

## A late applicant to the EU Settlement Scheme must not suffer lasting punitive impact if granted status

### What?

The UK Government did not know how many people were in the UK with free movement rights, as it had never required EU citizens to undergo any registration process. All these millions of people have now been asked to apply for a new UK immigration status, and not doing so has severe consequences, tipping them into the hostile environment. It was therefore right that the Home Office made provision for late applications where it considered there were reasonable grounds to have missed the deadline. The Home Office for example explicitly recognises that children may not have had an application made on their behalf by their parents or, for children in care or care leavers, by their local authority, and they have stated such children will automatically be recognised as having a reasonable ground for a late application.

However, there remains a serious lacuna at the heart of late applications, even when reasonable grounds for missing the deadline are accepted, and status is granted. Namely, the period between the date someone *should have* applied (which is either the EUSS deadline date of 30 June 2021, or 3 months after birth or entering the UK for joining family members), and the date they *submit a valid application*, remains forever 'unlawful' in the eyes of the UK Government.

One particularly egregious consequence of this is that any treatment for secondary NHS healthcare incurred during the period remains chargeable. If already paid, it is not to be refunded. If not yet paid, the debt continues to hang over the status holder. These debts can be life changing. The policy is irrational and detrimental, and is very easily fixed through a secondary legislation change.

### Why?

#### Improving EU-UK relationship

The EU [stated clearly](#) in the Specialised Committee on Citizens' Rights *"its position that those late applicants who are ultimately granted residence status should be treated as lawfully resident in the period between the application deadline and granting of the status."*

#### Impacted citizens

Some examples: Babies whose parents don't know to apply, or are unable to submit an application within 3 months of their baby's birth can incur charges of thousands of pounds if they require secondary healthcare. Elderly citizens who, due to not travelling, changing jobs or renting accommodation, only first become aware of the need to apply to the EUSS when admitted to hospital in a medical emergency. In all cases, once someone becomes aware and submits an application, they will be impacted forever by debts they would not have incurred had they made their application in time. This seems an extreme, long-lasting punishment.

### Why not? Reasoning behind UK Govt position and why we disagree

We are not sure why DHSC has refused to change this policy. The erstwhile Home Secretary Priti Patel denied that the policy worked this way, and the erstwhile Immigration Minister Kevin Foster said: *"if someone has been found to have a reasonable ground for a late application, it would be hard to then hold against them a penalty in the form of not getting access to treatment or being deemed an overstayer. That would seem a*

*bizarre outcome that I cannot imagine any court would uphold.”* And yet that is exactly what happens, and DHSC has restated its position on this even after these Home Office statements to Parliament.

### Cost?

We cannot cost this precisely. However, this affects a relatively low number of people who are disproportionately impacted. The impact of a charge worth thousands of pounds to an individual is devastating and potentially life-changing. The cost to the NHS is extremely small in relation to its budget of £180 billion, especially as some of these charges on the most vulnerable may ultimately prove unrecoverable (while even if not recovered, the debt never leaves the individual).

### How?

- Primary legislation
- Secondary legislation**
- Immigration Rules
- Guidance change**

### The detail

Amend section 13A of The National Health Service (Charges to Overseas Visitors) Regulations 2015 (<https://www.legislation.gov.uk/uksi/2015/238>), such that charges made or recovered during the period which begins on the person’s application deadline and ends on the date on which their application under Appendix is made, are cancelled or refunded if the person is successfully granted status under Appendix EU.