reality to the vision of safety and predictability painted by Boris Johnson and other Vote Leave campaigners.

What does the end of freedom of movement mean?

2

The UK is no longer a member of the EU or in the transition period, and so freedom of movement no longer applies. For EU nationals this means that unless they began their residency in the UK before 31 December 2020, they are covered by the new immigration system and they will have to qualify under one of the visa routes to be able to work or study here. EU nationals will continue to enter the UK visa-free for visits of up to 6 months but they cannot work, or access healthcare or the welfare system without a EUSS status or a visa.

New Immigration Rules – in brief

As of 1 January 2021 any foreign national will need to meet the new requirements for the appropriate visa route in order to live, work or study in the UK. Most workers will fall under the new Skilled Worker route, which requires employers to register with the Home Office to be able to issue a 'certificate of sponsorship' and which any foreign worker would need prior to applying. Their job must also be listed under the directory of eligible occupations, and their salary must meet a £25,600 threshold, and that threshold goes up for professions in which the going rate is higher. Applicants must also prove their level of English and demonstrate they have enough personal savings, and must be willing and able to pay the visa application fee, plus the additional healthcare surcharge for each year covered. In return, they will be able to work for a period of 5 years, without access to most welfare payments, and at risk of having their visa terminated or not renewed if they have to change

employers or lose their jobs. There are a number of exceptions for the income requirement, including for qualified medical staff who are also exempt from the health surcharge.

Foreign nationals from poorer backgrounds in particular are completely cut off from long-term settlement in the UK under the new rules. The few temporary worker visas that cater, for instance, to the agricultural industry offer no option to extend your visa, or apply for leave to remain. It is in fact unclear to what extent UK farm jobs will remain attractive to EU nationals who will now have to pay for their temporary visa, and who are prevented from seeking different employment or even switching farms as a condition of the visa. These visas carry with them considerable risk of super-exploitation, as workers can only leave their job if they are prepared to leave the country.⁷ Those foreign workers who do make use of the new system will find it more difficult to successfully negotiate with their employers, report misconduct or seek assistance if they were being exploited, as their visas are tied to the employer.

In general, all the new visa routes come with a price tag which already limits the appeal to the UK as a destination to EU nationals who can simply choose to use their freedom of movement rights with the rest of the EU and settle there instead. For foreign workers from disadvantaged backgrounds in particular, the combination of visa fee, proof of personal savings (at least £1270 even for the temporary agricultural workers) and the inconvenience of having to apply by filling in forms, obtaining job offers from a registered employer etc may prove prohibitive . Indeed, it is because of all these

⁷ For a review of the very poor record of protecting workers' rights these visas have, see: <https://www.anothereurope.org/wp-content/uploads/2017/09/aeip-free-movement-final-web.pdf>



added burdens that workers are at a greater risk of exploitation and modern slavery, as they will be reliant on a potential employer to assist with obtaining the visa to begin with.⁸

⁸ <https://emerging-europe.com/news/bulgarians-romanians-will-pay-more-than-other-eu-citizens-for-uk-seasonal-work-visas/?fbclid=IwAR07qDaj8bm2QnbISgV7ejfcADw2zEnG516WiNOAI1TB9zug0chJh0r2SEs>

Falling through the cracks: the EU citizens left in limbo

3

The following case studies present the stories of actual persons who the author has assisted with their EUSS queries. All names and identifying details have been changed. Explicit permission to use their stories as case studies has been granted.

Deyan's story

Deyan first moved to the UK in February 2020, hoping to start work as a delivery driver and to take advantage of the EUSS scheme for EU nationals resident in the UK before the end of the transition period. He had heard from friends and family that migration to the UK post-Brexit would be difficult and he wanted to take this opportunity to try and see if he can build a better life for himself here. It was pure bad luck that while he was waiting for an interview for a National Insurance number so he could start work, the global pandemic struck and the UK finally went into lockdown in March. Frightened by the prospect of being alone, without a job or stable income in the middle of this crisis, Deyan went back home to Bulgaria to wait it out.

In September, he got in touch with Settled, the charity providing free advice on the EUSS scheme for EU nationals in different languages, where I volunteer, to ask if he could apply for pre-settled status from Bulgaria, as he wasn't sure when he would be able to travel back to the UK. I explained that given his absence of just over 6 months, he would not be able to obtain settled status in five years' time, so it would be a better bet to return to the UK as soon as he can and then

apply based on his second attempt to begin residency.

A month later, Deyan messaged to tell me his mother was now ill with the virus and he would aim to travel at the beginning of December. He was also worried that because of the pandemic he would not be able to get a NI number and would have to wait to start a job, a situation that would rapidly exhaust his savings. I reassured him that as an EU national he could start work as soon as he arrives, as long as it was by the end of 2020.

On 28 December, Deyan got back in touch to tell me he had arrived, he was staying with friends in Luton and he had managed to get a number of documents to prove his residency in the UK, so I helped him with scanning his passport and filling in the application over a long video call. I'm not sure which one of us was more relieved when he finally received the confirmation email for a successful application pending result.

Naively, I thought this would be the last I'd hear from Deyan and wished him luck for the New Year and his life ahead. But the following Monday, we were back on a video call. Deyan, alongside thousands of EU nationals is in limbo, is unable to prove his right to work, unable to get a NI number and unable to access any kind of financial support in the midst of a global pandemic. Company after company rejected his applications as he did not have proof of his right to stay and work. He wanted to move out of his friends' place where he feels he is overstaying his welcome but is unable to find accommodation without a job and without a proof of his right to stay.

As of 1 January the UK Government has introduced its points-based immigration system, leaving many workers and employers uncertain about their rights and obligations. Anyone arriving in the UK from the start of the year needs to apply for permission to work under the new regulations. However, checks on EU nationals' rights to work

are not meant to come into force until 1 July this year, and even then employers are told not to conduct retrospective checks. In fact, EU nationals need not even have already applied for EUSS at this point: the official deadline is 30 June this year, as long as their residency began by 31 December 2020. Confused already? So are countless business owners, landlords and service providers.

A simple check on the Government's employer toolkit⁹ seems to contain contradictory guidance. Employers are warned they are liable for civil penalty if they employ an 'illegal' worker, and they are then told not to change their right to work checks until 1 July. But they are also told that they need a licence to employ foreign nationals from 1 January onwards. Moreover, from schools to call centres, HR departments are sending letters to managers telling them that they are responsible for ensuring staff members have the right to work.

There is also no clear instruction on right to work checks from 1 July onwards. No wonder therefore that employers would rather ensure that staff who they take on and train now won't need to be fired in 6 months' time.

Deyan's case is far from unique. In the week since the start of the new year, volunteers and campaigners have been receiving messages from seasonal workers in distress, who have been locked out of work on the farms they arranged to work at because they are still awaiting the decisions on their pending applications. In many situations, the farm also provides the accommodation for these workers, which they pay out of their wages. Without a clear timeline

⁹ <https://www.gov.uk/check-job-applicant-right-to-work>

for obtaining a decision and no source of income, these workers face homelessness, often in remote rural areas.

Tatyana's story

Tatyana and her husband moved to the UK in the summer of 2020, and immediately started work. They left their daughter with Tatyana's mother until they were settled and had good housing. Several months later they both got pre-settled status. The child finally joined them just after Christmas and they immediately applied for a status for her as well.

Tatyana found the whole process straightforward and had no reason to contact us for support until she started applying for a school place for her daughter. Although, as previously discussed, the Home Office advises employers not to change their right to work check practices, there is actually no mention of the obligations of local authorities in terms of access to services for people with pending EUSS applications.¹⁰

Guidance to schools on accepting foreign national children states that most children should be able to attend school and also that until 31 December 2020, EU nationals still had their freedom of movement rights.¹¹

¹⁰ <https://www.gov.uk/government/publications/eu-settlement-scheme-introduction-for-local-authorities/eu-settlement-scheme-introduction-for-local-authorities>

¹¹ <https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>

However, Tatyana's application for her daughter to attend a local school in Milton Keynes was returned to her as 'incomplete', as she failed to provide a copy of her daughter's visa – something she doesn't have and doesn't need to have.¹² Luckily, Tatyana had already applied for her daughter's status – even though she had 6 more months until the deadline of 30 June 2021. She was also aware of the availability of support and contacted us with a query about the council's requirements and the status of her daughter. Together, we drafted a letter to the council, included the confirmation letter to Tatyana following her daughter's status application and suggested they should take this as proof of her right to attend school.

This was a much more straightforward case to resolve in comparison to Deyan's, but the impact of similar issues across thousands of families in terms of their access to basic services cannot be underestimated.

Anna's story

Unfortunately, Anna's story is a far too common example of the ease with which people previously exercising freedom of movement rights are now locked out of the UK. Anna and her partner came to the UK to work on a farm for the first time in 2016. Then, in 2017 they returned for a second season with the plan in mind to save their earnings and try to find permanent jobs once the season was over.

¹² <https://www.milton-keynes.gov.uk/schools-and-lifelong-learning/school-admissions/in-year-admissions-changing-school-during-the-year>

They moved to Manchester, found a flat and work and didn't pay much attention to what was going on with Brexit in the meantime. Two years later, when Anna became pregnant with their first child, both decided it would be easier to go back home to give birth and to be around family who could provide support and childcare in the period immediately after the birth.

Anna went back to Bulgaria in January 2020 and her partner followed in March. After the child was born, neither parent felt comfortable with the idea of going back while the UK was dealing with the pandemic. Crucially, however, neither was aware of the need to apply to the EUSS scheme before they had been absent from the country for more than six months. They believed that as they had NI numbers, bank accounts, employment history and so on., they would have no issues returning to the UK.

Anna contacted me for advice in mid-January this year, long past the 6 month mark of their absence, and crucially after the deadline for the start of residence – 31 December 2020.

As a result, Anna, her partner and their child are locked out of the EUSS scheme. Although they were lawfully resident in the UK just after the referendum, they had neither the full 5 years of continuous residency (which would have allowed them to make an application for a settled status on historical grounds), nor could they now apply for pre-settled status as their previous residence in the country was 'discounted' after a 6-month absence, nor had they returned to the UK by 31 December 2020, which would have at least enabled them to reset the process and begin counting their five years from scratch.

A combination of lack of awareness, confusion about the rules and bad luck means that Anna and other families like hers are now at the mercy of the new immigration regime if they want to return to the lives they began building in the UK.

Recommendations: the changes we need now

4

Fixing the problem

The demands of the Right to Stay campaign is for a simple declaratory system to replace the Government-designed EUSS scheme. If this system had been in place from the start, it would have prevented many of the issues experienced by migrant communities at the moment. Crucially, it is also the only system that can prevent a future scandal of massive proportions for the close to 2 million people with pre-settled status who may well lose their rights.

The Government should adopt the Right to Stay principle. This would mean that people who reside in the UK by the cut-off Brexit point would all be legally entitled to Settled Status and would receive a physical proof of their new immigration status via a registration system. The deadline of 30 June is unrealistic and should be extended, or even scrapped. Those who are found to have missed the grace period deadline should be given the option to register instead.

The Government should also re-evaluate its policy on absences and continuous residence to account for the extraordinary circumstances and economic hardship for migrant communities and allow for those eligible for the scheme pre-pandemic to register.

The current system as it is guarantees the introduction of the hostile environment into the lives of millions of European nationals and their

family members. Despite clear evidence that deliberately creating barriers for foreign-born residents and requiring public service institutions to perform immigration checks leads to destitution¹³, poorer health outcomes¹⁴ and contravenes the Home Office's own duties under the Equality Act¹⁵, the hostile environment is clearly still the policy pursued by the Home Office.

Implementing a registration system based on the Right to Stay principle would protect the rights of millions and could point to a more humane and efficient immigration system overall.

The impact of the pandemic

Finally, it is worth making a few points about the impact of the global pandemic specifically on EU nationals living in the UK, and the EUSS scheme.

Latest figures show as many as 1.3 million foreign-born workers may have left the UK in 2020, the biggest drop in population since WWII.¹⁶ Migrant workers are heavily represented in hospitality, which is one of the worst-hit sectors by Covid-19 closures.

The complicated situation for businesses around the pandemic

¹³ <https://www.ippr.org/research/publications/access-denied>

¹⁴ <https://blogs.bmj.com/bmj/2019/07/23/the-uk-governments-hostile-environment-is-harming-public-health/>

¹⁵ <https://www.equalityhumanrights.com/en/inquiries-and-investigations/assessment-hostile-environment-policies>

¹⁶ <https://www.aljazeera.com/news/2021/1/15/uk-twin-pandemic-and-brexit-crises-prompt-unprecedented-exodus>

has already resulted in many EU nationals being let go¹⁷ from their workplaces rather than put on furlough. Of course, job losses due to Covid-19 closures are not unique for the UK, and in fact early reports from Ireland show for example that Eastern European women are particularly vulnerable to suffering job losses due to the pandemic.¹⁸ The implications, however, are very different for EU workers in post-Brexit Britain. Job losses have already forced many to leave the UK and would in time prevent some from returning under the EUSS scheme, as leaving the country interrupts their continuous residence and loses their right to settled status, forcing them to choose between spending thousands of pounds on visas and additional insurance, or seeking employment elsewhere.

Some of the digital inclusion support services that the Home Office has offered for EUSS applicants have been effectively suspended for close to a year now. Most of the document scanning centres have had to close in lockdowns, and the work of third-sector organisations funded by the Home Office to reach vulnerable groups has had to go entirely online, further exacerbating the digital divide.

Meanwhile, the Home Office has dangled the vague promise of taking the pandemic into account when calculating people's absences for obtaining status. But its official position appears to contradict this, and does not appear to accept most Covid-related absences as valid extenuating circumstances when it comes to being absent for more than 6 months (this is crucial for anyone who doesn't already have 5 years continuous residence for settled

¹⁷ https://www.theguardian.com/uk-news/2021/jan/06/fears-highlands-heading-spate-winter-redundancies?CMP=Share_iOSApp_Other

¹⁸ <https://www.esri.ie/news/east-european-workers-more-exposed-to-covid-19-job-loss-and-some-ethnic-minority-groups-to>

status). As it stands, the tens of thousands of people who have ended up abroad because they lost their jobs, wanted to be closer to their family or felt unsafe in the UK will still have lost their right to a settled status.¹⁹ The only acceptable circumstances are closed borders, flight cancellations or serious illness and hospitalisation due to Covid-19.²⁰

Some people – those who managed to apply for status before the pandemic- will return and be able to live and work in the UK until their pre-settled status runs out. However, they will discover that they have already lost their right to apply for settled status and will have to leave and then seek an alternative route in. Others, like Anna above, have already lost their right to take part in the EUSS scheme altogether.

The Home Office could, and does, argue that these are glitches in an otherwise well-designed system. But it cannot claim it wasn't warned of the effects of its scheme. In fact, the current situation was foreseen by campaigners, who have pushed for an automatic right to stay for EU nationals. Back in spring 2020, Another Europe is Possible together with the JCWI launched the [Right to Stay campaign](#) arguing for automatic rights for EU nationals as a basis for a levelling up programme on migration. Hundreds of people across the UK [put up posters defending the Right to Stay](#) for migrants as we were experiencing the first lockdown. We also organised for opposition parties to write to the Prime Minister in September warning against the issues with an application

19 <https://www.freemovement.org.uk/how-do-covid-related-absences-from-the-uk-affect-eu-settled-status/>

20 <https://www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants>

system – the same issues we are now seeing destroy people’s lives. Other migrants’ rights groups have also campaigned to highlight the impact on NRPF during the pandemic and on the impacts of the hostile environment for years. None of this is surprising. It is, however, an indication of what this agenda would mean in practice for migrants’ rights – a levelling down of rights that harms us all.

