

## Everyone with status under the EU Settlement Scheme must be considered to have Withdrawal Agreement rights

### What?

The Withdrawal Agreement offered the UK and all EU Member States the choice in how to protect the rights of the EU and British citizens respectively, resident in their host country before December 2020. The UK selected the 'constitutive' choice, which meant that it could require every EU citizen and their family member to apply for a new residence status that confers the rights under the Withdrawal Agreement. The Government created the EU Settlement Scheme (EUSS) to implement that new residence status.

The UK currently considers that some people with status under the EUSS are part of the 'true cohort' and have Withdrawal Agreement rights, whereas others are part of an 'extra cohort' and only have a domestic UK immigration status. They argue EUSS status indicates that someone may theoretically have Withdrawal Agreement rights, but these rights are conditional upon satisfying stricter requirements than the EUSS eligibility requirements.

The problem is that when the Home Office grants status under the EUSS it does not make this distinction, and status holders receive a decision letter stating that their status is granted "in accordance with the EU exit separation agreements." The stricter requirements for having Withdrawal Agreement rights are not communicated to EUSS status holders, and are not conditions to be adhered to for keeping their EUSS status.

So firstly, nobody has clarity over whether they have Withdrawal Agreement rights or not, which arguably means the EUSS does not lawfully implement the Withdrawal Agreement. And secondly, people are not informed about a stricter set of requirements they should fulfil in order to have, and to keep, protection of the Withdrawal Agreement.

The solution is to treat all EUSS status holders the same, which includes ensuring that **everyone** with EUSS status has full equal treatment rights.

### Why?

#### Improving EU-UK relationship

This issue with the UK's interpretation of the Withdrawal Agreement has been a fundamental sticking point for the EU since at least 2021 and it has been raised at the EU-UK Specialised Committee on Citizens' Rights (e.g. see Joint Statements on the meetings of [17 June 2021](#), [16 September 2021](#), [24 January 2022](#), [4 December 2023](#) and [6 June 2024](#)).

#### Impacted citizens

Citizens with pre-settled status under the EUSS usually only find out that they do not have Withdrawal Agreement rights at the point of needing help from the State, when they are refused Universal Credit, Housing or Homelessness Assistance. They likely face a spiral into destitution unless given the help they need.

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

The Home Office states that they did not want to create any *new* rights for EUSS status holders who have been in the UK for less than five years. We disagree - the UK made a choice to implement a constitutive system,

forcing UK residents who previously had free movement rights to apply for a new status. This system gave the UK the control it sought, namely to be able to refuse status. The UK must accept the consequence of this choice, by conferring unambiguous rights to those with status.

## Cost?

Fixing this issue will mean that some people with pre-settled status will become eligible for welfare and housing that were not before. There are less than 2 million people with pre-settled status, and this cohort is shrinking every month as people go on to be granted settled status and become eligible to benefits through that status. A proportion of this cohort will be eligible for welfare and housing anyway, through being able to demonstrate a legacy EEA Regulations right-to-reside. So this affects a subset of a shrinking cohort of vulnerable people.

On the cost savings side, because the existing legislation around the right to reside test is so complex, many decisions are going to court. The3million has intervened in three legal challenges on this already. One judge, on granting permission on our intervention, wrote: *".. having to deal with decisions and the reviews of decisions on the same basis multiple times is itself a financial burden that will be alleviated with certainty on the point one way or the other. I also bear in mind that this burden is being multiplied throughout England and Wales, which burden caused by uncertainty is falling on the public purse."*

## How?

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

## The detail

We propose setting out in a legally binding way that all EUSS status holders are beneficiaries of the Withdrawal Agreement.

Some other (secondary) legislation then becomes incompatible with the rights of Withdrawal Agreement beneficiaries. In 2019, a series of statutory instruments were passed to ensure that pre-settled status under the EUSS is excluded as a 'right to reside' for the purposes of determining eligibility for various state assistance. People instead must prove an alternative 'right to reside' which derives from legacy EEA regulations. For example, these SIs would need to be revoked:

- Social Housing and Homelessness Assistance (England) - [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- Social Housing and Homelessness Assistance (Wales) - [The Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) \(Amendment\) \(No 2\) Regulations 2019](#)
- Social Housing and Homelessness Assistance (NI) - [The Allocation of Housing and Homelessness \(Eligibility\) \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019](#)
- Universal Credit and income related benefits (England, Wales, Scotland) - [The Social Security \(Income-related Benefits\) \(Updating and Amendment\) \(EU Exit\) Regulations 2019](#)
- Universal Credit and income related benefits (NI) - [The Social Security \(Income-related Benefits\) \(Updating and Amendment\) \(EU Exit\) Regulations \(Northern Ireland\) 2019](#)
- Child Benefit and Child Tax Credit (UK) - [The Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#)