

# Questions to the Home Office on 'Settled Status'



Many questions remain about the UK Government's proposed settled status scheme, which aims to document the 3.6 million EU citizens in the UK and give them a new legal status when their EU rights end after the transition period.

the3million has listed some of these questions and will continue to work collaboratively with the Home Office to publish answers so that EU citizens can gain certainty and feel confident about their future.

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# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

Key to source document abbreviations:

- SOI – EU Settlement Scheme Statement of Intent, 21<sup>st</sup> June 2018<sup>1</sup>
- BETA1 – Guidance for Home Office Staff for use during private beta phase 1, 28<sup>th</sup> August 2018<sup>2</sup>
- BETA2 – Guidance for Home Office Staff for use during private beta phase 2, 1<sup>st</sup> November 2018<sup>3</sup>
- BETA3 – EU Settlement Scheme public beta phase: EU citizens and their family members, 21 January 2018<sup>4</sup>
- GOV.UK – Settled and pre-settled status for EU citizens and their families – website as at 18<sup>th</sup> February 2018<sup>5</sup>
- RULES – Immigration Rules Appendix EU, 5<sup>th</sup> November 2018<sup>6</sup>
- SUIT – EU Settlement Scheme: suitability requirements v 1.0 – 1<sup>st</sup> November 2018<sup>7</sup>
- BETA1REPORT – EU Settlement Scheme private beta 1 – key findings, 31<sup>st</sup> October 2018<sup>8</sup>
- BETA2REPORT – EU Settlement Scheme private beta testing phase 2 report, 21<sup>st</sup> January 2019<sup>9</sup>

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<sup>1</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/736281/EU\\_Settlement\\_Scheme\\_Caseworker\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736281/EU_Settlement_Scheme_Caseworker_guidance.pdf)

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf)

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772099/EUSS-public-beta-caseworker-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772099/EUSS-public-beta-caseworker-guidance.pdf)

<sup>5</sup> <https://www.gov.uk/settled-status-eu-citizens-families>

<sup>6</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756616/euss-suitability-v1.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756616/euss-suitability-v1.0ext.pdf)

<sup>8</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-1>

<sup>9</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report>

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## 1 - Criteria for settled status applications

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	the3million Question	Home Office Reply	the3million comment
1.1 Application criteria	What criteria does the government intend to test for?	<p>ID, nationality, residence, criminality, suitability, absences Also for family members, evidence of relationship</p> <p>BETA2 states that “Applicants (aged 18 or over) are required to provide information about previous criminal convictions in the UK and overseas.”</p> <p>BETA2 states “Applicants (aged 18 or over) are also required to declare whether they have been involved in any terrorist related activities, war crimes, crimes against humanity or genocide” Also, that all applications will be subject to a check against the Police National Computer (PNC) and the Warnings Index (WI)</p>	We continue to oppose systemic criminal checks in this way, as we assert that any citizens who pose a genuine, present and sufficiently serious threat to the security of the UK will already be known to the UK, and therefore such a check at application time is not proportionate.
1.2 Application questions	What will be the "6-8" questions which will be asked of applicants when they apply?		The “6-8 questions” were never provided. However, between BETA1, BETA2 and SUIT there is now more clarity as to what questions will be asked of applicants.
1.3 HMRC/DWP	The government has suggested that information will be acquired from HMRC/DWP records, is this correct? Exactly what and how much information is required from HMRC/DWP in order to satisfy residence criteria for settled status?	<p>The SOI confirms that information will be acquired from HMRC, and in due course from DWP.</p> <p>BETA1 says “Where these checks indicate that the applicant has been continuously resident.”</p> <p>BETA1 states HMRC checks will only be made if the applicant provides a National Insurance number.</p>	A Memorandum of Understanding between the Home Office and HMRC has been provided, which shows that income and tax data is transferred to the Home Office as part of the automated checks. <sup>10</sup> Why is this data needed, and what is the business logic applied in the automated check?

<sup>10</sup> <http://www.ilpa.org.uk/data/resources/35100/EU-Settled-Status-Automated-Data-Checks-ILPA-Research-Piece.pdf>

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		BETA3 states “Automated checks will be undertaken with HMRC and DWP as part of the application process which may provide evidence that the applicant has completed a period of 5 years’ continuous residence in the UK.” It later mentions “checks will be run against HMRC” and “certain DWP records”.	A Freedom of Information request for a Memorandum of Understanding between the Home Office and DWP has been refused <sup>11</sup> on the grounds of public interest.
1.4	Missing HMRC/DWP records What will happen if HMRC/DWP does not show data for recent years, but does show data for earlier years?	<p>SOI 5.2: Where possible, the application process will help the applicant to establish their continuous residence and whether it amounts to five years, on an automated basis using data held by HMRC and in due course also the DWP.</p> <p>BETA1 states that “where these checks indicate that the applicant has been continuously resident in the UK for at least 5 years, and where the applicant has confirmed, by way of a self-declaration as part of the application process, that they have not been absent from the UK for a period of more than 5 consecutive years, no further evidence of residence will be required to determine eligibility.”</p> <p>Also, BETA 2 states “Once the applicant has been continuously resident in the UK for 5 years, they may rely on this in applying for settled status under the scheme (under condition 3 in rule EU11) where, since completing that 5 year period, there has been no ‘supervening event’ (as described above). This means, for example, that, since completing that 5 year period, they have not been absent from the UK for more than 5 consecutive years.”</p>	

<sup>11</sup> <https://www.whatdotheyknow.com/request/541814/response/1305059/attach/html/2/FOI%20response%2051777%20Axel%20Antoni.pdf.html>

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1.5	Acceptable documents	<p>There are 2 lists provided in the Annex of the SOI, preferred evidence and alternative evidence.</p> <p>Annex A of BETA3 also provides a list of both 'preferred' and 'alternative' evidence. It mentions that "The guidance below is not prescriptive or definitive", but there are no additional evidence options listed in this compared to the SOI Annex.</p>	<p>The lists are too restrictive, and out of touch with modern digital life. A very large number of people will struggle to evidence their continuous residence. In particular Table 2, in considering a piece of evidence to only cover the applicable month, makes a presumption that an applicant may be lying about their residence status. The recent report produced by the Joint Committee on Human Rights<sup>12</sup> made the same point about Windrush cases.</p>
	Please indicate whether these documents can be copies, or have to be certified copies or originals.	<p>BETA1 states "In line with the draft Withdrawal Agreement, other than for proof of identity and nationality, <b>applicants may submit a photocopy, photograph or scanned digital image of any required evidence.</b> They need only submit the original documents(s) where you have reasonable doubt as to the authenticity of the information submitted."</p>	
1.6	Other agencies	<p>Apart from accessing HMRC and DWP, SUI states that applications are subject to a check against the Police National Computer (PNC) and the Warnings Index (WI). It also states that cases can be referred to Immigration Enforcement (IE). It mentions requests to ACRO Criminal Records Office.</p>	<p>We do not know if this is an exhaustive list, this has been deduced from SUI. We also have concerns about data protection and GDPR immigration exemption issues. A Freedom of Information request was submitted on 20 November 2018 requesting a list of all organisations (public and private) "involved with storage, transfer and processing of the data provided during the settled status application process".<sup>13</sup> The Home Office confirmed the requested</p>

<sup>12</sup> <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/windrush-report-publication17-19/>

<sup>13</sup> [https://www.whatdotheyknow.com/request/settled\\_status\\_app\\_data\\_privacy](https://www.whatdotheyknow.com/request/settled_status_app_data_privacy)

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			information is held, but that it is exempt from disclosure.
1.7	Residence - Lacking evidence  How will someone who has no evidential footprint prove residence, for example a household where all bills are in one person's name, and the partner has no documentary evidence?	<p>SOI Annex A: "We recognise that some applicants may lack documentary evidence in their own name for various reasons, and we work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them".</p> <p>BETA2 says "Some applicants may lack documentary evidence in their own name for various reasons; you must work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them." and "You may request further evidence of residence if appropriate and, where you do so, must ensure that the applicant is given reasonable opportunity to provide it before a decision on the application is made."</p> <p>BETA3: caseworkers should "work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them."</p>	More details of this flexibility are required.
1.8	Residence - Children  There have been growing concerns raised about the rights of EU Citizen children being protected, particularly those who may not be able to rely on their parents to prove a right to reside (for example children in care, in foster placements, or where their parents neglect their own immigration status).	<p>SOI 4.4 states: "...We will also confirm the scope, beyond a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child, for the application process to be completed on behalf of a person without the capacity to complete it themselves."</p> <p>SOI 6.6 states: "It does not currently include a child cared for by the EU citizen (or by their spouse or civil partner) solely by virtue of a legal guardianship order or a formal or informal fostering arrangement, but we are looking further at those and other aspects of the definition."</p> <p>SUIT says "Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the</p>	<p>There are no substantive details about extra measures for children, beyond being family members of EU citizens.</p> <p>Children need particular measures to ensure that they are not the undocumented Windrush 2.0 in the future. They are dependent on their parents applying on their behalf.</p>

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	<p>What measures will the UK put in place to ensure that the rights of children are protected?</p>	<p>decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child.</p> <p>All decisions must demonstrate that the child’s best interests have been considered as a primary, but not necessarily the only, consideration” and “Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child’s best interests”</p> <p>BETA3 -acceptable evidence of family relationship “a relevant document issued on the basis of the relevant family relationship” or “the full birth certificate(s) or other document(s) which you are satisfied evidences that the applicant is the direct descendant of (or otherwise a child of) the relevant EU citizen or of their spouse or civil partner”. It adds, “In the case of an adopted child, surrogate child or a child subject to any of the guardianship orders referred to above, you must discuss the case with your senior caseworker who may refer to the European Migration Policy Team for further advice.” For over 21s, the evidence of dependency that needs to be satisfied is detailed as: “financial evidence of dependency, such as bank statements or money transfers to the applicant from the relevant EU citizen or the spouse or civil partner”; “evidence, as above, of their dependency prior to coming to the UK, if appropriate”; “where appropriate, evidence that the applicant needs the personal care of the EU citizen (or their spouse or civil partner) on serious health grounds, for example a letter from a hospital consultant”. A foster carer can make an application on behalf of a ‘looked after’ child.</p>	<p>Coram Children's Legal Centre has produced a briefing<sup>14</sup> which states "Any new system for EU nationals must avoid an increase in children finding themselves undocumented as a result of practical barriers or policy decisions."</p> <p>Statement on considering the children best interests does not provide further information on how the UK will protect these children or what type of documentation will be accepted</p>

<sup>14</sup> <https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/>  
[https://www.childrenslegalcentre.com/wp-content/uploads/2018/03/European-national-children-in-care\\_March2018Final.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2018/03/European-national-children-in-care_March2018Final.pdf)

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		<p>BETA3: "the section 55 duty means you need to identify and act on any concerns about the welfare of any child of whom you become aware while considering an application under the scheme."</p> <p>BETA2REPORT: "PB2 included scope for applications from EU citizens with more complex needs, who were either being supported by one of seven community organisations or were 'looked after' children in the care of one of five Local Authorities"</p>	
1.9	Residence - Corporate parents How will the government register children with corporate parents such as children's care homes? (Corporate parenting refers to organisations or persons in power, for instance a council, who have special responsibilities to care for children and young people.)	<p>SOI 4.4 states: "...We will also confirm the scope, beyond a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child, for the application process to be completed on behalf of a person without the capacity to complete it themselves."</p> <p>SOI 4.6 states: "There will be no requirement for an application fee where a child is being 'looked after' by a local authority".</p> <p>BETA3 adds: "In the case of an adopted child, surrogate child or a child subject to any of the guardianship orders referred to above, you must discuss the case with your senior caseworker who may refer to the European Migration Policy Team for further advice."</p>	Apart from the fee waiver (which currently applies to all applicants following the PM's 21 January announcement), no details have been provided of how the government will register these children.
1.10	Residence - Parents Can parents prove their residence through their children? For example, can a single stay at home parent who has no paperwork, use evidence of their children attending school to prove their own residence?		This was asked in Home Office user group meeting in addition to this document. No written or verbal response has been provided.

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1.11 Residence - Retained Rights	How will people who have "retained rights of residence" and do not need 5 years' residence be identified? Will they be able to apply with less than 5 years?	<p>EU11, part 4 states :-</p> <p>a) The applicant is a relevant EU citizen who is a person who has ceased activity</p> <p>EU11, part 6, states:</p> <p>a) The applicant is a family member of a relevant EU citizen who has died and the relevant EU citizen was resident in the UK as a worker or self-employed person at the time of their death; and                      (b) The relevant EU citizen was resident in the UK for a continuous qualifying period of at least two years before dying, or the death was the result of an accident at work or an occupational disease; and                      (c) The applicant was resident in the UK with the relevant EU citizen immediately before their death and since then no supervening event has occurred</p> <p>BETA3 adds on this: "since the death of the relevant EU citizen, none of the following events has occurred in respect of the applicant, unless it has been set aside or no longer has effect: any decision or order to exclude or remove them from the UK under regulation 23 or 32 of the EEA Regulations or a decision to which regulation 15(4) of the EEA Regulations otherwise refers in respect of their right to permanent residence in the UK, unless that decision arose from a previous decision under regulation 24(1)". It then states: "If the applicant does not meet these criteria, you must consider if they have retained a right of residence."</p>	<p>They will be able to apply with less than 5 years as set out in SOI.</p> <p>Will the Home Office recognise that this group of people needs to given clear advice, and therefore request that the Ministry of Justice provide sufficient funds and resources for the large-scale legal advice and outreach that will be required?</p>

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1.12	Residence - evidence gaps	<p>If applicants dispute Home Office evidence that they have been in the UK for less than 5 years, how can they fill in the gaps in evidence?</p> <p>SOI 1.15/5.15/Annex A: The government will require them to provide further evidence and give them a 'reasonable opportunity' to do so. This is further supported by BETA1, BETA 2 and BETA3.</p>	
1.13	Past absence	<p>SOI 3.4: There is no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period.</p> <p>There are some exceptions:</p> <ul style="list-style-type: none"> <li>A single period of absence of more than six months but which does not exceed 12 months is permitted, where this is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.</li> <li>Any period of absence on compulsory military service is permitted.</li> </ul> <p>Continuity of residence is broken (and restarts from scratch on release, where this is before the end of the implementation period on 31 December 2020) where the person served or is serving a sentence of imprisonment of any length in the UK, unless:</p> <ul style="list-style-type: none"> <li>The person has resided in the UK continuously for at least 10 years (and has the right of permanent residence in the UK under the EEA Regulations) and the Home Office considers that they had forged integrating links with the UK which were not broken by imprisonment and that, overall,</li> </ul>	<p>The requirement for the exception to this breaking of continuity of absence relies on having the right of Permanent Residence, which is difficult for many not least due to the UK infringement<sup>15</sup> of the Comprehensive Sickness Insurance requirement: "The United Kingdom, however, does not consider entitlement to treatment by the UK public healthcare scheme (NHS) as sufficient. This breaches EU law."</p> <p>This is incompatible with the proposed settlement scheme being residence based, and is not in the spirit of the Withdrawal Agreement.</p>

<sup>15</sup> [http://europa.eu/rapid/press-release\\_IP-12-417\\_en.htm](http://europa.eu/rapid/press-release_IP-12-417_en.htm)

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		<p>it would not be appropriate to treat imprisonment as breaking continuity of residence.</p> <p>Continuity of residence is likewise broken if for example a deportation order, exclusion order or exclusion decision is made, or the person is removed from the UK under the EEA Regulations, unless this has been set aside or no longer has effect.</p>	
1.14	Length of absence	<p>SOI 3.4 states "Once the person has been continuously resident in the UK for five years, this means that they will be eligible for settled status where, since completing that period, they have not been absent from the UK <b>for more than five consecutive years</b> (as set out in the draft Withdrawal Agreement, rather than for more than two consecutive years as set out in the Free Movement Directive) when they apply under the scheme."</p> <p>BETA1 states "where these checks indicate that the applicant has been continuously resident in the UK for at least 5 years, and where the applicant has confirmed, by way of a self-declaration as part of the application process, that they have not since been absent from the UK for a period of more than 5 consecutive years, no further evidence of residence will be required to determine eligibility."</p>	<p>It appears that the government will check for a subsequent break of 5 years.</p> <p>This check for absence of less than 5 years will be done by way of a self-declaration.</p>
1.15	Absent at the point of application	<p>As above, SOI 2.2 states "So, for example, those who are continuously resident in the UK but who happen to be abroad on business or holiday or living overseas temporarily on 31 December 2020 will still be protected".</p> <p>However, 4.4 states that the application "will need to be made, initially at least, in the UK."</p>	<p>No ability to apply from abroad and no timescale given as to when it will be possible to apply from abroad.</p>

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		<p>EU9 states, amongst other criteria, that “A valid application has been made under this Appendix where it has been made in the UK using the required application process.”</p> <p>Under ER10, an application will be rejected as invalid where it does not meet the requirements in paragraph EU9.</p>		
1.16	Absence – standard of proof	<p>What proof of continuity of residence are citizens required to provide?</p>	<p>At least 6 months proof of residence for every one of the 5 years, according to Tables 1 and 2 in SOI Annex A.</p>	Evidential burden too high for many.
1.17	ID - expired	<p>Some EU countries tell their citizens that their ID is still valid despite being beyond its expiry date.</p> <p>What are the consequences for a settled status application for an applicant whose passport or ID has expired?</p>	<p>SOI 4.8: "a valid passport or a valid national identity card", where valid means "genuine and has not expired or been cancelled or invalidated"</p> <p>BETA1 states that “Irish citizens may, instead, provide their full birth certificate from Ireland or other official documentation which satisfies the decision-maker of their identity and Irish nationality”</p> <p>If the ID is changed after applying for the settled status scheme, applicants need to use the Home Office online service<sup>16</sup> to update details. “Use this service if you’ve applied to the EU Settlement Scheme and you’ve changed your: mobile phone number, email address, name, identity document.”</p>	<p>An expired passport should be considered valid evidence of ID.</p> <p>Citizens who do not currently have a need for an in-date passport will be forced to incur trouble and expenditure to renew their passports (with their consulates) in addition to the settled status application.</p> <p>Why are non-Irish citizens not able to provide a birth certificate or other documentation instead of a passport?</p> <p>As the system relies on the applicant to update future ID and other information, would there be any consequences for those who do not amend their ID details if they change?</p>

<sup>16</sup> <https://www.gov.uk/update-eu-settlement-scheme-details>

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1.18 ID – cannot scan and cannot send	What happens if an applicant cannot submit proof of their ID (for example they are not able to scan their ID)?	<p>SOI 1.14 / 4.9: "By a secure postal route in the UK, by which we will aim to return the document to them as soon as we can, to minimise delays if other aspects of the application need further consideration."</p> <p>For BETA2 <a href="#">13 locations</a> have been made available to scan the ID document (passport or biometric ID card-service does not accept ID cards) if people are unable to scan it themselves.</p> <p>BETA2REPORT: "the Home Office will work with partner organisations during the public test phase from 21 January 2019 to substantially increase the network of identity document scanner locations, building towards national coverage for the full opening of the scheme by 30 March 2019."</p>	<p>No details have been provided of the secure postal route, and "as soon as we can" does not commit to a timeline. The return should be by return of post, as indicated in the draft WA. There will be great concern about loss of identity documents (which happens even with current Royal Mail Special Delivery).</p> <p>The 13 locations do not currently accept national identity cards. It seems the only option would be for ID cards to be scanned and no ID cards are accepted at the moment. If these document verification services are available when the scheme is fully opened, they won't prevent certain applicants requiring a postal service. In addition, the cost of the EU Settlement Service is £14 (including VAT).</p>
1.19 ID – sent to Home Office	Under what circumstances would EU citizens be obligated to send their original ID documents to the Home Office?	SOI 4.9 If the applicant does not have a biometric document, or is not able to use the smartphone app on either their personal device or at a location established to enable the applicant to use the app.	<p>It is not desirable to have to send ID documents by post, both for being without one's ID document, and due to the risk of loss. An alternative should be available.</p> <p>The 13 locations for ID verification during BETA2 are existing ID verification services but it seems the only option will be for identity documents to be scanned and no ID cards are accepted. In addition, there is a charge for this service.</p>

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1.20	<p>ID – timeline for return</p> <p>If an applicant must hand in their ID, will there be a time limit by which it will be returned to them? Will applicants need to provide pre-paid envelopes?</p>	<p>It is not clear if the ID documents sent by post will be returned immediately and earlier than other documentation sent to the Home Office:</p> <p>SOI 1.14 / 4.9 "Those who do not wish to or cannot use the app, or whose identity document is not compatible with it, will need to send us the document by post. We are establishing a dedicated team to check these documents and we will aim to return them to the applicant as soon as we can, to avoid delays if other aspects of the application need further consideration."</p>	<p>No details have been provided on time limits, cost or, if applicable, the need for pre-paid envelopes.</p> <p>The Withdrawal Agreement states "Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State <b>shall return that document upon application without delay and before the decision on the application is taken.</b>"</p>
1.21	<p>ID – name does not match</p> <p>What provisions will be made for applicants whose names do not match the name on their passport?</p> <p>Some examples:</p> <ul style="list-style-type: none"> <li>- married women <b>must</b> have their maiden name in their passport, with optional "spouse of ..." (e.g. Netherlands)</li> <li>- it is customary for married women to use a hyphenated "married surname-maiden surname" in everyday life (e.g. Netherlands)</li> </ul>	<p>BETA1REPORT showed that 3% of applicants "required some form of intervention to successfully match applicants to HMRC data. Automated matching was not possible primarily due to name matching issues (fixes have been identified will be applied in a future release) or applicant error (e.g. they entered the NINo incorrectly). Changes to the matching process are being introduced in November to help resolve these issues for future cases. 1.4% could not be matched to HMRC records, typically because of data errors, such as NINo and passport records not matching."</p>	<p>the3million is concerned that even with improvements, a 1-2% data matching error would affect tens of thousands of applicants, which, in the absence of face-to-face applications at local level, will lead to long delays in decision making and resulting anxiety for these citizens.</p>

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## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	<ul style="list-style-type: none"> <li>- citizens may have a formal name in their passport, but use a different given name all their lives – including on all UK documentation (e.g. Netherlands)</li> <li>- the order of first names and middle names on the passport may not match the name in use in everyday life (e.g. Sweden)</li> </ul>		
1.22	<p>ID – name cannot be input correctly</p> <p>How will the application system deal with characters that cannot be input into a digital system, or a name that exceeds the maximum length expected by the system?</p> <p>E.g. German citizens entering "ue" as an alternative to "ü" or "ss" as an alternative to ß; or citizens of countries that use accents and other special characters?</p>	<p>BETA1REPORT shows that 9% of applicants “required help in putting names correctly, e.g. aliases, special characters and naming conventions. To resolve this problem, changes have been made to the application form and further changes are being made to the data matching process in November to improve name matching capability due to variations in naming formats and convention.”</p> <p>BETA2REPORT does not offer further detail on this issue.</p>	<p>the3million warned of this potential problem in the first issue of this document. We are concerned as to what impact this will have when the settled status scheme is fully rolled out, without face-to-face help such as was available during the private beta phase 1.</p>
1.23	<p>Criminality checks – historic</p> <p>Given that the EU and the UK have agreed that the application of criminality checks will be in line with the</p>	<p>BETA1 states “Applicants (over the age of 18) are required to provide information about previous criminal convictions in the UK and overseas, and are only required to declare overseas convictions which appear in their criminal record in accordance with the law of the State of conviction.</p>	<p>Despite BETA1 and SUIT giving more detail on criminality checks, our questions on historic checks have not been answered, despite many requests for details from user groups including embassy user groups.</p>

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	<p>exclusion/expulsion criteria of the Citizens Directive 2004/38:</p> <p>a) How will the government treat applicants who have historic criminal convictions and who have not been subject to removal orders?</p> <p>b) Will there be a distinction between spent and unspent convictions?</p> <p>c) Should people with spent convictions be obliged to declare?</p> <p>d) What about people with conditional discharge who have not reoffended? (Conditional discharge is where an offender will not be sentenced for an offence unless a further offence is committed within a stated period).</p> <p>e) Will offences such as fines, cautions, tickets and other fixed penalty notices, that do not appear on a criminal record, be required to be</p>	<p>Applicants are also required to declare whether they have been involved in any terrorist related activities, war crimes, crimes against humanity or genocide. All applications are subject to a check against the Police National Computer (PNC) and the Warnings Index (WI)."</p> <p>SUIT p. 9 and 10 gives detailed information of the thresholds at which an application must be referred to IE.</p>	

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	<p>declared?</p> <p>f) Under what circumstances will prison sentences shorter than 12 months be accumulated and be regarded as genuine, present and sufficiently serious threat?</p> <p>g) How would convictions in other countries be compared where are there are concerns for trials in absentia, issues concerning double criminality, or possible lack of transparency relating to convictions committed outside the EU?</p> <p>h) Will you give the applicant clear information about which types of offences need to be declared, including information relevant to the applicant's nationality (for example what constitutes 'spent' for a historic conviction in that applicant's member state)?</p>		

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	i) Will you give the applicant advice/warning in the relevant part of the application form to take legal advice before declaring criminal offences?		
1.24	Criminality checks – shared data How will the UK be able to acquire data from outside the UK in relation to foreign criminals given that the existing sharing arrangements will no longer be in place?	Whilst SUIIT gives precise thresholds for referral to IE for convictions in the UK, overseas criminality is left very open.	There have been discussions in Brussels, where no deal has yet been reached on data sharing.
1.25	Criminality checks – exclusion / expulsion Will the UK be relying on such shared data when making decisions around exclusion (preventing a person from entering the UK) and expulsion (requiring a person to leave the UK)?		There have been discussions in Brussels, where no deal has yet been reached on data sharing.
1.26	Security checks - definition What is the definition of a 'security check'?	'Security checks' are no longer mentioned, instead the documents refer to suitability checks.  Suitability checks are defined in SUIIT, and RULES EU15 and EU16.	Although the suitability checks have been defined, the3million considers that these undermine the entire premise of the EU Settlement Scheme (see 1.30)
1.27	Security checks - application How will a 'security check' be applied?	SUIIT: "Where the result of the check of the Police National Computer (PNC), the Warnings Index (WI) or immigration records indicates that: - the applicant has, in the last 5 years, received a conviction which resulted in their imprisonment	the3million considers that these undermine the entire premise of the EU Settlement Scheme (see 1.30)

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
		<ul style="list-style-type: none"> <li>- the applicant has, at any time, received a conviction which resulted in their imprisonment for 12 months or more as a result of a single offence (it must not be an aggregate sentence or consecutive sentences)</li> <li>- the applicant has, in the last 3 years, received 3 or more convictions (including non-custodial sentences) unless they have lived in the UK for 5 years or more</li> <li>- the applicant is the subject of an existing deportation or exclusion order</li> <li>- the case is of interest to Criminal Casework in respect of deportation or exclusion, for example where the applicant is in prison and the case is awaiting deportation consideration</li> <li>-the applicant has entered, attempted to enter or assisted another person to enter or attempt to enter into a sham marriage, sham civil partnership or durable partnership of convenience (or IE is pursuing action because of this conduct)</li> <li>-the applicant has fraudulently obtained, attempted to obtain or assisted another person to obtain or attempt to obtain a right to reside in the UK under the EEA Regulations 2016 (or IE is pursuing action because of this conduct)</li> <li>- the applicant has participated in conduct that has resulted in them being deprived of British citizenship you must refer the case to IE for a case by case consideration of the individual's conduct under the public policy, public security or public health test as set out in the EEA Regulations 2016."</li> </ul>	
1.28	Security checks - failed What are the consequences of a failed 'security check'?	SUIT states that this will result in a refused application.	the3million considers that these undermine the entire premise of the EU Settlement Scheme (see 1.30)

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
1.29 Applicants serving sentences	Will an EU citizen, who is currently serving a sentence that will not be completed until after the end of the transition period and subsequent grace period, be able to apply for temporary or settled status during their sentence?	SOI 3.4 states that continuity of residence is broken by a prison sentence (with some exceptions).	It therefore appears unlikely that they will be able to apply for temporary or settled status during their sentence.
1.30 Suitability Check – misuse of rights under Directive 2004/38/EC	SOI E15 states: "An application [...] will be refused where [...] (c) The applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights under Directive 2004/38/EC".  This clause appears to undermine the entire premise of the EU Settlement Scheme in not testing for Comprehensive Sickness Insurance <sup>17</sup> or 'genuine and effective work'. Please provide details and justification of this clause.		New question in 1.2 arising from Statement of Intent being published.
1.31 Calculation of absence	BETA2 states "Being continuously resident in the UK generally means that the applicant has not been absent	BETA3 includes the same paragraph as BETA2.	New question since publication of BETA2. The legal position is complex and needs clarifying. It is unclear how this is assessed.

<sup>17</sup> It is in any case considered against EU law to not accept access to the NHS as fulfilling the CSI requirement: [http://europa.eu/rapid/press-release\\_IP-12-417\\_en.htm](http://europa.eu/rapid/press-release_IP-12-417_en.htm)

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	<p>from the UK for more than 6 months in total (in a single period of absence or more than one) in any given 12-month period, throughout the period of residence relied upon by the applicant.”</p> <p>It is not clear to a non-lawyer what “any given 12-month period” is – whether this is calculated per calendar year, per 12-month segment of the applicant’s chosen qualifying period, or on a rolling basis.</p> <p>This confusion could inadvertently lead an applicant to make an invalid application. For example, if the applicant’s qualifying period was 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2017:</p> <p>1) would a 3-month absence from 1<sup>st</sup> January 2013 to 31<sup>st</sup> March 2013 and a 4-month absence from 1<sup>st</sup> June 2013 to 30<sup>th</sup> September 2013 exceed the allowable absence? (Yes if on calendar or rolling basis, no if on 12-month segment</p>		

# Questions to the Home Office on 'Settled Status'



## 1 - Criteria for settled status applications

	the3million Question	Home Office Reply	the3million comment
	<p>basis).</p> <p>2) would a 3-month absence from 1<sup>st</sup> August 2012 to 31<sup>st</sup> October 2012 and a 4-month absence from 1<sup>st</sup> December 2012 to 31<sup>st</sup> March 2013 exceed the allowable absence? (Yes if on 12-month segment basis or rolling basis, no if on calendar basis).</p>		

# Questions to the Home Office on 'Settled Status'



## 2 - Eligibility of Different Groups for Settled Status

### 2 Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.1 ILR holder checks	In the event that current holders of Indefinite Leave to Remain (ILR) will need to apply for settled status under the Withdrawal Agreement, what checks (absence, criminality, security, HMRC/DWP) are required for an applicant with existing Indefinite Leave to Remain (ILR)?	<p>SOI foreword states “The process will be particularly straightforward for those who already hold a valid permanent residence or indefinite leave to remain document, which they will be able to swap for settled status free of charge.”</p> <p>SOI EU 11.2, definition of “valid evidence of their indefinite leave to enter or remain” makes clear that the ILR must not have lapsed, been revoked or invalidated.</p> <p>BETA1 states that “The applicant must provide confirmation, via self-declaration within the application process, that their ILR or ILE has not lapsed through absence from the UK of more than 2 consecutive years or been revoked or invalidated.”</p>	<p>An EU citizen who is a holder of ILR will confirm via self-declaration that their ILR or ILE has not lapsed through absence from the UK of more than 2 consecutive years.</p> <p>In addition, they will be subject to the self-declaratory criminal checks of all applicants.</p>
2.2 ILR holder application time limit	For an application with ILR, will the government commit to a time limit between applying for, and receiving proof of, settled status?		No details provided.
2.3 ILR holder application	<p>Some EU citizens have been granted with Indefinite Leave to Remain. Most of these citizens were granted this status many years ago.</p> <p>a) Will these citizens be able to rely on their previous grants of ILR in order to apply for settled status?</p>	<p>Yes. SOI EU 11 condition 2: The applicant is a relevant EU citizen, or a family member of a relevant EU citizen, and there is valid evidence of their indefinite leave to remain.</p>	

## Questions to the Home Office on 'Settled Status'



### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	b) If so, what checks will be performed?	<p>Criminality and security checks, and that ILR has not lapsed (by an absence from the UK of a period of more than 2 consecutive years), been revoked or invalidated.</p> <p>BETA1 states that the absence checks since date of ILR will be by self-declaration.</p>	
	c) In instances where these citizens have lost their ILR BRP cards what will the implications be?	<p>Definition of “valid evidence of their indefinite leave to remain” includes:</p> <p>“(b) the decision-maker is otherwise satisfied from the information available to them that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated”</p> <p>BETA1 states that in these circumstances the caseworker “should check all existing Home Office records to confirm whether the Home Office holds any information confirming the status being claimed by the applicant. Where Home Office records confirm the status, you should accept this as evidence of that status. If the applicant is unable to provide any evidence of their status, and no such evidence exists in Home Office records, you are unable to grant the application under this condition.”</p> <p>BETA2 states “Applicants who claim to have an historical grant of ILE/ILR that they are unable to provide evidence of and which pre-dates current Home Office records may be able to apply under the Windrush Programme to have their status checked and documented.”</p>	<p>We welcome that the BETA1 Guidance states that the Home Office will try to check for a lost PR document, but the reference to narrowing searches correlates with reports of the Home Office having incomplete records.</p> <p>the3million is concerned that the Home Office records of historical ILR and ILE are minimal. See new question <a href="#">10.23</a> Home Office records of ILR / ILE / PR.</p> <p>the3million welcome the fact that EU citizens and their families are able to apply under the Windrush Programme to have their status checked and documented.</p>

# Questions to the Home Office on 'Settled Status'



## 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	<p>d) In other instances, the vignette/stamp confirming grant of ILR is in an expired passport which has been retained by their embassy. The Home Office have stated they do not have a record of ILR holders. What will the implications be?</p>	<p>Definition of "valid evidence of their indefinite leave to remain" includes</p> <p>"(a) a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated; or"</p> <p>BETA2 states "Applicants who claim to have an historical grant of ILE/ILR that they are unable to provide evidence of and which pre-dates current Home Office records may be able to apply under the Windrush Programme to have their status checked and documented."</p>	<p>the3million welcome the fact that EU citizens and their families are able to apply under the Windrush Programme to have their status checked and documented.</p>
2.4	<p>PR holder exchange</p> <p>Will holders of PR be able to exchange their document for a new residence document or will they have to make an application for a new status with absence, criminality, security and ID checks to obtain a 'certificate of application' and a settled status document?</p>	<p>SOI 5.3: "The process will be particularly straightforward for those EU citizens and their family members who have previously been issued a permanent residence document (that is a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations). They will be able to exchange this free of charge for settled status (indefinite leave to remain) under the scheme, subject only to criminality and security checks and to confirming that this status has not lapsed or has done so through absence from the UK for more than two consecutive years (as set out in the Free Movement Directive) but not more than five consecutive years (as set out in the draft Withdrawal Agreement: see paragraph 3.4, above). The assessment of their previous UK residence which we will have done before issuing their permanent residence document will not be repeated."</p>	<p>Although free of charge, a 'swap' is not possible as the scheme is constitutive, in other words the applicant still has to make a fresh application for status without guarantee of success.</p>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	Given they have already proven five years' residence, do they need to prove additional time of residence, and if so, does that require an element of continuity or is it sufficient to prove residence on the single date of their new application?	<p>SOI Glossary: "Documented right of permanent residence" includes that the document was issued under regulation 19 of the EEA Regulations, and issued or renewed within the last 10 years.</p> <p>BETA1 states that the "The applicant must provide confirmation, via self-declaration within the application process, that they have not been absent from the UK for a period of more than 5 consecutive years, at any point since they last acquired the right of permanent residence."</p> <p>BETA2REPORT: "Almost 1,000 people in PB2 mistakenly believed that they had documented PR status or existing ILR"</p>	<p>Many people still have their old residence permit issued in the late 1980s which was issued under EEC regulation. Will this document therefore not be valid? BETA1 defines a permanent residence document as "a document certifying permanent residence or a permanent reside card issued by the UK under the Immigration (EEA) Regulations 2006 or 2016". Therefore, we assume old residence permits issued in the late 1980s are not valid.</p> <p><b>Proof of residence since date of PR will be via self-declaration.</b></p>
2.5	PR holder timeline	For an application with PR, will the government commit to a time limit between applying for, and receiving proof of, settled status?	No details provided.
2.6	PR holder lost document	What happens if an applicant has lost their PR document?	<p>BETA1 states "If an applicant cannot provide the PR document or its reference number, for example because it's damaged or obscured, or it never had one, you should check Home Office record and, if there is no record available, contact the applicant for further details such as approximate date of issue to narrow any searches. If there is still no trace the applicant should be invited to submit the document for you to consider."</p> <p>We welcome that the BETA1 and subsequent trial phases Guidance states that the Home Office will try to check for a lost PR document, but the reference to narrowing searches correlates with reports of the Home Office having incomplete records.</p> <p>the3million is concerned that the Home Office records of historical ILR and ILE are minimal. See new question <a href="#">10.23</a> Home Office records of ILR / ILE / PR.</p>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.7	Family members: application	<p>SOI 5.8 and 5.9 explains that the non-EU citizen must provide evidence of their relationship to the relevant EU citizen, and their valid passport or national identity card. “We will accept alternative evidence of the EU citizen’s identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons”.</p> <p>BETA1 states “Evidence of the EU citizen having been granted status under the scheme will constitute sufficient evidence of that person’s identity, nationality and continuous residence (for the period on the basis of which they were granted status) in any subsequent application under the scheme by a person relying on their family relationship to that EU citizen.</p> <p>BETA3: “A non-EU citizen will be able to apply where they have previously been issued with a biometric residence card under the Immigration (European Economic Area) Regulations 2016 (‘the EEA Regulations’), on the basis of an application made on or after 6 April 2015, as a family member or former family member of an EU citizen.”</p>	<p>More details need to be provided of the acceptable alternative evidence, since this is currently an existing problem for many applicants.</p>
2.8	Family members genuine relationship	<p>SOI 6.6 mentions “it is not a marriage of convenience”, “it is not a civil partnership of convenience” and “it is not a durable partnership of convenience”.</p> <p>Defined in glossary as “entered into as a means to circumvent: (a) any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations; or</p>	<p>No details are provided of how it will be established that the relationship is not one "of convenience".</p>

# Questions to the Home Office on 'Settled Status'



## 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
		<p>(b) any other provision of UK immigration law or any requirement of the Immigration Rules; or</p> <p>(c) any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law”</p>	<p>If a genuine relationship does in fact also result in one party gaining a right to enter or reside in the UK, this definition can be abused to accuse almost any such relationship of being one of convenience.</p> <p>The SOI’s interpretation of a durable partnership for the purpose of settled status is inconsistent with EU law, for example, the requirement of two-year cohabitation. The acknowledgement that ‘other significant evidence’ can be submitted does not clarify relationships qualifying under the proposed rules.</p>
2.9	<p>Children: application</p> <p>The Withdrawal Agreement Article 17 (1)(l)(iii) states that “direct descendants who are under the age of 21 or are dependants and dependent direct relatives in the ascending line” may apply for settled status as a family member by providing documentary evidence of their relationship.</p> <p>Is it possible for an EU citizen under the age of 21 to apply for settled status in their own right instead? If so, is there a minimum age at which they can do so?</p>	<p>There appear to be different rules and regulations for children depending on their age and location:</p> <p>SOI 4.4: “a parent applying on behalf of a child or a local authority on behalf of a ‘looked after’ child... Within the meaning of section 22(1) of the Children Act 1989, section 17(6) of the Children (Scotland) Act 1995, section 74(1) of the Social Services and Well-being (Wales) Act 2014 or article 25(1) of the Children (Northern Ireland) Order 1995.”</p> <p>GOV.UK 4 – For citizens under the age of 21: “You can either get someone to apply for you ... or apply on your own”.</p>	<p>No minimum age is mentioned.</p>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
2.10 Dual Nationals application	Will those British-EEA dual nationals who have rights to family reunion under the Withdrawal Agreement need to make an application for settled status in order to evidence their right?	<p><a href="http://www.legislation.gov.uk/ukxi/2018/801/made">http://www.legislation.gov.uk/ukxi/2018/801/made</a> Shows that “a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national” is to be considered an EEA national within the Immigration Rules.</p> <p>SOI 6.5: “Otherwise, the following family members of an EU citizen who is continuously resident here by 31 December 2020 (as described in section 3, above) will be eligible to apply for status under the scheme,....This includes a dual British-EU citizen in line with the CJEU judgment in Lounes....further details in due course”.</p> <p>See RULES: Annex 1, definitions of “relevant EU citizen”, “relevant naturalised British citizen”. BETA2 “Relevant EU citizens” confirms that “a relevant British citizen is a dual British-EU citizen in line with the Court of Justice of the European Union (CJEU) judgment in Lounes”.</p>	Further details to be provided – still not clear whether the dual national citizen needs to, or is able to choose to, make an application for settled status in order for their family members to be able to apply.
2.11 Dual Nationals evidence	If it is not intended that they make an application for settled status, how will they evidence this in the future at the point of wishing to bring a family member into the UK?	BETA1, BETA2 and BETA3 all state that the trial schemes are available to “an EU citizen (but not a British citizen)”	<p>BETA2 states “The rights of Irish citizens residing in the UK are protected after the UK leaves the EU under the UK-Ireland Common Travel Area arrangements. This means that Irish citizens do not need to apply under the scheme, should they wish to do so.”</p> <p>The3million argue that Lounes dual nationals should similarly be able to apply under the scheme, should they wish to do so – in order to obtain proof <b>now</b> for <b>future</b> family reunification purposes.</p>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	It has been suggested by the Home Office that they will need to show a Permanent Residence (PR) certificate. EU citizens who became dual nationals before November 2015 will not necessarily have a PR certificate, and people who became dual nationals after November 2015 may have discarded their PR certificate once they acquired British citizenship.		
2.12	Dual Nationals checks	Will dual nationals be subject to any checks (such as absences, criminality, security, HMRC/DWP) in order to be covered by the Withdrawal Agreement?	See 2.10.
2.13	Groups not covered – identified	Has the government identified any groups who will not be covered by the Withdrawal Agreement?	No information provided.
2.14	Groups not covered – reasons	If so, what are these groups and why will they not be covered by the Withdrawal Agreement?	See 2.13.
2.15	Surinder Singh	Will Surinder Singh cases (non-EU family members of British citizens who have exercised EU freedom of movement before returning to the UK) be covered by the Withdrawal Agreement?	SOI 6.12: “In addition, in respect of the following categories involving a British citizen in circumstances which are not protected by the Withdrawal Agreement, we have decided, as a matter of domestic policy, that:  Our interpretation of the SOI is that Surinder Singh family members will not be able to move to the UK after the end of the transition period, even if their British citizen family member is in the UK before the end of the transition period.

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	If not, how does the UK intend to protect those who are currently benefiting from these rights? Will there be measures in place to allow citizens to benefit from this right in the future?	<ul style="list-style-type: none"> <li>• A non-EU citizen family member of a British citizen who is lawfully resident in the UK by the end of the implementation period on 31 December 2020, by virtue of regulation 9 of the EEA Regulations (the 'Surinder Singh' route, which leads to a right of permanent residence under EU law), will be eligible to apply for status under the EU Settlement Scheme."</li> </ul>	Furthermore, we are concerned that British citizens returning after the end of the transition period will not benefit from Surinder Singh at all.
2.16 Zambrano	How does the UK intend to protect those who are currently benefiting from Zambrano rights? (A Zambrano carer is the non-EEA citizen primary carer of a British citizen who is residing in the UK.)	<p>SOI 6.12. "In addition, in respect of the following categories involving a British citizen in circumstances which are not protected by the Withdrawal Agreement, we have decided, as a matter of domestic policy, that:</p> <ul style="list-style-type: none"> <li>• A non-EU citizen who is the primary carer of a British citizen in the UK and also currently derives a right of residence from wider EU law (a Zambrano carer) will be provided for in the Immigration Rules. Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them."</li> </ul>	<p>Details of the eventual status are not yet available.</p> <p>From Freemovement blog (<a href="https://www.freemovement.org.uk/derived-rights-of-residence-brexite/">https://www.freemovement.org.uk/derived-rights-of-residence-brexite/</a>):</p> <p>"The figures also show that 310 people were accepted as having a derived right of residence in the first six months of 2018 — about as many as in the whole of 2017. That may indicate a rise in applications for derived right residence cards in the run-up to Brexit. Nevertheless, the numbers are small. The EU Settlement Scheme will allow up to 3.5 million EU citizens to settle in the UK permanently, and another 130,000 of their non-EU relatives. Allowing maybe two thousand more carers to join them seems unlikely to cause undue political or logistical difficulty."</p>
2.17 Irish citizens - rights	We understand Irish citizens living in the UK will not need to apply for settled status.	SOI 2.6: "Irish citizens enjoy a right of residence in the UK that is not reliant on the UK's membership of the EU. They will not be required to apply for status under the scheme (but may do so if	It is not made clear what the advantages are of the Irish citizen applying for settled status.

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	<p>Taking family reunion rights as an example, will Irish citizens living in the UK have:</p> <ul style="list-style-type: none"> <li>a) the same family reunion rights as British citizens? or</li> <li>b) the enhanced family reunion rights as granted by the Withdrawal Agreement? or</li> <li>c) the full EU citizenship family reunion rights as granted by Directive 2004/38/EC?</li> </ul>	<p>they wish), and their eligible family members (who are not Irish citizens or British citizens) will be able to obtain status under the scheme without the Irish citizen doing so.”</p> <p>BETA2 confirms “The rights of Irish citizens residing in the UK are protected after the UK leaves the EU under the UK-Ireland Common Travel Area arrangements. This means that Irish citizens do not need to apply under the scheme. Nonetheless Irish citizens can make an application under the scheme, should they wish to do so. Their family members (who are not Irish citizens or British citizens and who do not have leave to remain in the UK) will need to make an application for status under the EU Settlement Scheme”</p>	<p>BETA2 seems to indicate the answer would be b) but this is not made clear. Also, if that’s the case, is there a time limit for their family members to apply for settled status – i.e. do they need to apply before the end of the implementation period or there is no time limit, same as other EU citizens’ eligible family members?</p>
2.18	<p>Irish citizens – distinctions</p> <p>Will there be a distinction, and if so, what are the distinctions, between the following groups of Irish citizens:</p> <ul style="list-style-type: none"> <li>a) an Irish citizen not born in Northern Ireland, but resident in Northern Ireland</li> <li>b) an Irish citizen not born in Northern Ireland, and resident in Great Britain</li> <li>c) an Irish citizen born in Northern Ireland, and resident in Northern Ireland</li> <li>d) an Irish citizen born in Northern Ireland, but resident in Great Britain</li> </ul>		<p>No information given.</p>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	e) an Irish citizen living in one of the 26 EU countries (not UK or Ireland) who moves to the UK after Brexit		
2.19	Good Friday Agreement	What specific measures, mechanisms or procedures does the UK propose to ensure the “right of the people of Northern Ireland to hold British or Irish citizenship or both ... with no detriment or differential treatment of any kind” as guaranteed by the Belfast/Good Friday Agreement?	No information given.
2.20	British children of EU parents	<p>Will a British child, whose EU parents have settled status, be covered by the Withdrawal Agreement?</p> <p>If such a child is covered, will they have to make an application for settled status in order to evidence their right in the future? If not, how will they evidence their right in the future?</p> <p>If such a child is not covered, what would happen in the following scenario:</p>	<p>The Home Office has not responded to this question/scenario in writing, or at all, to date. It had given verbal assurances that all questions would be answered in writing.</p> <p>Beyond talking about applications of children under 21 in the SOI and the more recent guidance<sup>18</sup>, no details are given on children and their specific rights and obligations, or on facilities to identify them and to provide them with specialist advice and assistance.</p>

<sup>18</sup> <https://www.gov.uk/settled-status-eu-citizens-families/settled-status-if-youre-under-21>

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	<ul style="list-style-type: none"> <li>- In the future, when the British child (X) is an adult, X's parents leave the UK for longer than 5 years to retire/look after their own elderly parents, resulting in X's parents losing their settled status</li> <li>- Once X's parents are old themselves, they would like to return to the UK to be looked after by their British child X, but X is not covered by the Withdrawal Agreement and therefore cannot claim their family reunion rights.</li> </ul> <p>Again, if such a child is not covered, what would happen in the following scenario:</p> <ul style="list-style-type: none"> <li>- if the British child (X) is an adult, and is in a durable relationship (before the end of the transition period) with a foreign national living abroad, will X be able to bring their partner to the UK (after the end of the transition period) without having to fulfil UK immigration law requirements including minimum earnings thresholds?</li> </ul>		

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2.21 EU children living abroad	<p>Will an EU child, living outside the UK before the end of the transition period, be covered by the Withdrawal Agreement, if that child has an EU parent in the UK who naturalised as a British citizen after the child's birth?</p> <p>If so, will that child be able to apply for Temporary Status and subsequent Settled Status if they move to the UK after the end of the transition period?</p>	<p>SOI 2.5: "The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme."</p> <p>Under 21s will be able to 'link' their application to their parents' – 'if your application is successful, you'll get the same status as your parent'<sup>19</sup>. "If you're not a British or Irish citizen, you'll be eligible for either:</p> <ul style="list-style-type: none"> <li>• the same status your parent could get, based on how long they've lived in the UK</li> <li>• settled or pre-settled status, based on your own residence."</li> </ul>	<p>the3million has had verbal assurance that under 21s will be able to 'link' their application to their parents 'even if they arrive in the UK after 31 December 2020' but we have not found written confirmation of this.</p>
2.22 Difference between ILR and settled status	<p>Will the government make clear to ILR holders that, although they do not need to apply for settled status in order to maintain their rights of residence, not doing so has the following implications:</p> <ul style="list-style-type: none"> <li>- they will lose their ILR after a 2-year absence from the UK, whereas holders of settled status lose their rights after a 5-year absence from the UK</li> </ul>		<p>Despite many discussions these issues have not been addressed, beyond setting out in the SOI that a 5-year absence rule applies to the "EU-ILR" instead of the 2-year absence rule under "non-EU ILR" that is not covered by the scheme.</p> <p>The Home Office have not explained how the two forms of ILR will be distinguished.</p>

<sup>19</sup> <https://www.gov.uk/settled-status-eu-citizens-families/settled-status-if-youre-under-21>

## Questions to the Home Office on 'Settled Status'

### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	<ul style="list-style-type: none"> <li>- family reunion rules as defined in the Withdrawal Agreement will not apply to them</li> <li>- they will not have the same rights of appeal against any Home Office decisions (to revoke ILR on grounds of criminality, or on those applying as returning residents) as holders of settled status</li> <li>- they will not benefit from European Court of Justice rulings or protection during the proposed 8-year period</li> <li>- without also holding a Biometric Residence Permit, under current rules they will not be able to gain employment past the end of the transition period</li> </ul>		
2.23	<p>Recognition of ILR</p> <p>The government have stated: "Indefinite leave to remain status will not be affected by the UK leaving the EU. Once the application scheme for settled status opens there will be a simple process for you to exchange your</p>	<p>SOI Glossary definition of "valid evidence of their indefinite leave to enter or remain" contradicts this Government statement, since the SOI insists that the applicant must prove that the ILR has not lapsed, whereas the Government statement says "we won't repeat any assessment of residence".</p>	<p>The Home Office has given verbal indications that EU citizens with existing ILR can simply hold on to their documentation and do nothing. But without specialist face to face advice on the validity of their documentation and of the consequences of doing nothing this would be a risky strategy to pursue.</p>

## Questions to the Home Office on 'Settled Status'

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	the3million Question	Home Office Reply	the3million comment
	<p>old indefinite leave to remain document for a settled status document free of charge, should you wish to prove you benefit from the withdrawal agreement. We won't repeat any assessment of residence."</p> <p>There is a large group of older EU citizens and their families who believe that they do not need to obtain settled status, because they have a variety of forms of documentation obtained many decades ago, including for example a stamp in an old passport, a police booklet, or letters. Some of these documents may be considered to not constitute ILR.</p> <p>a) What will be the consequences for these citizens and their families if they do not apply for settled status? Will they be treated as illegal citizens, will they face penalties, loss of access to services, or deportation?</p> <p>b) What specific proposals are there to reach out to this particular group of citizens?</p>	<p>SOI 1.16 proves that the Home Office is still in the initial consultation stages of devising an application scheme for vulnerable groups when it talks about 'our new group which particularly focuses on the needs of vulnerable users'</p> <p>BETA3: "Where an applicant applies on the basis of having ILE or ILR but does not provide documentary evidence of this status, you must check Home Office records to confirm whether the Home Office holds any information confirming the status being claimed by the applicant. Where Home Office records confirm the status, you must accept this as evidence of that status. Applicants who claim to have an historical grant of ILE / ILR that they are unable to provide evidence of and which pre-dates current Home Office records may be able to apply under the Windrush Programme to have their status checked and documented." And "If the applicant is unable to provide any evidence of their status, and no such evidence exists in Home Office records, you are unable to grant the application under this condition"</p> <p>On point c.: On 25 October 2018, the Home Office announced grant funding of up to £9 million to support EU citizens who need 'additional help'; these funds are for organisations who deal with vulnerable groups.</p>	<p>Alternatively, the government appears to be contemplating secondary legislation to transform ILR documents into status under the Withdrawal Agreement. However, the difficulty with that would be that the settled status scheme under the WA is an application or 'constitutive' scheme, with applications having no guarantee of success. Also, how would the 'exchange' occur in practice? How would the government find and identify all these older citizens and their family members, examine their documents and issue them with valid digital proof of the new status? Would the Home Office have to provide a Certificate of Application to the applicant meanwhile?</p> <p>a) not known                  b) none beyond vague, unspecific promises                  c) despite many requests, the government does not seem prepared to make funds available for legal advice. It keeps up the mantra that nobody should need legal advice despite the many fundamental issues about this and other vulnerable groups of EU citizens</p>

# Questions to the Home Office on 'Settled Status'



## 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	c) These citizens may need legal advice to see what their options are. What funding is being made available for this advice and at what stage will this funding be available?		
2.24 Exchange of ILR for settled status	<p>The government have stated: "Indefinite leave to remain status will not be affected by the UK leaving the EU. Once the application scheme for settled status opens there will be a simple process for you to exchange your old indefinite leave to remain document for a settled status document free of charge, should you wish to prove you benefit from the withdrawal agreement. We won't repeat any assessment of residence."</p> <p>a) Can the government provide a comprehensive list of acceptable documents that prove an EU citizen has Indefinite Leave to Remain status?</p> <p>b) Can the government confirm that the phrase "We won't repeat any assessment of residence" means that</p>	<p>a) SOI Glossary definition of "valid evidence of their indefinite leave to enter or remain" states "a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated."</p> <p>b) from a) – "which has not lapsed"</p> <p>c) no document will be granted to EU citizens</p> <p>SOI 1.13: " applicants will be able to upload additional evidence to fill in gaps in residence or where there is no government data. [...]The application process we are designing will be particularly straightforward for applicants for settled status who already hold a valid permanent residence or indefinite leave to remain document."</p> <p>BETA2 confirms that for these applicants to be eligible under the scheme there must be valid evidence of their indefinite leave to enter or remain in the UK, which has not lapsed (through absence from the UK for a period of more than 2 consecutive years) or been revoked or invalidated. Confirmation that their</p>	<p>There is no 'exchange' or swap'. Holders of ILR will have to make a fresh application for settled status under the Withdrawal Agreement if they want to benefit from the scheme in terms of family reunion. There will be no guarantee of success and no document given to them as evidence of their status.</p> <p>Holders of ILR face various difficulties: First they would have to obtain specialist advice on whether their ILR is still valid. There is no indication that the Home Office would provide such individual face-to-face advice on applicants' documentation.</p> <p>a ) This is not a comprehensive list of acceptable documents, e.g. many people have asked us about stamps in a police booklet, or an old letter.</p>

## Questions to the Home Office on 'Settled Status'



### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	<p>applicants only need to confirm UK residence at the time of document exchange, and does not mean they need to provide 5 years' proof of residence, or proof of residence since the date of ILR?</p> <p>c) If a citizen's ILR document is exchanged for a settled status document, will the settled status document show the date that ILR was originally granted?</p>	<p>ILR/ILE has not lapsed/been revoked/declared invalid is done via self-declaration, but if case worker identifies during the process that their status has in fact elapsed or being lost, the application won't be granted.</p> <p>If applicant is unable to show valid ILR/ILE documents, Home Office will check their databases. They may also be able to apply under the Windrush Programme to have their status checked and documented.</p> <p>BETA3: "Where an applicant has declared that their ILE or ILR has not lapsed through absence from the UK for a period of more than 2 consecutive years or been revoked or invalidated but it is identified during the caseworking process that their status has, in fact, lapsed or been lost, you are unable to grant the application under this condition."</p>	<p>b) BETA2 clarifies that confirmation that status has not lapsed/been revoked/declared invalid is done via self-declaration, but still allows applications to be refused if the case workers identifies status has been lost. Carrying out absence checks could mean that the ILR holder would have to satisfy a challenging evidential burden of proving that no 2 year gap in residence has occurred throughout decades.</p> <p>c) There will be no document issued to EU citizens, despite many requests for physical evidence of status to avoid discrimination and difficulties. It seems the electronic record of status will only show the date the status was granted. Letters confirming settled status by email clearly mention "Your status takes effect from the date of this letter".</p>
2.25	<p><b>Future children</b></p> <p>SOI Summary, and again in 1.6 states: "Future children are also protected (see paragraph 2.5, below)".</p> <p>SOI 2.5 states: "The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or</p>		<p>We urgently need clarity about the rights of future children.</p>

## Questions to the Home Office on 'Settled Status'



### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
	<p>parents eligible for status under the scheme”.</p> <p>What are the “certain circumstance”, and why does the summary state future children ARE protected while 2.5 states “in certain circumstances”?</p>		
2.26 PR invalid	<p>BETA1 p. 31 states that the caseworker must be satisfied that, at the date of application, the [Permanent Residence] document or card is not invalid under regulation 19(4)(c) because the applicant never had the right of residence.</p> <p>What circumstances would trigger a caseworker to doubt the validity of a PR document or card, and what checks would the caseworker be required to perform to check its validity?</p>	<p>BETA3 gives some details under “Documented right of permanent residence”:</p> <p>“An EU citizen will be eligible for ILR under the scheme, as a relevant EU citizen under condition 1 in rule EU11, where they have a documented right of permanent residence, and no supervening event has occurred. This means that you are satisfied from the information available to you that the applicant has been issued with a document certifying permanent residence under regulation 19 of the EEA Regulations, or with a residence permit or residence document under the Immigration (European Economic Area) Order 1994 endorsed to show permission to remain in the UK indefinitely, and:</p> <ul style="list-style-type: none"> <li>• this document is not invalid under regulation 19(4)(c)</li> <li>• this document has not been revoked, and its renewal has not been refused, under regulation 24 (except where the revocation or refusal occurred because the person had been absent from the UK for a period of more than 2, and no more than 5, consecutive years)</li> </ul>	<p>Some details are given in BETA3, but there is still no clarity on the exact circumstances which would prompt these extra checks.</p> <p>BETA1REPORT included 9 people who held ‘valid PR/ILR documentation’, yet were not granted settled status. Correspondence between the3million and the Home Office showed that two were later confirmed as holding valid PR/ILR documentation and were granted settled status, and the remaining seven were found not to hold valid PR/ILR. The3million asked again for clarification as to why the UKVI changed their mind about the validity of the PR/ILR documentation after BETA1REPORT, but no satisfactory answer has been received.</p>

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### 2 - Eligibility of Different Groups for Settled Status

	the3million Question	Home Office Reply	the3million comment
		<ul style="list-style-type: none"> <li>the person's right to reside has not been cancelled under regulation 25</li> </ul> <p>It also means that:</p> <ul style="list-style-type: none"> <li>the applicant has not been absent from the UK for a period of more than 5 consecutive years, at any point since they last acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations or since they last completed a period of 5 years' continuous residence in the UK</li> <li>none of the following events has occurred in respect of the applicant, unless it has been set aside or no longer has effect: any decision or order to exclude or remove them from the UK under regulation 23 or 32 of the EEA Regulations a decision to which regulation 15(4) of the EEA Regulations otherwise refers in respect of their right to permanent residence in the UK, unless that decision arose from a previous decision under regulation 24(1)."</li> </ul>	
2.27	Lacking mental capacity	What provisions have the Home Office put in place for people to apply on behalf of another citizen who lacks mental capacity to make the decision to apply for settled status and/or engage with the application process?	

## 3 - Details of Application Process

### 3 Details of Application Process

	the3million Question	Home Office Reply	the3million comment
3.1 Joint family applications	Will families (including both dependent descendants and direct ascendants) be able submit one application for the whole family, or should they submit one application per family member?	<p>SOI 6.1. "Family members who are living with, or join, an EU citizen resident in the UK by the end of the implementation period on 31 December 2020 will be eligible to apply for status under the EU Settlement Scheme. They will be able to apply under the scheme on their own account, but non-EU citizen family members may prefer, where possible, to apply once the relevant EU citizen has done so and been granted status as this is likely to make it easier and quicker for the family member to demonstrate their eligibility (see paragraph 5.9, above). Applications made by families at the same time will be considered together."</p> <p>The recent Guidance for under 21s, there is a mention of how they will be able to 'link' their applications to parents, 'using the application number your parent gets when they apply'. "If your application is successful, you'll get the same status as your parent."</p>	<p>Families will not be able to submit one application per family.</p> <p>Where their applications are going to be 'considered together' there are no full details given on how this will be carried out, although the latest guidance for under 21s mentions linking their application to their parents' application number.</p>
3.2 Procedure for missing or incorrect evidence	What procedure will be put in place to give applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions in their application?	<p>SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision.</p> <p>SOI 5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision.</p>	<p>These statements are welcomed, however, more details are needed as to how this can and will be done in practice.</p> <p>BETA1REPORT acknowledges issues linked to, for example, name recognition and data matching for automated checks; however, no additional information regarding a mechanism to identify/correct errors has been included as part of BETA2, which is of concern.</p>

# Questions to the Home Office on 'Settled Status'



## 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
	<p>In particular, what will protect EU citizens from errors being interpreted by the Home Office as fraud, with resulting loss of protection by the Withdrawal Agreement?</p>	<p>BETA2 only includes information about validity of applications “If an applicant submits an application which is missing any of the components required for it to be valid, they must be prompted or contacted and given a reasonable opportunity to provide what is needed to validate the application”. “There is no basis to refuse a valid application under the scheme beyond the eligibility and suitability conditions set out in Appendix EU”</p> <p>SUIT states “You must not refuse an application under rule EU16 where there has been a genuine error by the applicant or a third party, as this would not constitute deliberate dishonesty and would not be proportionate.”</p>	<p>BETA2REPORT mentions 84% applicants did not need to submit additional evidence. “The page in the application process which provides the applicant with the opportunity either to accept or challenge the length of time they have been continuously resident in the UK (and so whether they are issued settled or pre-settled status, where they do not instead show that they qualify for settled status with less than five years’ continuous residence where particular criteria are met) has been reformatted and simplified to help prevent similar errors from being made in the future.”</p> <p>Information provided to applicants who take part in BETA2 includes the following: “For any questions about your application in this pilot, contact the EU Settlement Scheme Resolution Centre by calling 0300 123 7379 (inside the UK) or +44 (0) 203 080 0010 (outside the UK). Find out about call charges at <a href="http://www.gov.uk/call-charges">www.gov.uk/call-charges</a>. You can also ask a question using the online submissions form.</p>

# Questions to the Home Office on 'Settled Status'



## 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
			BETA2REPORT details on the Settlement Resolution Centre (SRC): " The team of over 200 staff work across shift patterns of 8am – 8pm on Monday to Friday and 9:30am – 4:30pm at weekends. In PB2, the SRC took a mix of calls (70%) and emails (30%) from applicants through various stages of the process from pre-application enquiries to post-outcome questions. In PB2, the SRC received 10,628 calls and 4,654 emails from applicants. Around 34% of calls related to applicants asking about making an application, and around 44% were from applicants with questions whilst making an application."
3.3 Application Charges	<p>Article 17(1)(g) <sup>20</sup>of the draft Withdrawal Agreement states that the residence document shall be issued free of charge or for a charge not exceeding that imposed on citizens or nationals for the issuing of similar documents.</p> <p>How do charges for obtaining settled status comply with the Withdrawal Agreement, given that no 'similar documents' currently exist in the UK?</p>	<p>For BETA1 and BETA 2, an application under the scheme costed £65 (the same as the current fee for a permanent residence document), which will part-fund the cost of the scheme. For children under the age of 16 the fee was £32.50</p> <p>On 21 January 2018, the Prime Minister announced there will be no fee when the scheme opens fully on 30 March 2019. Anyone who already applied and paid a fee during BETA1, 2 and 3 will be refunded. Details of the refunds process will be published. (GOV.UK)</p>	We welcome the decision to scrap the settled and pre-settled status fee. This brings the scheme a step closer to the the SOI claims that EU citizens will 'continue their lives here much as before, with the same entitlements to work, study and access public services and benefits, determined according to the same rules as now'. However, there will still be some charges incurred by some applicants in the process, for example the £14 charge for those using the 13 local ID checking services (see question 1.18) or charges to post documents to the Home Office.

# Questions to the Home Office on 'Settled Status'



## 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
3.4	Timeline What will be the timeline for applications?	<p>BETA2REPORT: "69% of decided cases were processed in three working days, with 81% processed within a week"</p> <p>BETA2REPORT: "Where the applicant sent in their passport, it was checked and sent back to them within 24 hours."</p>	<p>There are performance data available for BETA1 and BETA2, which show that the timeline depends on the case. Those 'incomplete or awaiting further evidence' took significantly longer to be decided. There are no additional details on target timelines.</p>

## Questions to the Home Office on 'Settled Status'



### 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
3.5	Timeline – corrected application	<p>1.15 SOI: “The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place.”</p> <p>BETA3: “‘A reasonable opportunity in which to provide more information or evidence’ means, subject to the next paragraph, 14 calendar days, from the date of the attempted contact (or the date on which you discussed the matter with the applicant), in which to provide the information or evidence specified in your request (or which you discussed with the applicant). Where the attempted contact is by letter sent by first-class post, you may assume delivery on the second business day after the date of postage. You may provide longer than 14 calendar days where, following consultation with your senior caseworker, you are satisfied that there is good reason to do so in the particular circumstances of the case. Once the final deadline you have given the applicant to provide more information or evidence (or to contact you to discuss this) has passed, you must consider and decide the application on the basis of all the information and evidence before you.”, but “you may exercise discretion in their favour where appropriate, to minimise administrative burdens. “</p>	<p>No timeline for this has been indicated by the Home Office in writing, or in the user groups.</p> <p>In contrast, there are indications that applicants will be held to firm timelines to submit further documentation where required, leading to double standards in the application process. For example, BETA 3 mentions ‘14 calendar days’ regarding the ‘reasonable opportunity in which to provide more information of evidence’. However, the caseworker ‘may exercise discretion’. While the flexible approach is welcome, clearer details are needed, especially on the Home Office’s timeframes.</p>
3.6	Timeline – appeal of refused application	<p>BETA2REPORT: “PB2 included scope for applicants to apply for an administrative review by the Home Office of certain decisions under the EU Settlement Scheme. 11 such administrative review applications had been received and processed by 14 January 2019, with a further 13 pending. In all 11 cases the applicant was challenging a grant of pre-settled status rather than settled status. One of these grants of pre-settled status was upheld following the</p>	<p>The Home Office has not set out timelines for the resolution of refused or rejected applications, despite the well-known maxim ‘justice delayed is justice denied’.</p>

## Questions to the Home Office on 'Settled Status'

### 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
		administrative review and the other 10 were instead granted settled status. Of these 10, nine of the applicants had originally accepted a grant of pre-settled status when making their application and then provided additional evidence of their eligibility for settled status with their application for administrative review.”	BETA2REPORT gives some details on the administrative reviews received so far 11 processed and 13 pending. There is no detail on a timeframe for the ‘pending’ cases.
3.7	Timeline exceeded	Will the Home Office have a compensation scheme for Home Office delays over the time limit, both in applications and returning ID evidence?	The Home Office has set no time limits or compensation schemes for delays. It appears to discount all previous evidence of shortcoming and errors in their department, from the 10% error rate found by the independent Chief Inspector of Immigration and the Windrush scandal, by indicating that any new scheme will function perfectly and will be ‘straightforward’ or even be ‘particularly straightforward’ (this word appears 7 times in the SOI).
3.8	Use of digital app – biometric chip	Given that ‘EU Exit: ID Document Check’ App requires access to the biometric chip, how will the App work for young children who are not issued with biometric passports, or applicants with older passports without biometric chips?	GOV.UK states that those unable to check their ID using the App will be able to check their ID at the current 13 centres (see question 1.18) – but currently, ID cards are not accepted- or send their ID via post.  There is no information in the SOI about applications from young children. This is particularly worrying as the Home Secretary Sajid Javid indicated orally to a House of Lords Select Committee that children as young as 10 years will be checked for ‘criminality’ and ‘security’. <sup>21</sup>

<sup>21</sup> <http://www.legalvoice.org.uk/british-citizenship-for-young-migrants-and-bad-character-provisions/>

## Questions to the Home Office on 'Settled Status'

### 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
3.9	Use of digital app – technical failure  Many existing software applications fail from time to time when scanning passports (for example flight check in – resulting in the passenger needing to check in in person). What will happen if the settled status App experiences such a technical problem?	<p>A call centre and online forms have been made available to BETA2 applicants, see full details in 3.2 above.</p> <p>BETA2REPORT contains the nature applicants’ contact with the Settlement Resolution Centre: 44% with questions while making an application. There is no further detail on the nature of these calls and emails.</p> <p>BETA2REPORT: “The app worked very well in PB2, with 90% of applicants successfully validating their identity via the app, removing the need for them to submit their identity document to the Home Office for manual verification.”</p> <p>“Whilst the app performed well in PB2 across a wide range of devices, there were users who experienced difficulty when reading their passport chip and we are taking steps to improve the guidance and support available to applicants. Additional help text on using the app has been added to application screens, including more prominent messaging to applicants to call the Settlement Resolution Centre should they encounter technical difficulty. Experienced call handlers have received additional training to support callers through this process. The Home Office is also producing a short video to demonstrate how to use the app.”</p> <p>BETA2REPORT also mentions issues with NFC settings on devices.</p>	<p>The previous BETA reports acknowledge that the App did not work in all cases (e.g. 10% did not successfully validate their identity via the app in BETA2). If the App experienced a technical problem (such as related to NFC settings), the applicant sent their passport and, according to the report, this was checked and sent back within 24 hours.</p>
3.10	Rejection due to absence since PR or ILR  BETA1 p.32: Where an applicant has declared that they have a document right of PR, and that they have not been absent from the UK for a period of more than 5 consecutive years, “but it is identified during the caseworking process that this is not the case, the applicant is not eligible for ILR	<p>For a): Similar guidance in BETA3: “An EU citizen will be eligible for ILR under the scheme, as a relevant EU citizen under condition 2 in rule EU11, where there is valid evidence of their indefinite leave to enter or remain in the UK. This means either: • a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or</p>	<p>More detail is needed on the checks performed on the ‘information available’ from Home Office records in certain cases. As the fee has been scrapped, the application cannot be rejected on the basis on the non-payment of the required fee.</p>

# Questions to the Home Office on 'Settled Status'



## 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
	<p>under this condition. If the applicant had relied on their PR documentation as the basis for a fee exemption does not apply and the application must be rejected as invalid on the grounds of non-payment of the required fee.”</p> <p>Similarly, BETA1 p. 35: “If the applicant had relied on their ILE or ILR status as the basis for a fee exemption, then, as the fee exemption does not apply, the application must be rejected as invalid on the grounds of non-payment of the required fee.”</p> <p>a) BETA1 also states that the check for no more than 5 years absence is through a self-declaration. Therefore, what checks will the caseworker be performing such that they would conclude that the absence is incorrect?</p> <p>b) SOI 1.15/5.15 also state that the Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. If an</p>	<p>invalidated • you are otherwise satisfied from the information available to you (including from Home Office records) that the applicant has indefinite leave to enter or remain in the UK, and this status both: o has not lapsed through absence from the UK for a period of more than 2 consecutive years o has not been revoked or invalidated.”</p> <p>No detail on b), although it should be mentioned that since the publication of BETA3, the fee has been scrapped. Thus, the application cannot be rejected on the basis of non-payment of the fee.</p>	

## Questions to the Home Office on 'Settled Status'



### 3 - Details of Application Process

	the3million Question	Home Office Reply	the3million comment
	<p>applicant has made a mistake with their absence calculation however, it appears that “their application must be rejected as invalid on the grounds of non-payment of the required fee”. Why is the applicant rejected rather than given the opportunity to pay the required fee?</p>		
3.11	<p>Compatible app devices</p> <p>The PB2 report mentions that over 500 different types of android device from 52 different device manufacturers were successfully used by applicants. Would the Home Office consider publishing the list of these android device types and manufacturers, as this simple list would be of great help to applicants in preparing for their application.</p>		

## Questions to the Home Office on 'Settled Status'



### 4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

#### 4 Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

	the3million Question	Home Office Reply	the3million comment
4.1	Pre-WA voluntary scheme legal basis	What will be the legal basis for a scheme which is based on a pre-Withdrawal Agreement that has not yet been fully ratified?	<p>No written response has been provided to this question even though it was submitted to the Home Office, DExEU and other government departments some considerable time ago.</p> <p>Apart from the Draft Withdrawal Agreement, there is the Appendix EU Immigration Rules (“Appendix EU”) containing settled status rules. The UK Government has communicated the intention to preserve the settlement scheme regardless of Brexit outcome, however, more detail is needed on this.</p> <p>Appendix EU transposes some citizens’ rights provisions under the draft WA in UK law, but some groups remain uncovered, such as: Teixeira/Ibrahim family members, Chen carers, frontier workers.</p>

## Questions to the Home Office on 'Settled Status'

### 4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

	the3million Question	Home Office Reply	the3million comment	
4.2	Pre-WA voluntary scheme status	<p>If a voluntary scheme becomes active before the Withdrawal Agreement is fully ratified, what will be the status acquired under such a voluntary scheme?</p>	<p><a href="https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm">https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm</a> section i) states:</p> <p>“Successful applicants will be granted indefinite leave to remain (ILR) with the same rights and access to benefits, education and healthcare as those who have acquired it under current UK Immigration Rules, except insofar as the agreement makes special arrangements.”</p>	How will this ILR be translated into a status under the Withdrawal Agreement?
4.3	Pre-WA voluntary scheme failed application	<p>What are the consequences of a failed application under such a pre-WA voluntary scheme?</p>	<p>SOI 5.18: “Where a valid application made is refused under the scheme, we will provide for the right to request an administrative review of the decision. A person refused status under the scheme before 31 December 2020 may also make a further application under the scheme at any point before 30 June 2021.”</p>	The SOI, whilst confirming that a person can re-apply, does not set out clearly the consequences of those who face deportation or removal and how they can exercise their rights in this context.
4.4	Pre-WA voluntary scheme diverging status	<p>What will happen if there is a divergence between the status acquired pre-WA ratification and that acquired post-WA ratification?</p> <p>If an applicant makes a pre-WA voluntary application, how will this be reconciled with the post-WA status?</p>		This scenario is not covered in the SOI.

## Questions to the Home Office on 'Settled Status'

### 4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

	the3million Question	Home Office Reply	the3million comment
4.5	Pre-WA voluntary scheme vs EU status	SOI 5.21 "Consistent with the draft text of the Withdrawal Agreement, the draft Immigration Rules for the scheme confirm that, where a person granted status under it also has a right to reside here under the EEA Regulations, their status under the scheme does not have effect to their detriment in so far as it is incompatible with that right."	
4.6	Legality of pre-WA voluntary scheme	So far, there have been two BETA trials, and currently the settlement scheme is in public test phase. The applicants who applied voluntarily get a 'real status' pre-WA. Part of the WA provisions (but not all) are in Appendix EU Immigration Rules.	According to section 9 of the European Union (Withdrawal) Act 2018, implementation of the Withdrawal Agreement (WA) via secondary legislation is only possible after the adoption of the Withdrawal Agreement and Implementation Bill. It is hard to see how the proposed Settlement Scheme is not an implementation of the WA. It is therefore questionable that the introduction of the Settlement Scheme via Immigration Rules complies with the EU Withdrawal Act. Furthermore, since the scheme pre- and post- March 2019 appear to be a single scheme, we would argue that the commencement of the scheme before March 2019 is not legally possible.

## Questions to the Home Office on 'Settled Status'

### 4 - Pre-Withdrawal Agreement voluntary application scheme (before 29 Mar 2019)

	the3million Question	Home Office Reply	the3million comment
4.7	<p>Right of appeal during pre-WA voluntary scheme</p> <p>SOI 5.19 states that a statutory right of appeal will be established from 30 March 2019.</p> <p>Why will there not be a right of appeal for those applying under the pre-WA voluntary scheme?</p>	<p><a href="https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm">https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm</a> states “Any applicant refused status under the scheme will still be able to assert their free movement rights and will retain their right of appeal against any restriction of those rights under the Immigration (EEA) Regulations 2016 before and during the implementation period.”</p> <p>BETA2REPORT contains detail on the 11 processed and 13 pending administrative reviews submitted so far by applicants who received pre-settled status when they applied for settled status. No applicants so far were refused status – all processed cases were either given pre-settled or settled status.</p>	<p>In BETA 2, applicants could apply for an administrative review. Even though no processed case was rejected during these trials, if an applicant was facing deportation or removal they would be able to use statutory rights of appeal under EEA legislation. In all other cases, they will have no choice but to apply again for another fee.</p>

## Questions to the Home Office on 'Settled Status'

### 5 - Transition Period - Withdrawal Agreement ratified (30 March 2019 – 31 Dec 2020)

#### 5 Transition Period - Withdrawal Agreement ratified (30 March 2019 – 31 Dec 2020)

	the3million Question	Home Office Reply	the3million comment
5.1 Transition application rejected	If an application during the transition period is rejected on grounds of fraud, will measures then be taken against the applicant on grounds of public policy or public security, or will the applicant be protected by Article 17 of the Withdrawal Agreement until the end of the transition period?	<p>SOI EU.16 states that applicants will be refused (amongst others) where “whether or not to the applicant’s knowledge, false, or misleading information, representations or documents have been submitted”.</p> <p>BETA1 repeats the phrase “whether or not to the applicant’s knowledge”</p> <p>SUIT includes detail on how to determine if there are grounds for refusal under EU16 but does not specify if further measures against the applicant will be taken.</p> <p>BETA3: “EU16(a): in relation to the application and whether or not to the applicant’s knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application), and the information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to remain or limited leave to remain under the scheme.”</p>	<p>There is lack of detail on the rules relating to fraud allegations.</p> <p>The EU and UK have not agreed this test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.</p>

## Questions to the Home Office on 'Settled Status'



### 5 - Transition Period - Withdrawal Agreement ratified (30 March 2019 – 31 Dec 2020)

	the3million Question	Home Office Reply	the3million comment	
5.2	Transition period re-application	<p>If the applicant is protected by Art. 17 of the Withdrawal Agreement until the end of the transition period, will they be able to make a fresh application in every case of refusal, even if accused of fraud?</p>	<p>SOI 5.18: “A valid application for status under the EU Settlement Scheme will only be refused under the Immigration Rules for the scheme on the basis of criteria which reflect the Withdrawal Agreement or the more favourable UK approach. Where a valid application made is refused under the scheme, we will provide for the right to request an administrative review of the decision. A person refused status under the scheme before 31 December 2020 may also make a further application under the scheme at any point before 30 June 2021.”</p> <p>SOI EU.16 states that applicants will be refused (amongst others) where “whether or not to the applicant’s knowledge, false, or misleading information, representations or documents have been submitted”.</p>	<p>There is a contradiction between SOI 5.18, and SOI EU.16.</p> <p>The EU and UK have not agreed this EU.16 suitability test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.</p> <p>It is unclear whether someone would be able to reapply if initial refusal was on the basis of fraud. There does not seem to be a clearly stated exemption for a specific type of refusal. However, SUI states “There is no right to apply for an administrative review of a decision made to refuse an application under Appendix EU on suitability grounds as set out in rule EU15 or EU16.” More details are needed on this question.</p>
5.3	Transition period discrimination	<p>How will the government ensure that people entitled to settled status, but not yet in possession of evidence of settled status, will not be discriminated against by landlords, employers, banks, healthcare providers or other agencies?</p>	<p>The full EU acquis including freedom of movement holds during the transition period, so landlords, employers etc. should continue to accept EU passports as sufficient evidence.</p>	

# Questions to the Home Office on 'Settled Status'



## 6 - Grace Period for Settled Status Applications (Jan – Jun 2021)

### 6 Grace Period for Settled Status Applications (Jan – Jun 2021)

	the3million Question	Home Office Reply	the3million comment
6.1 Grace Period discrimination	<p>a) During the 6-month grace period after the end of the transition period, how will the government ensure that people entitled to settled status, but not yet in possession of evidence of settled status, will not be discriminated against by landlords, employers, banks, healthcare providers or other agencies?</p> <p>b) If there is any extension of this grace period, how will EU citizens be similarly protected? Will such an extension be published widely to service providers including landlords, universities, schools, DVLA and many others to ensure there is no discrimination?</p>	<p>The UK Government has said that employers will have a transition period before being forced to check EU citizens' status, even in a no-deal Brexit. More detail is needed in how would employers be able to distinguish between the two categories of EU citizens, who arrived before and after the cut off date.</p>	<p>This situation is not addressed. During this grace period, landlords, employers etc. are potentially expected to distinguish between EU citizens entitled to settled status and those not entitled to settled status.</p> <p>Even if landlords, employers etc. are not expected to distinguish between these two groups of EU citizens (requiring a temporary suspension of the Hostile Environment), the government is unlikely to go beyond warning landlords etc. in information materials that discrimination against EU citizens is unlawful.</p>

## Questions to the Home Office on 'Settled Status'



### 6 - Grace Period for Settled Status Applications (Jan – Jun 2021)

	the3million Question	Home Office Reply	the3million comment
6.2 Late Applicants	<p>Will an applicant who applies after the end of the grace period be considered to have committed an immigration offence?</p> <p>The Withdrawal Agreement talks of documents 'evidencing the status' rather than 'conferring status', implying that a person should not be considered an overstayer if they acquired the right of permanent residence in the past.</p>	<p>SOI 1.12: “the deadline for applications to the scheme by those resident here by the end of 2020 will be 30 June 2021.”</p> <p>1.19. “There will be plenty of time – until 30 June 2021, six months after the implementation period ends on 31 December 2020 – for all those resident here by 31 December 2020 to apply for status under the EU Settlement Scheme, and they will remain protected by the Withdrawal Agreement pending the outcome of such an application made by 30 June 2021. Close family members joining an EU citizen here after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021). We have agreed with the EU that, where someone misses the deadline for their application for a good reason, they will be given a reasonable further period in which to apply”</p>	<p>No response is set out in the SOI.</p> <p>The Home Office stated in a recent user group meeting that it is making this issue ‘dependent on the future relationship’ with the EU.</p> <p>In other words, it is using EU citizens as bargaining chips rather than offering unilateral assurances that they will not be criminalised if applying late for ANY reason, or if they do not apply.</p> <p>This raises public policy issues as this will potentially create hundreds of thousands of illegal overstayers and a Windrush type situation.</p>

# Questions to the Home Office on 'Settled Status'



## 7 - Temporary / Settled status and Citizenship

### 7 Temporary / Settled status and Citizenship

	the3million Question	Home Office Reply	the3million comment
7.1 Pre-WA voluntary scheme citizenship	Would a status acquired under a pre-WA voluntary scheme entitle the person to apply for citizenship?	<a href="https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm">https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm</a> section i) states that the status acquired under a pre-WA voluntary scheme is Indefinite Leave to Remain under UK Immigration Rules.	We assume that since this status is ILR, the person will be entitled to apply for citizenship.  However, the introduction of the Settlement Scheme via secondary legislation prior to the Withdrawal Agreement and Implementation Bill is likely to be in breach of section 9 of the European Union (Withdrawal) Act 2018.  Therefore, we are concerned about the legality of a status acquired under a pre-WA voluntary scheme.

# Questions to the Home Office on 'Settled Status'



## 7 - Temporary / Settled status and Citizenship

	the3million Question	Home Office Reply	the3million comment
7.2	British citizenship conditions	<p>Can citizens who have obtained settled status apply for British citizenships on the same conditions as applicable to those with Permanent Residence now?</p> <p>SOI 7.7: “Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for British citizenship if they wish and otherwise meet the requirements for this:</p> <ul style="list-style-type: none"> <li>• Immediately, if they are the spouse or civil partner of a British citizen (and they have been lawfully resident here for at least three years), or if they were granted indefinite leave to remain in another capacity more than 12 months previously (and this has not lapsed or been revoked or invalidated); or</li> <li>• 12 months after the date on which they acquired the right of permanent residence under the Free Movement Directive, as evidenced by a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations; or</li> <li>• Otherwise, 12 months after the date on which they were granted indefinite leave to remain under the scheme.”</li> </ul>	There is no reason to assume that this will change.
7.3	British citizenship timing	<p>Will EU citizens who obtain settled status after 6 years of UK residence be able to apply for citizenship directly thereafter or will they have to wait for a further year?</p> <p>SOI 7.7: “12 months after the date on which they acquired the right of permanent residence under the Free Movement Directive, as evidenced by a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations.”</p>	<p>They will have to wait for a further year.</p> <p>User groups have confirmed that settled status will not currently be backdated.</p>

## Questions to the Home Office on 'Settled Status'

### 7 - Temporary / Settled status and Citizenship

	the3million Question	Home Office Reply	the3million comment	
7.4	British citizenship married / civil partners	<p>Will EU citizens who are married to, or the civil partner of, a British citizen be able to apply for citizenship directly after obtaining settled status or will they have to wait for a further year?</p>	<p>SOI 7.7: “Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for British citizenship if they wish and otherwise meet the requirements for this:</p> <ul style="list-style-type: none"> <li>• Immediately, if they are the spouse or civil partner of a British citizen (and they have been lawfully resident here for at least three years), or if they were granted indefinite leave to remain in another capacity more than 12 months previously (and this has not lapsed or been revoked or invalidated)”</li> </ul>	<p>They will be able to apply immediately after obtaining settled status.</p>
7.5	EU children entitled to British citizenship	<p>There will be instances where EU citizen children living in the UK cannot access paperwork (of parents) to support an application confirming their right to citizenship.</p> <p>What measures will be put in place to deal with such cases?</p>	<p>This is not answered by the SOI.</p>	
7.6	British citizenship – PR	<p>Will a Permanent Residence document become invalid as a means for obtaining Citizenship? If so, from what date will it become invalid?</p>		

## Questions to the Home Office on 'Settled Status'



### 8 - Support, Legal Assistance and Legal Aid

#### 8 Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.1 Available assistance	<p>What form and level of support contact will applicants for settled status have access to?</p> <p>Currently, when applying for Permanent Residence, it is not possible to speak to anyone (caseworker or general help) about an individual application.</p>	<p>SOI Foreword / 1.15 / 5.15: “We will work with applicants to help them avoid any errors or omissions, and we will work with longer-term residents without official documentation to establish their eligibility under the scheme from the material they have.”</p> <p>Support has been made available for BETA2 by:</p> <ul style="list-style-type: none"> <li>– Making 13 locations available for biometric ID scans – replaces self-identification via app</li> <li>– Making a helpline and online form available (EU Settlement Scheme Resolution Centre, 0300 123 7379 (inside the UK) or +44 (0) 203 080 0010 (outside the UK) and online submissions form)</li> <li>– An assisted digital service ( We Are Digital, 03333 445675 (Mon-Fri 9am-5pm))</li> </ul> <p>BETA 3: “The SRC has been set up to receive calls and emails to support applicants through the EU Settlement Scheme application process. The team of over 200 staff work across shift patterns of 8am – 8pm on Monday to Friday and 9:30am – 4:30pm at weekends.”</p> <p>The Home Office has said it will look to increase the number of ID check services to 50 when the scheme fully opens on 30 March 2019.</p>	<p>There is no confirmation that resources available for BETA2 will be rolled out when the settlement scheme becomes available on 30/03/19.</p> <p>Some forms of support, such as the phone line and email service available through the Settlement Resolution Centre, have been tested in BETA 2 and 3. More detail is needed on the forms of support made available when the scheme fully opens, including a confirmation of all local ID checking services available.</p>

# Questions to the Home Office on 'Settled Status'



## 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.2	Assistance - face to face contact	<p>Will there be any face to face contact available in the local authority, and also as an in-depth European passport return service, offering ID or passport checks together with support with the application process?</p>	<p>SOI 4.9: “The means by which the applicant will be able to provide the required proof of their identity and nationality will include: As part of the digital application process (through a smartphone app which facilitates the reading of the chip in a biometric document), either using a personal device or at a location established to enable the applicant to use the app or be helped to do so;”</p> <p><a href="https://www.gov.uk/government/publications/assisted-digital-uk-visas-and-immigration/assisted-digital-uk-visas-and-immigration">https://www.gov.uk/government/publications/assisted-digital-uk-visas-and-immigration/assisted-digital-uk-visas-and-immigration</a> provides details of the Digital Assist Service.</p> <p>The system is already available to applicants of BETA2 – this service is currently only available over the phone, but GOV.UK website states that face-to-face support will be available at a later date.</p> <p>BETA 3: the Settlement Resolution Centre received both calls and emails to support applicants. “Applicants were able to contact the SRC to enquire about specific elements of the scheme and were able to highlight specific challenges they were facing with the application process, which were directly fed back into the programme team daily. Applicants were supported in the application process, and by identifying key behaviours and challenges, the SRC knowledge base was improved.”</p> <p>BETA2REPORT: “Seven callers who did require assisted digital support, and were offered this over the telephone, preferred to wait until face-to-face support</p>

## Questions to the Home Office on 'Settled Status'

### 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
		is available as part of the next test phase. For the public testing phase from 21 January 2019, face-to-face assisted digital support will initially be available in 50 locations. These will gradually be increased to provide national coverage by 30 March 2019.”	
8.3	Assistance – email / telephone Will there be any telephone or email contact available about an individual application?	<p>SOI 1.14: Our services will also include an assisted digital service for those who need support to make an online application.</p> <p>1.15 Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place.</p> <p>4.6 Failing to submit a valid application may lead to being contacted by the Home Office and given a reasonable opportunity to provide what is needed for the application to be valid and avoid it being rejected as invalid.</p> <p>See 8.1 for details available on BETA2 – there is no confirmation same resources will be available for main scheme</p> <p>BETA 3: Settlement Resolution Centre (calls and emails), in addition to the Assisted Digital Service</p>	There will be some telephone and online assistance but there is little detail in the latest BETA2REPORT about the scope and the nature of requests, other than applicants either calling to ask about making an application or with “questions whilst making an application”.

## Questions to the Home Office on 'Settled Status'



### 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.4	Individual application help charges	Will there be charges for any telephone or email contact about an individual application?	Some information now available on phone numbers available for BETA2 – standard 03 phone numbers that have set costs.
			So far details only provided for assistance linked to BETA 2 –standard charges for telephone helplines apply. There is no confirmation on whether this will also be the case when main scheme opens in 30 <sup>th</sup> March 2019.
8.5	Helpline / review staffing	What will be the staffing level for the telephone helpline and the administrative review service?	BETA2REPORT: “The SRC has been set up to receive calls and emails to support applicants through the EU Settlement Scheme application process. The team of over 200 staff work across shift patterns of 8am – 8pm on Monday to Friday and 9:30am – 4:30pm at weekends.”  No details on administrative review service.
			Some details provided in BETA2REPORT on the Settlement Resolution Centre (phone line and email), but not on the other services.
8.6	Helpline / review staff training	How much training will telephone helpline and administrative review service staff receive?	
			No details provided.
8.7	Helpline / review charges	Will there be charges for the use of the helpline and administrative review process?	<a href="https://www.gov.uk/call-charges">https://www.gov.uk/call-charges</a> : The phone line is a 03 number, thus the charges are standard for UK-wide numbers. Cost from landlines per minute: up to 9p. Cost from mobiles per minute: 3p to 55p.
			There have been some verbal indications in Home Office user groups that charges may be applied for use of the helpline. This would present applicants with an additional financial burden and may also be in breach of the terms of the Withdrawal Agreement (Aft 17 Applications should be free of charge or in line with similar national documents).  The helpline is a standard UK 03 number with the standard charges.

## Questions to the Home Office on 'Settled Status'

### 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
8.8	<p>Legal advice vulnerable groups</p> <p>Will the government provide access and funding for independent legal advice and assistance to vulnerable groups? In particular the following example groups:</p> <ul style="list-style-type: none"> <li>- elderly</li> <li>- persons with a long-term illness</li> <li>- computer illiterate</li> <li>- persons without access to IT facilities</li> <li>- persons with disabilities</li> <li>- non-English speakers</li> <li>- children in care</li> <li>- young people just out of care</li> <li>- persons with literacy issues</li> </ul>	<p>The Home Office have set up grant funding of £9M to support EU citizens who may need additional help when applying for immigration status under the settlement scheme. This money will be awarded to VCS organisations who can deliver practical assistance to “vulnerable or at-risk EU citizens and their family members who must all complete an EUSS application”</p> <p>This funding seems to be more aimed at engaging with at-risk citizens and enabling them to apply for immigration status than to provide legal advice so it may prove lacking.</p>	<p>For a long time here was a refusal to recognise the potential need for advice including legal assistance in respect of vulnerable groups in the settled status scheme, despite these issues having been raised repeatedly in user group meetings with the Home Office, and in writing in this questions document.</p> <p>Recently, the Home Office decided to set up grant funding destined to enable VCS organisations to provide support. However, the funding is very limited to enable the VCSs activities to have real impact and there is also a limitation with regards to the timeframe – funding only announced at the end of October 2018, full information published on 12<sup>th</sup> Nov 2018, closing date for applications 23<sup>th</sup> Nov 2018.</p>
8.9	<p>Legal advice funding</p> <p>If so, how will the government ensure that these services will be adequately funded?</p>		See above.
8.10	<p>Legal advice for rejected applications</p> <p>Will the government provide access and funding for independent legal advice and assistance to anyone whose application is refused or rejected?</p>		Despite verbal requests in user groups and this questions document, no offer of independent legal advice and assistance has been made.
8.11	<p>Assistance for digital application</p> <p>The government has stated that the Home Office will help applicants prove their eligibility and avoid any errors or omissions in the applications. How will this help be provided in practice with a digital application?</p>	SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary	Although there is some talk of help in the SOI, there is no clarity on where this would involve the caseworker contacting the applicant, and where the assistance from a telephone helpline may be

# Questions to the Home Office on 'Settled Status'



## 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
		<p>evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. User friendly guidance will be available online to guide applicants through each stage of the application process.</p> <p>5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.</p> <p>4.9 (Evidence of ID and nationality) By a secure postal route in the UK, by which we will aim to return the document to them as soon as we can, to minimise delays if other aspects of the application need further consideration.</p> <p>BETA2 and SUIT include references to case workers contacting applicants when further evidence/clarification is needed. For instance, SUIT states “Before conducting an overseas criminal record check, it may be necessary to contact the applicant to obtain further information about their overseas conviction. An applicant may be contacted by</p>	<p>required (for which there may be a charge) .</p> <p>There is no indication that there will be any face to face assistance.</p> <p>It is difficult to see how this would work in case of postal submissions.</p> <p>Some clarity has been provided for BETA2, but there is no confirmation that this would be equally applicable for main scheme from 30<sup>th</sup> March 2019.</p> <p>In BETA3, caseworkers are instructed to allow 14 calendar days after asking for clarification or further documentation, unless there is “good reason” to provide longer, after consulting the senior caseworker.</p>

## Questions to the Home Office on 'Settled Status'

### 8 - Support, Legal Assistance and Legal Aid

	the3million Question	Home Office Reply	the3million comment
		<p>telephone or in writing or invited to an interview to provide additional information in person.”</p> <p>BETA3: ““A reasonable opportunity in which to provide more information or evidence’ means, subject to the next paragraph, 14 calendar days, from the date of the attempted contact (or the date on which you discussed the matter with the applicant), in which to provide the information or evidence specified in your request (or which you discussed with the applicant). Where the attempted contact is by letter sent by first-class post, you may assume delivery on the second business day after the date of postage. You may provide longer than 14 calendar days where, following consultation with your senior caseworker, you are satisfied that there is good reason to do so in the particular circumstances of the case.”</p>	
8.12	<p>Categories requiring legal advice</p> <p>How will the government make specific provision for categories of EU citizens who would need legal advice before and after application, including:</p> <ul style="list-style-type: none"> <li>- those who have historic criminal convictions?</li> <li>- those without documentation?</li> <li>- those who fail 'security' checks?</li> </ul>		In all three cases, there has been no clear provision given in the SOI.
8.13	<p>Legal aid eligibility</p> <p>Please set out precisely for which type of legal issue legal aid will not be available.</p>		No answer provided in the SOI or in the HO FAQ.

# Questions to the Home Office on 'Settled Status'



## 9 - Loss of Settled Status

### 9 Loss of Settled Status

	the3million Question	Home Office Reply	the3million comment
9.1 Loss of status due to absence	<p>How will the Home Office determine that settled status is lost due to absence of longer than 5 years:</p> <ul style="list-style-type: none"> <li>a) In the case of EU citizens and their family members?</li> <li>b) in the case of dual nationals who fall under the terms of the Withdrawal Agreement?</li> </ul>		<p>a) no information provided as to the mechanism for determining absence or the loss of settled status</p> <p>b) No information provided in respect of dual nationals</p>
9.2 Loss of status due to convictions	<p>Will the UK seek to combine future convictions with historic convictions to determine whether to revoke settled status, exclude or expel EU citizens?</p>		<p>No written answer has been provided.</p>

# Questions to the Home Office on 'Settled Status'



## 9 - Loss of Settled Status

	the3million Question	Home Office Reply	the3million comment
9.3	<p>Definition of allowable absence</p> <p>How is the 5 years' absence defined?</p> <p>For example, if someone with settled status leaves the UK for 3 years, comes back, then leaves again for another 3 years?</p> <p>Is the 5-year absence period a once-in-a lifetime permissible absence or can it be repeated? If the latter, how long would one need to be back in the UK before leaving again?</p> <p>Will this be clearly defined? Or will it depend on assessing 'proportionality' in court proceedings - e.g. how long have you lived in the UK prior to your repeated absence, etc.?</p>	<p>SOI 4.6: "has not lapsed [...] through absence from the UK for a period of ....more than five consecutive years (as set out in the draft Withdrawal Agreement);"</p> <p>7.4 for those already holding settled status: "Holders of settled status (indefinite leave to remain) under the scheme will be able to be absent from the UK for any reason for a period of five consecutive years before their status lapses and they cannot use it to return to the UK."</p>	<p>The SOI indicates that a person who has already acquired the right to claim settled status (generally through continuous residence for 5 years, see Table at SOI 3.4) can have been absent from the UK for less than 5 years retrospectively without losing status.</p> <p>As this is also a right confirmed in the WA this is unlikely to change, at least as long the Withdrawal Agreement is governed by supervision of the CJEU and supervised by a properly constituted Independent Monitoring Authority.</p>
9.4	<p>Pre-settled status and allowable absence</p> <p>How will the Home Office make clear to holders of pre-settled status the conditions under which those citizens permanently lose their right to convert to settled status?</p>	<p>Holders of pre-settled status will lose their right to convert their status to settled status if they inadvertently break their continuous residence (see question) 1.31.</p>	<p>This will potentially create a large problem over the next 5 years when pre-settled status expires and some citizens find themselves both ineligible for converting to settled status, and unable to re-apply for pre-settled status.</p> <p>This is especially acute in the light of many citizens being granted pre-settled status even though they have been resident in the UK for more than 5 years</p>

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

### 10 Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.1 Home Office capacity	<p>It has been estimated that in order to register all EU citizens currently living in the UK, the Home Office will need to process about 6,000 applications per day. This is only an average. As many applicants may wait to first see how the scheme works out for others, there will be fluctuation and the daily rate may be significantly more.</p> <p>Given the high number of applications and identified concerns for the capacity of the Home Office to process over 3 million applications, and given that the Withdrawal Agreement only commits the UK Government to immediately issuing Certificates of Application, will the Home Office commit to a time frame in which to make decisions on applications?</p>	<p>Foreword to SOI: “processing applications on the scale required is feasible, providing we get the scheme design and the communications right.”</p> <p>“I do not underestimate the scale of the challenge, but the Home Office already issues around seven million passports and three million visas each year and so processing applications on the scale required is not new to us.”</p>	<p>There is no written commitment in the SOI as to the timeframe for resolving applications (despite constant requests to the Home Office through user groups to do so).</p> <p>It must also be pointed out that the EU settlement scheme will be on top of the existing seven million passports and three million visas – both of which have suffered periods of delay in the past.</p> <p>BETA1REPORT states that “the average time taken on all decisions was just under 9 calendar days, with the fastest application decision being made within 3 days”. Even if the system was still being tested, the fact that 1,053 applications were received over 1 month, where all applicants had face to face support, does not present a positive picture in terms of realistically short timescales to process a high volume of applications.</p> <p>BETA2REPORT: 69% cases processed in 3 working days, 81% within 7 days. No detail on the rest of cases which required further evidence or incomplete on 14 January 2019.</p>

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.2	Home Office staff training	What level of training will the new staff be given to process applications to a high standard, and to what level of responsibility?	This has not been answered, which creates a lack of transparency in the process that is not reassuring.
10.3	Home Office hubs	How many Home Office hubs in the whole of the UK will be used to process the applications?	No details provided.
10.4	Home Office – difficult to reach groups	Has the government identified groups of EU citizens who may be more difficult to reach?	Although evidence has been given on several occasions to the Home Office (through the user group that meets once per month) that many EU citizens are living in areas or circumstances that make them difficult to reach, this has to date not led to any government proposals on how to identify and reach out to these EU citizens and their family members. There is no mention of difficult to reach groups in the SOI.
10.5	Identifying vulnerable groups	How will the government identify vulnerable groups of citizens to inform them of their need to apply for settled status?  SOI 1.16: “The Home Office is designing the EU Settlement Scheme with input from [...] our new group which particularly focuses on the needs of vulnerable users.”  BETA2REPORT contains some details about the experience with the ‘vulnerability cohort’, including that an alternative paper application would benefit some (made available from 30 March 2019) and that others could not apply because they did not have a passport needed for this trial.	No proposals to date. The Home Office only started recently to consult vulnerable groups for 1-2 hours per month, but has not presented these groups with proposals on how to identify vulnerable citizens, or how to advise them appropriately.
10.6	Information translations	Will information about the application scheme, including an explanation about the difference	1.17 SOI : “We will also use feedback to inform what we publish online, including the scheme  There is a promise to cover “all community languages””

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
	between Permanent Residence and settled status, be translated into all community languages and be available in other forms of support (e.g. Braille, audio etc.)?	application guidance which we plan to publish in English and also in the other 23 official languages of the EU."	The information is unlikely to explain the difference between PR and settled status.  No information regarding Braille and other forms of support.
10.7	Information reach Where will the information about the registration/application scheme be placed to ensure maximum reach?	SOI 1.20: "There will be more information shortly on when the EU Settlement Scheme will be open and how to apply... The scheme will be open fully by 30 March 2019."	There is online information available on GOV.UK where specific guidelines about the different pilot schemes has been published, together with supporting information such as regarding the ID verification app or the digital ID verification service. There is also general information on the scheme available.
10.8	Certificate of having made application Article 17(1)(b) of the draft Withdrawal Agreement states that a certificate of application for the residence status shall be issued 'immediately'.  What form will this certificate take?	SOI 5.17: "The draft text of the Withdrawal Agreement makes provision for an applicant for residence status to be issued with a certificate of application to confirm they have made an application which is under consideration by the Home Office. We will provide further information in due course about arrangements for this under the scheme."  BETA2 states "A certificate of application will be issued to the applicant on receipt of a valid application by them under the scheme"	No mention of 'immediately', and difficult to see how this will be possible in the case of applications by post.  However, BETA2 states that a certificate of application will be issued the moment a valid (made in the UK, fee paid, and required proof of identity, nationality and biometric information provided) is received. This seems to indicate a similar process could be followed for digital applications in the main scheme – but still no information on postal applications. Same for BETA 3 (applicants will still pay the fee, but this will be refunded for all who applied so far in the near future). The certificate of application seems to be sent for those applying online via email upon receipt of the application.

## Questions to the Home Office on 'Settled Status'



### 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.9	Legal certificate - reference Withdrawal Agreement	Will the proof of settled status include a statement that it has been issued in accordance with the Withdrawal Agreement?	No physical document will be given. On the applicants' end, there is a mention that the status has been granted under the "EU Settlement Scheme", but it is not clear whether this is further linked to the WA in any way.

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.10 Physical proof	Will applicants be issued with a physical copy of their certified settled status?	SOI 7.2: Evidence of this status will be given to EU citizens in <b>digital form</b> ; no physical document will be issued to them.	The refusal of the government to issue physical proof of status, coupled with the hostile environment, is deeply concerning.  In addition, there are concerns about Home Office record-keeping of similar status holders in the past. The consequences of loss of data on settled status would be potentially very serious in light of individuals not having a physical document.
		SOI 7.3: As well as this digital means of evidencing their status, non-EU citizen family members in the UK granted status under the EU Settlement Scheme will also be issued with a biometric residence document, where they do not already hold a biometric residence card issued under the EEA Regulations. This will provide them with a convenient way of evidencing their status to those who may need to see confirmation of it, such as an employer, landlord or service provider.	Non-EU citizen family members will be given physical proof, in acknowledgement the Hostile Environment.

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.11	Physical proof – lack of If there is no physical proof of their status, how will applicants be able to prove their status and therefore their entitlements?	SOI 7.2: 'evidence of status' of EU citizens 'in digital form' and of 'control who they wish to share it with'.	There is no detail as to how this 'control' would be carried out. EU citizens access their status online, after inputting some details (such as ID number and date of birth they applied with), then receiving a verification code via phone or email. A similar structure of the process will be used by employers and landlords to check the right to work, rent, etc. There are concerns this could lead to more (indirect) discrimination.
10.12	Physical proof – access to UK services The Home Office have stated that landlords and other agencies will be able to access an electronic register using a reference number that the person will give them.  If no physical proof exists of an applicant's status, then:  a) how will the reliability of such a register be ensured? b) will there be any costs related to consulting the register and can such costs be passed on to the applicant? c) how will non-IT literate landlords or other agencies be able to consult such a register? d) how will an IT failure affect such an applicant?	The Home Office has recently published some general guidelines for employers on settled status ( <a href="https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit/eu-settlement-scheme-briefing-pack-communicating-the-facts-to-your-employees">https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit/eu-settlement-scheme-briefing-pack-communicating-the-facts-to-your-employees</a> ).  Based on the BETA trials, it seems that employers and others will be send a code (via email), which will be valid for a limited period of time, to check the status.  The letter confirming settled status for applicants in BETA2 states: "Checks are already carried out by employers or landlords when you wish to work or rent in the UK but this online service will allow the checking of your new settled status. This information is protected by Data Protection Legislation and employers and landlords will only be able to check your status if	Through BETA 1 and 2, there is more understanding about how this process of checking the EU citizens' status works in practice online, however there are limitations to that (particularly since EU citizens are responsible to amend their details when their ID is renewed for example). There is also little detail on how this system will work for non-IT literate landlords or detail on the reliability of this system and the likelihood of IT failure.  The Government's 'Digital Service Standard' states that a plan must be made for a digital service being offline ( <a href="https://www.gov.uk/service-manual/service-standard/make-a-plan-for-being-offline">https://www.gov.uk/service-manual/service-standard/make-a-plan-for-being-offline</a> ).

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
		<p>you have given them permission to do so, by providing them with the relevant internet link and a unique code. Details of these services and how to access them will be available via your online digital profile.”</p> <p>After accessing one’s settled status online (ID details, date of birth, then verification code), one can click on a link “Prove your right to an employer”. Then, one can choose “Share this with an employer”, input the employer’s email address and then the employer will receive instructions.</p> <p>Employers will use a different service: <a href="https://www.gov.uk/view-right-to-work">https://www.gov.uk/view-right-to-work</a>, input the ‘applicant’s share code’ and then follow further instructions.</p>	<p>How will EU citizens be able to prove their rights at border control, to an employer, to a landlord, at a hospital etc, if at the point of attempting to prove status the service is offline? How will the government ensure these offline periods will not cause further discrimination of EU citizens over citizens with physical proof of their status?</p>

## Questions to the Home Office on 'Settled Status'

### 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.13	Temporary status charge What will be the charge for applying for temporary status, and will there be a further charge when someone with temporary status applies for settled status?	Previously, those with pre-settled status could apply for settled status free of charge after paying the initial settled status fee (£65 adults and £32.50 children). In January 2019, it was announced that the fee will be scrapped for all applicants, regardless of the type of status they apply for.	There will not be a further charge when someone with pre-settled status applies for settled status.  The fee was scrapped for all applicants and those paying under BETA 1, 2 and 3 will be refunded.
10.14	Temporary status – physical proof Will an applicant who has successfully applied for temporary status receive physical proof of their temporary status?		Both settled and pre-settled status only have digital proof.
10.15	Temporary status – validity length How long will the document evidencing temporary status be valid?	SOI 1.18: "We will send a reminder to people to do so before their pre-settled status (five years' limited leave to remain) expires."	It does not appear likely that there will be such a document, however the status will be valid for 5 years. (Hopefully slightly longer than 5 years to allow time to actually apply for settled status once eligible to do so).
10.16	Temporary status – reference Withdrawal Agreement Will the document evidencing temporary status include a statement that it has been issued in accordance with the Withdrawal Agreement?		See 10.9.

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.17	Temporary status – settled status eligibility date	Will the document indicate the date by which the person becomes entitled to apply for settled status?	<p>SOI 1.18: "We will send a reminder to people to do so before their pre-settled status (five years' limited leave to remain) expires."</p> <p>It does not appear likely that there will be such a document, however the status will be valid for 5 years. (Hopefully slightly longer than 5 years to allow time to actually apply for settled status once eligible to do so).</p> <p>Citizens would prefer to have a physical proof containing the date, such a reminder may get lost, especially if EU citizens change their details (such as email address or phone number) and fail to update them on the system on time.</p>
10.18	Temporary status – evidence for settled status	<p>Once a person who is already holder of temporary status achieves the five years of residence, what will be the evidence required to apply for settled status?</p> <p>5.12: Where the non-EU citizen family member is granted five years' pre-settled status (limited leave to remain) under the scheme, they will need to demonstrate, if they later apply for settled status (indefinite leave to remain) under the scheme, that they have been continuously resident in the UK for five years as the family member of that EU citizen (or of another EU citizen continuously resident here by 31 December 2020) or as a family member who has retained the right of residence.</p> <p>SOI 7.5: Holders of pre-settled status (limited leave to remain for five years) under the scheme will need to maintain their continuous residence in the UK (as set out in paragraph 3.4, above) and, where relevant, their family relationship, in order to qualify for settled status, generally after five years here.</p>	<p>It appears that continuous residence needs to be demonstrated on application for settled status. It is also suggested that criminality / security checks will be performed again.</p> <p>This is further validated by BETA2 and SUIT.</p>

# Questions to the Home Office on 'Settled Status'



## 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.19	Temporary status – access to health and benefits	<p>Would a citizen with temporary status qualify for healthcare, housing, and social benefits? What criteria will be applied?</p> <p>SOI 7.5: "In the meantime, as reflected in the Withdrawal Agreement, they [holders of pre-settled status] will continue to have the same entitlements as now to work, study and access public services and benefits, determined according to the same rules as now.</p> <p>With footnote: They will continue to have to provide evidence that they meet the relevant eligibility requirements e.g. in any benefit claim or application for social housing, supported housing or homelessness assistance."</p>	This is the same as current status. It must be noted however that these rules, being Immigration Rules, can change frequently. Assurances are needed.
10.20	Temporary status - discrimination	<p>How will the government ensure that people with temporary status are not discriminated against by landlords, employers, banks, healthcare providers or other agencies?</p>	No details provided.
10.21	Temporary status – criminality checks	<p>Will an application for registration (i.e. those who arrive in the UK during the transition period) be required to answer criminality checks?</p> <p>SOI 1.13 status criminality checks will be conducted against all applicants who apply, including those who arrive during the transition period.</p>	

## Questions to the Home Office on 'Settled Status'



### 10 - Home Office Infrastructure for settled Status

	the3million Question	Home Office Reply	the3million comment
10.22	Loss of physical proof What are the consequences of losing one's physical proof of settled status?		There will not be any physical proof of settled status. The Outcome letters received by applicants in BETA 1 and 2 give details on where and how to access one's status. It must be made clear what the consequences are of losing access to one's digital proof of settled status (e.g. if passport number is the key to accessing the digital status, what happens in case of loss of passport number or renewal of passport and failure to notify the Home Office about these changes?)
10.23	Home Office records of ILR / ILE / PR Can the Home Office confirm how far back their records go for: a) holders of Indefinite Leave to Remain b) holders of Indefinite Leave to Enter c) holders of Permanent Residence		New question since publication of BETA1. No answer given so far.

# Questions to the Home Office on 'Settled Status'



## 11 - Consequences of rejected settled status applications

### 11 Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.1 Errors – Home Office	What measures will be put in place to ensure that if errors are made by the Home Office when assessing applications, this will be addressed swiftly and that applicants receive full support in case of any adverse effect?	SOI 1.15: The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision.  5.15. We will work with applicants to help them avoid any errors or omissions that may impact on the application decision.	Despite the comprehensive evidence of errors made by the Home Office, the SOI does not address the Home Office making any errors. The SOI mentions 7 times how 'straightforward' their application process will be – this is in stark contrast to the promise of further information on the scheme 'in due course' which appears 12 times in the document.  The Home Office is only anticipating that the <i>applicants</i> will make 'errors or omissions'.
11.2 Hostile environment - banks	Banks are under obligation to refuse new accounts or close existing accounts of citizens who are deemed unlawfully present in the UK.  Will a rejection of settled status or temporary status result in their accounts being closed or new accounts being refused?		This obligation by banks is currently suspended, but it is not clear whether this will be resumed. <sup>22</sup>

<sup>22</sup> <https://www.theguardian.com/uk-news/2018/may/17/home-office-suspends-immigration-checks-on-uk-bank-accounts>

## Questions to the Home Office on 'Settled Status'

### 11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.3	<p>Hostile environment – employers</p> <p>The Home Office can inform employers that employees no longer have a right to work in the UK.</p> <p>Will a rejection of settled status or temporary status lead to the Home Office contacting the applicant's employer resulting in the employee losing their job?</p>		No information given. However, if refused, EU citizens can re-apply during a transition, when Freedom of Movement rules will still apply.
11.4	<p>Hostile environment – landlords</p> <p>Will a rejection of settled status or temporary status lead to the Home Office contacting the applicant's landlord to terminate a rental agreement?</p>		No information given. However, if refused, EU citizens can re-apply during a transition, when Freedom of Movement rules will still apply.
11.5	<p>Hostile environment – healthcare</p> <p>Will a rejection of settled status or temporary status have a negative effect on an applicant's access to health and social care?</p>		<p>There is no clear written guarantee, however free movement rights will apply until the end of the transition period (end 2020)</p> <p>No written explanation as to status during rejection/re-application, of if an application is rejected for alleged ID fraud.</p>
11.6	<p>Question moved</p> <p>Question moved to 15.1 Comprehensive sickness insurance</p>		
11.7	<p>Hostile environment – immigration law</p> <p>Will the Home Office consider a landlord, bank, or employer to be in breach of immigration law when they have provided accommodation, accounts or employment to someone whose application for settled status or temporary status has been rejected?</p>		No information given.

## Questions to the Home Office on 'Settled Status'

### 11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.8	Conduct What type of conduct could result in revocation of settled status?		No information given.
11.9	Reasonable grounds for late submissions Article 17(1)(d) of the draft Withdrawal Agreement states that only where there are reasonable grounds will an application submitted after the deadline be permitted.  What are these 'reasonable grounds'?		No information given.
11.10	Late submissions consequences What will be the consequences for a person who does not meet the 'reasonable grounds' test in submitting an application after the deadline?		No written answer has been provided.  However, there has been an oral answer by Home Office stating that the UK will make this dependent on the future relationship with the EU.  This continues to make EU citizens bargaining chips in future trade negotiations. It means that EU citizens potentially face the risk of being criminalised as an illegal overstayer and falling into the hostile environment.
11.11	Deportations of mixed nationality families What will be the consequence for a family where one parent has one nationality, another has a second, and the children have a third? What would be the impact on such a family, and where would they go, if one of its members were deported?		No information given.

## Questions to the Home Office on 'Settled Status'

### 11 - Consequences of rejected settled status applications

	the3million Question	Home Office Reply	the3million comment
11.12 Appeals in-country	Will there be an in-country right of appeal in case of all refusals of applications?	BETA2REPORT details on administrative reviews, but no cases have been refused (the reviews were based on applicants claiming they were eligible for settled status, while they were given pre-settled status).	No information given on appeals if the application is refused.
11.13 Hostile environment during appeals and review	How will those exercising a right of appeal / judicial review be able to navigate the Hostile Environment whilst their litigation is proceeding?		No information given.
11.14 Deportations: young people	Will the Home Office deport young people to their 'country of origin' who did not grow up there and do not speak the language?		No information given. This is especially concerning in light of recent reports of children being denied British Citizenship on the basis of a past police caution. <sup>23</sup>
11.15 Penalties for undeclared crime	What penalties will be faced by those who did not declare a previous conviction because they wrongly thought it was irrelevant or spent, or because they were afraid?		No information given. This could be linked to EU16 and the Home Office considering applicants providing false information 'with or without their knowledge' subject to refusal. No mention of penalties in these documents, thus further detail is needed.
11.16 Reporting requirements	Will a rejection of settled status or temporary status mean that the applicant has to attend regular meetings at an immigration reporting centre?		No information given.

<sup>23</sup> <http://www.legalvoice.org.uk/british-citizenship-for-young-migrants-and-bad-character-provisions/>

## Questions to the Home Office on 'Settled Status'



### 12 - EU Citizens' Rights and Data Protection Legislation

#### 12 EU Citizens' Rights and Data Protection Legislation

	the3million Question	Home Office Reply	the3million comment
12.1 Data Protection – immigration exemption	<p>The UK government wishes to deny people access to their data on the grounds of immigration control, through the proposed exemption set out in Schedule 2 Clause 4 in the Data Protection bill.</p> <p>Considering the above, how will an EU citizen whose application is refused be able to access data held about them in order to argue their case?</p>		No written satisfactory response.
12.2 Data Protection – transparent procedure	<p>Article 17 (1)(e) of the Withdrawal Agreement commits the UK to a 'transparent administrative procedure'. How will citizens be guaranteed a 'transparent' procedure given the proposed data protection exemption?</p>	<p>BETA1 – Six separate sections contain:</p> <p><b>Official – sensitive: start of section</b> The information on this page has been removed as it is restricted for internal Home Office use only.</p> <p><b>Official – sensitive: end of section</b></p> <p>Same applies for BETA2 and SUIT</p> <p>BETA3 – 5 sections of this type.</p>	<p>This text in the guidance does not create any reassurance to EU citizens that the application process is transparent.</p> <p>The data protection exemption is awaiting legal challenge and/or EU Commission infringement proceedings.</p>
12.3 GDPR compliance	<p>What measures will the government put in place to ensure that the settled status application process will be fully compliant with the General Data Protection Regulation (GDPR)?</p>		<p>No written response.</p> <p>The immigration exemption in the Data Protection Bill interferes with the automatic right of access to one's own data.</p>

## Questions to the Home Office on 'Settled Status'

### 12 - EU Citizens' Rights and Data Protection Legislation

	the3million Question	Home Office Reply	the3million comment
12.4 Biometric data	In September 2017, the Home Office confirmed that they would not be collecting fingerprints from EU citizens. It has now become clear that the Settled Status App will read a passport's biometric chip, which includes fingerprint information.	<p>Verbal confirmation in user group meeting that fingerprints would not be collected by the app.</p> <p>SOI 4.10: "A non-EU citizen family member who has not already done so for the purposes of being issued a biometric residence card under the EEA Regulations will need to attend one of our application centres in the UK to enrol their fingerprints"</p> <p>Information on the 'EU Exit: ID document check' app made available on <a href="https://www.gov.uk">GOV.UK</a> for BETA 2 specifies steps for ID verification and they do not include collection of fingerprints.</p>	<p>No written confirmation.</p> <p>Information available for BETA2 confirms no fingerprints are collected via app but further confirmation for the wider scheme is needed in writing.</p>
	<p>a) what data will be read from the chip?</p> <p>b) will this data be stored?</p> <p>c) where will this data be stored?</p> <p>d) how long will this data be retained?</p> <p>e) who will have access to this data?</p> <p>for those who apply without passports, will the government re-confirm that they will not take fingerprints?</p>		<p>a-f) No written response</p>

# Questions to the Home Office on 'Settled Status'



## 12 - EU Citizens' Rights and Data Protection Legislation

	the3million Question	Home Office Reply	the3million comment
12.5 Settled status app – access to phone data	<p>When an applicant wants to install the settled status app on their device, what permissions will they need to agree to in order to enable them to install and use the app?</p> <p>What data, other than the answers to the app's explicit questions, can the app gain from the device?</p> <p>Will the app have access to the location of the device and enable tracking of the mobile device's user?</p>	<p>Before proceeding with scanning the ID, the following text appears on the screen and the applicant needs to click "OK" before proceeding:</p> <p>"Terms and conditions The EU Settlement Scheme terms and conditions [link] covers using the app and completing your application online.</p> <p>Privacy policy The Home Office will use the personal information you provide to decide whether to grant your application. We may also share your information with other public and private sector organisations in the UK and overseas.</p> <p>For more detail, see the Privacy Notice for the Border, Immigration and Citizenship system. This also sets out your rights under the Data Protection Act 2018 and explains how you can access your personal information and complain if you have concerns about how we are using it."</p> <p>Cookies and similar technology The app stores information from your session. Your information is only stored until the app is closed or your session ends. Information is only stored within the app and not anywhere else in the phone. The only information the app stores when it closes is that it's been used on the phone before."<sup>24</sup></p>	<p>This kind of information is not detailed in the main document sources used for these questions, but the Terms and Conditions are available to view when downloading the app. Further information is required particularly on the "public and private sector organisations in the UK and overseas" which the data may be shared with (yet a FOI in this sense was refused by the Home Office).</p>

## Questions to the Home Office on 'Settled Status'

### 13 - Withdrawal Agreement – UK Legislation

#### 13 Withdrawal Agreement – UK Legislation

	the3million Question	Home Office Reply	the3million comment
13.1 Withdrawal Agreement implementation	a) How will the citizens' rights provisions of the Withdrawal Agreement be implemented into national law?	Para 1.8 of the SOI speaks about the Withdrawal Agreement and Implementation Bill.	No details are given as to what will be included in the WAIB.
	b) Will they be set out in primary legislation?	See above. Some of it will be set out in primary legislation.	
	c) Will all provisions be set out in the Withdrawal Agreement Implementation Act?	No	We strongly feel they should be.
	d) Will all provisions be set out in one single legislative act?	No. Para 1.11 SOI talks about immigration regulations which indicates secondary legislation	No information given

<sup>24</sup> <https://www.gov.uk/government/publications/personal-information-use-in-borders-immigration-and-citizenship/borders-immigration-and-citizenship-privacy-information-notice>

<https://apply-for-eu-settled-status.homeoffice.gov.uk/help/terms-conditions>

## Questions to the Home Office on 'Settled Status'



### 13 - Withdrawal Agreement – UK Legislation

	the3million Question	Home Office Reply	the3million comment
13.2	<p>Inconsistent or incompatible legislation</p> <p>We understand that citizens' rights under the Withdrawal Agreement should have direct effect and that any inconsistent or incompatible rules will be disapplied.</p> <p>a) How will the UK translate the principle of direct effect into national law?</p> <p>b) Will the principle of direct effect for citizens' rights be set out in the Withdrawal Bill, or in the Withdrawal Agreement Implementation Act?</p>		<p>No response in SOI. Indeed, the proposed mixture of primary and secondary legislation, mostly set out in ever-changing immigration regulations but also in statutory instruments, Rules or Codes of Practice will make it exceedingly difficult to identify inconsistent or incompatible rules, and to apply direct effect.</p>
13.3	<p>Withdrawal Agreement registration process – Protocol</p> <p>Would the UK be willing to set out the detailed conditions of the registration process in the UK, such as Compulsory Sickness Insurance being covered by the NHS, into a Protocol to the Withdrawal Agreement, or in a Memorandum of Understanding?</p>		<p>No written answer.</p> <p>No verbal indication of willingness to write the CSI commitment into a legally binding Protocol, or even a Memorandum of Understanding.</p>
13.4	<p>Withdrawal Agreement registration process - commitment</p> <p>If not, how will the UK ensure that it will commit to the unilateral promises it has made in respect of tests under the Withdrawal Agreement, such as Compulsory Sickness Insurance being covered by the NHS?</p>	<p>The SOI indicates, but does not spell out, that the promises will only be set out in secondary legislation. Notably, secondary immigration regulations are undergoing constant changes. It is difficult to understand why the UK makes no effort to secure these unilateral promises in the WA.</p>	<p>The HO has indicated verbally that the relaxation of CSI rules will not be evidenced in the primary legislation that incorporates the WA into UK law.</p> <p>Will it lay out the CSI guarantees in secondary legislation – immigration regulations? We will then have primary legislation (EU Withdrawal Bill) stating that EU nationals will have to have exercised treaty rights conflicting with secondary legislation. How will this conflict be resolved in practice?</p>

## Questions to the Home Office on 'Settled Status'

### 14 - The Independent Authority

#### 14 The Independent Authority

	the3million Question	Home Office Reply	the3million comment
14.1	<p>Independent authority – UK or UK-EU</p> <p>Para. 152 of the draft Withdrawal Agreement states that 'In the United Kingdom, the implementation and application of Part Two shall be monitored by an independent authority'.</p> <p>Will this be a UK authority or a joint UK-EU authority?</p>		No information given
14.2	<p>Independence of authority</p> <p>How will the independence of this authority be ensured?</p>		No information given
14.3	<p>Independent authority composition</p> <p>How will the Independent Authority be composed?</p>		No information given
14.4	<p>Independent authority powers</p> <p>Will it have decision-making power vis-à-vis an administrative authority that is not complying with the Withdrawal Agreement?</p>		No information given
14.5	<p>Independent authority resourcing</p> <p>How will the Independent Authority be resourced?</p>		No information given
14.6	<p>Direct access to court</p> <p>Will citizens be able to invoke their rights, as defined by the Withdrawal Agreement, before UK courts? What will be the procedure?</p>		No information given

## Questions to the Home Office on 'Settled Status'

### 14 - The Independent Authority

	the3million Question	Home Office Reply	the3million comment
14.7	Information Commissioner - notification of SARs refusals	Does the Home Office propose a mechanism whereby the Information Commissioner will be automatically informed every time a Subject Access Request (SAR) will be refused on the basis of the immigration exemption?	No information given.
14.8	Information Commissioner – review SARs refusals	What powers will be given to the Information Commissioner to review such refusals that are specific to the immigration exemption?	No information given. .
14.9	Information Commissioner – review time limits	What time limits, if any, will be given to carry out reviews and interventions from the Information Commissioner?	No information given.
14.10	Information Commissioner - budget	Will the Information Commissioner receive additional financial assistance to cope with the necessary budget/staff increases for the additional responsibilities arising from these refusals?  How will this be calculated - how many refusals are anticipated?	No information given.

# Questions to the Home Office on 'Settled Status'



## 15 - Rights of EU citizens with Settled Status

### 15 Rights of EU citizens with Settled Status

	the3million Question	Home Office Reply	the3million comment
15.1	<p>Comprehensive sickness insurance</p> <p>The Home Office website (<a href="https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know">https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know</a>) states "In some circumstances, comprehensive sickness insurance is still required for the purposes of accessing the healthcare system in the UK, but will no longer be considered as a requirement for acquiring settled status."</p> <p>Under what circumstances will comprehensive sickness insurance be required by EU citizens for the purposes of accessing the healthcare system in the UK?</p>		<p>This question has not been answered.</p> <p>We are concerned in the House of Lords EU Justice Select Committee, Mr Glynn Williams (Direct General, Border Immigration and Citizenship System) and Sajid Javid (Home Secretary) would not confirm whether family members who joined holders of settled status after the end of the transition period, would be entitled to treatment by the National Health Service without requiring Private Insurance.</p> <p>Mr Williams confirmed those family members would be able to obtain residence in the UK, but when pressed by the Chair, Baroness Kennedy of the Shaws as to whether this included access to the National Health Service, Mr Williams said "We're not saying anything today about those sorts of things because they go beyond our immediate remit".<sup>25</sup></p> <p>The lack of legal protection in respect of CSI rules means that the promises on CSI as made on the HO website can be changed at any time.</p>

<sup>25</sup> <https://www.parliamentlive.tv/Event/Index/7499d843-c474-4015-ae10-8370aaecdf27> 12:03-12:06

## Questions to the Home Office on 'Settled Status'



### 15 - Rights of EU citizens with Settled Status

	the3million Question	Home Office Reply	the3million comment
15.2	Voting Rights Will EU citizens with settled status retain their right to vote in UK local elections?		The Immigration Minister told the Exiting the EU Committee that 'the EU declined a reciprocal offer for continuing voting rights part of the WA negotiations. Currently, there is no clarity on how voting rights will be (or not) exercised by EU citizens in the UK.
15.3	Right to stand for election Will EU citizens with settled status retain their right to stand for election in UK local elections?		See 15.2.

# Questions to the Home Office on 'Settled Status'



## 15 - Rights of EU citizens with Settled Status

	the3million Question	Home Office Reply	the3million comment
15.4	<p>Maintenance of settled status database</p> <p>How will the Settled Status database be maintained?</p> <p>For example, how will name changes due to marriage/divorce be reflected in the data used by landlords, banks, employers and the NHS to verify the new immigration status?</p> <p>What procedures will be put in place to ensure that holders of settled status can notify the Home Office of any changes to their personal details?</p>	<p>When receiving an outcome letter for settled status, the applicant is informed that “You will need to keep us updated if you change your passport or identity card for any reason. As most passports and identity cards expire every 10 years, you will probably need to inform the Home Office within the next 10 years of the details of your replacement documentation. To receive updates from the Home Office about your status, please make sure to keep us informed via your online profile if your contact details change.”</p> <p>Settled status holders can update their mobile phone number, email address, name and identity document online:  <a href="https://www.gov.uk/update-eu-settlement-scheme-details">https://www.gov.uk/update-eu-settlement-scheme-details</a>.</p> <p>There is no detail on alternative ways to update details or any consequences if EU citizens fail to update details in good time.</p>	<p>Applicants do receive information on this in their outcome letter and there is a GOV website where details can be updated. However, there is little detail on assisted or alternative ways to update these details or the consequences of not updating these details in the future.</p> <p>The link provided states: ‘If you’ve got a new identity document you’ll need to send this in the post - you’ll be told where to send it in the service.’</p> <p>The3million do not think it is acceptable that EU citizens will need to be separated from their passports after renewing it.</p> <p>What are the consequences of not informing the Home Office of a renewed passport?</p> <p>What happens if a passport is renewed abroad, and the citizen travels to the UK with the new passport before having been able to send it to the Home Office for updating the settled status database?</p>

## Questions to the Home Office on 'Settled Status'



### 15 - Rights of EU citizens with Settled Status

	the3million Question	Home Office Reply	the3million comment
15.5	<p>University tuition fees</p> <p>Will holders of settled status be treated equally with British citizens for the purposes of university fees throughout the UK including Scotland?</p>		<p>UKCISA's guidelines mention that students who are 'settled in the UK on the first day of the first academic year of the course' and are ordinarily resident in the UK for a full three-year period before (which must not be full-time education) qualify for Home Fees. There is no confirmation about settled status specifically.</p>
15.6	<p>Change of name in settled status database</p> <p>Further to question 1.21 and 15.4, since settled status appears to be granted in the name that appears on the top line of the applicant's passport, a name which may not match up with the applicant's name in everyday use, how will the applicant be able to have their settled status record changed?</p> <p>As an example, several EU countries dictate that passports are always in the citizen's maiden name, even if the citizen uses their married name in the UK, including on the National Insurance database.</p> <p>As another example, Bulgarian citizen showing their status in their Cyrillic name which will be difficult for employers, landlords etc to engage with.</p>		<p>It is currently proving extremely difficult to obtain changes to the name in which settled status has been granted.</p>
15.7	<p>Access to health and benefits</p> <p>Will settled status qualify as satisfying the Habitual Residence Test (HRT), or will further tests be applied?</p>		<p>The3million has seen a case where a citizen with settled status was refused Universal Credit on the grounds of settled status not being sufficient to satisfy HRT.</p>

## Questions to the Home Office on 'Settled Status'

### 16 - Ambiguities in the SOI

#### 16 Ambiguities in the SOI

	the3million Question	Home Office Reply	the3million comment
<p>16.1 Length of absence</p>	<p>SOI 3.4 states "Once the person has been continuously resident in the UK for five years, this means that they will be eligible for settled status where, since completing that period, they have not been absent from the UK <b>for more than five consecutive years</b> (as set out in the draft Withdrawal Agreement, rather than for more than two consecutive years as set out in the Free Movement Directive) when they apply under the scheme."</p> <p>However, SOI 2.2 states "People considered to be 'resident in the UK' will include those here before midnight on 31 December 2020. It will also include those previously resident in the UK who are outside the UK on that date but who have maintained continuity of residence here, <b>generally as set out in current free movement rules for those who have not already acquired EU permanent residence rights, and up to five years' absence for those who have.</b>"</p> <p>There is a contradiction between these two paragraphs.</p>	<p>From our earlier questions document:</p> <p>"SOI 3.4 states that anyone who has been <u>continuously resident</u> in the UK for 5 years, is entitled to settled status, and an absence of up to 5 years since completing the initial 5 years residence period.</p> <p>However, SOI 2.2 appears to suggest that only those who acquired <u>EU Permanent Residence</u> rights are able to be absent for up to 5 years since acquiring those rights.</p> <p>We urgently require clarification of this apparent contradiction."</p> <p>BETA1 clarifies that the 5 years' absence applies to anyone who has previously been continuously resident in the UK for 5 years, not just to someone who has previously acquired EU Permanent Residence.</p>	

## Questions to the Home Office on 'Settled Status'

### 16 - Ambiguities in the SOI

	the3million Question	Home Office Reply	the3million comment
16.2	<p>Prison sentence breaking continuity of residence</p> <p>SOI 3.4 explains that a prison sentence breaks continuity of residence, unless “the person has resided in the UK continuously for at least 10 years (and has the right of permanent residence in the UK under the EEA regulations)” and can prove 'integrating links'.</p> <p>However, SOI 3.4 also states that once a person has been continuously resident in the UK for five years, they will be eligible for settled status, and mentions that since completing that 5-year period, a deportation order has not been made against them.</p> <p>SOI 5.16 states that deportation thresholds <u>after</u> the end of the transition period involve “a prison sentence of 12 months or more, unless one of a number of exceptions apply”. <u>Before</u> the end of the transition period, EEA Regulations apply to deportation, namely a person must be a genuine, present and sufficiently serious threat.</p> <p>This creates a serious contradiction.</p>		<p>X, an EU citizen, was continuously resident in the UK from 2007 to 2015, exercising treaty rights.</p> <p>X served a prison sentence for 6 months in 2016, for failing to pay some debts.</p> <p>According to the 3.4 box on page 13 (Once the person has been continuously resident in the UK for five years), X should have been entitled to settled status in 2015, and should therefore only be liable to lose this status by being a genuine, present and sufficiently serious threat up to December 2020, or by serving a prison sentence of 12 months or more after January 2021.</p> <p>However, according to the 3.4 box on page 12, X’s continuous residence was broken by his 6 month prison sentence, and he was not eligible for the exception to this rule because he had only been continuously resident for 9 years, not the required 10.</p> <p>These paragraphs, as stated in the SOI, are clearly completely incompatible.</p>
16.3	<p>Suitability Criteria</p> <p>SOI EU.16 states that applicants will be refused (amongst others) where “whether or not to the applicant’s knowledge, false, or misleading information, representations or documents have been submitted”.</p>	<p>BETA1, 2 and 3 repeat the phrase “whether or not to the applicant’s knowledge”.</p>	<p>The EU and UK have not agreed this test be included in the WA, and it does not feature in EU law. It is a replication of a general ground for refusal under the Immigration Rules. This clause is arguably incompatible with the agreement and should be removed.</p>

## Questions to the Home Office on 'Settled Status'

### 16 - Ambiguities in the SOI

	the3million Question	Home Office Reply	the3million comment
16.4	<p>Relatives of non-EU spouse or partner</p> <p>SOI 6.6 “Dependent Relative” does not include relatives of the spouse or civil partner of an EU citizen as extended family members. Those who had already been issued with an EEA family permit, registration certificate or residence card as an extended family member and have been continuously resident in the UK since its issue are protected but other extended family members are not.</p>		<p>This is contrary to the approach of the Court of Justice in <i>Rahman</i> (C83/11) to the EU law requirement to ‘facilitate’ the entry of extended family members.</p>

## Questions to the Home Office on 'Settled Status'

### 17 - Questions on Private Beta Testing Phase 1 Report

#### 17 Questions on Private Beta Testing Phase 1 Report

	the3million Question	Home Office Reply	the3million comment
17.1 Applicants with PR/ILR	<p>The report states that 102 applicants had valid documented PR/ILR. However, 93 applicants with valid documented PR/ILR were granted settled status.</p> <p>Why were the remaining 9 candidates not granted settled status? Were they given pre-settled status (and if so, why) or was a decision not made (and is so, why)?</p>	<p>The Home Office informed the3million on 21<sup>st</sup> Dec 2018 that:</p> <ul style="list-style-type: none"> <li>• 2 of these 9 had valid PR/ILR and were granted settled status</li> <li>• 7 did not have valid PR/ILR                             <ul style="list-style-type: none"> <li>○ 6 were granted settled status</li> <li>○ 1 was granted pre-settled status</li> </ul> </li> </ul>	<p>New question since Private Beta Testing Phase1 Report.</p> <p>The3million still has no answers for:</p> <ul style="list-style-type: none"> <li>• Why, given the Home Office reported on 30<sup>th</sup> Oct 18 that these 9 (who applied before 17<sup>th</sup> Oct 18) had 'valid documented PR/ILR', did they subsequently changed their mind?</li> <li>• For the 2 who did indeed have valid PR/ILR, why did it take so long to grant settled status especially given that 'these cases are not subject to the automated checks'?</li> </ul>
17.2 Applicants where decision was not made	<p>The report states that out of 1053 applications, 924 decisions were made. Therefore 129 decisions were not made.</p> <p>Can the Home Office provide more information about these 129 cases?</p> <p>If these cases were still in progress, and not complete in time for the report, will the Home Office agree that the 'average time' statistics on 'all decisions' is misleading?</p>	<p>The Home Office informed the3million on 21<sup>st</sup> Dec 2018 that all 129 cases had been decided, and none refused, but did not supply the requested breakdown.</p> <p>The Home Office informed the3million on 14<sup>th</sup> Feb 2019 that 90 were granted settled status and 39 were granted pre-settled status.</p>	<p>New question since Private Beta Testing Phase1 Report.</p> <p>the3million is concerned about the lack of detail on these 129 cases in this report, and the quality of the reporting and monitoring of the phase 1 trial.</p> <p>the3million is concerned about the lack of information about the Independent Monitoring Authority which the draft Withdrawal Agreement states must be operational by the end of the transition period.</p>

## Questions to the Home Office on 'Settled Status'



### 17 - Questions on Private Beta Testing Phase 1 Report

	the3million Question	Home Office Reply	the3million comment
17.3	<p>Applicants given unexpected status</p> <p>The report states that 'So far, all applicants have been granted the leave that they expected'.</p> <p>However, the3million is aware of at least one case involving a 20-year who has been resident in the UK for at least 5 years, but who has only had a NINo since aged 16, who was expecting settled status but has received pre-settled status. The applicant has supplied the Home Office with extra residence evidence, but at time of the publication of the report he had not received any acknowledgment or decision, so affirmation that all applicants have been granted the leave they expected is at best misleading.</p>		<p>New question since Private Beta Testing Phase1 Report</p> <p>No detail received on this question yet.</p>
17.4	<p>Advice to children</p> <p>If a 20-year old applies for settled status in their own right, they need to prove 5 years' continuous residence. However, they can also apply as a child of a relevant EU citizen with settled status and only need to provide proof of relationship, not proof of residence.</p> <p>Was this choice made clear to applicants in the Beta Testing Phase 1?</p>	<p>On 14<sup>th</sup> Feb 2019, the Home Office informed the3million 'we have published information on gov.uk for applicants aged under 21. That advice is clear that they can apply based either on the status for which their parent is eligible or on how long they have lived in the UK themselves.</p>	<p>New question since Private Beta Testing Phase1 Report.</p> <p>Following Home Office response, the3million would like confirmation that this link will be provided from within the application after the applicant scans their passport, and therefore their age becomes known to the application.</p>

## Questions to the Home Office on 'Settled Status'



### 18 - Questions on Private Beta Testing Phase 2 Report

### 18 Questions on Private Beta Testing Phase 2 Report

	the3million Question	Home Office Reply	the3million comment
18.1	<p>Additional evidence: file limits</p> <p>In BETA2, applicants who needed to submit additional evidence could upload a maximum of 10 separate files, each with a 2MB limit.</p> <p>BETA2REPORT notes: “The size of file an applicant could upload if supporting evidence was needed was initially limited to 2MB. Feedback from applicants highlighted that a larger file size was required and so this was increased to 6MB. Further minor technical changes were made to the document upload process in response to specific issues raised by a small number of applicants.”</p> <p>When the scheme fully opens, what will be the limitations regarding files, both in terms of the number limit and the size limit?</p>		
18.2	<p>Settled status issued with incorrect details</p> <p>There have been mentions of difficulties with hyphens and name spellings from BETA2 applicants.</p> <p>If a settled status is issued with the wrong name spelling for example, how will this be corrected? Can the settled status holder amend this themselves through in the same way they will update their phone or email address if it changes? Or is there any procedure by which the Home Office will correct these errors?</p>		

# Questions to the Home Office on 'Settled Status'



## 18 - Questions on Private Beta Testing Phase 2 Report

	the3million Question	Home Office Reply	the3million comment
18.3	<p>Consistency of metrics provided</p> <p>In the interest of transparency, integrity and accountability of monitoring processes over the EU settlement scheme, we feel it is essential that relevant metrics that are published in one trial should also be published in subsequent trials. Would you therefore be able to provide, for PB2:</p> <ul style="list-style-type: none"> <li>a) The number of applicants who were / were not granted the leave they were expecting</li> <li>b) The number of applicants that did not have to provide any additional evidence</li> <li>c) The number of applicants that had to provide additional evidence for part of their residence</li> <li>d) The number of applicants that had to provide evidence for all of their residence</li> <li>e) The average time taken on all decisions</li> <li>f) Breakdown of the 2,776 cases which had not yet received a decision as at the 14<sup>th</sup> January.</li> </ul>		

## Questions to the Home Office on 'Settled Status'



### 18 - Questions on Private Beta Testing Phase 2 Report

	the3million Question	Home Office Reply	the3million comment
18.4	<p>NINO for PR/ILR holders</p> <p>Both the PB1 and PB2 reports confirm that where applicants apply on the basis of holding valid documented Permanent Residence (PR) / Indefinite Leave to Remain (ILR), the system does not perform automated checks. However, they do nevertheless have to provide their National Insurance number. Could you therefore:</p> <ul style="list-style-type: none"> <li>a) Explain why the system requires the applicant to supply a National Insurance number in the 'Residence' section, <i>after</i> they have indicated they hold PR/ILR in the 'Application type' section?</li> <li>b) Confirm whether the system will be re-configured such that applicants with PR/ILR will not need to supply their National Insurance number?</li> </ul>		<p>Applicants are concerned about this, especially in the light of the 'Memorandum of Understanding' between the Home Office and HMRC which shows that income and tax data is transferred to the Home Office.</p>

# Questions to the Home Office on 'Settled Status'



## Version History:

1.0	9 <sup>th</sup> April 2018	First version
1.1	11 <sup>th</sup> May 2018	<ul style="list-style-type: none"> <li>- correction of <a href="#">12.1 Data Protection – immigration exemption</a> – Schedule 2 Clause 4</li> <li>- updated question: <a href="#">1.23 Criminality checks – historic</a> - added items e) – i)</li> <li>- new question: <a href="#">1.29 Applicants serving sentences</a></li> <li>- new question: <a href="#">2.17 Irish citizens</a></li> <li>- new question: <a href="#">2.18 Irish citizens – distinctions</a></li> <li>- new question: <a href="#">2.19 Good Friday Agreement</a></li> <li>- new question: <a href="#">2.20 British children of EU parents</a></li> <li>- new question: <a href="#">2.21 EU children living abroad</a></li> <li>- new question: <a href="#">2.22 Difference between ILR and settled status</a></li> <li>- new question: <a href="#">2.23 Recognition of ILR</a></li> <li>- new question: <a href="#">2.24 Exchange of ILR for settled status</a></li> <li>- new question: <a href="#">3.8 Use of digital app – biometric chip</a></li> <li>- new question: <a href="#">3.9 Use of digital app – technical failure</a></li> <li>- new question: <a href="#">6.2 Late Applicants</a></li> <li>- new question: <a href="#">9.3 Definition of allowable absence</a></li> <li>- new question: <a href="#">10.21 Temporary status – criminality checks</a></li> <li>- new question: <a href="#">10.22 Loss of physical proof</a></li> <li>- new question: <a href="#">11.16 Reporting requirements</a></li> <li>- new question: <a href="#">12.4 Biometric data</a></li> <li>- new question: <a href="#">12.5 Settled status app – access to phone data</a></li> <li>- new section: <a href="#">15 Rights of EU citizens with Settled Status</a></li> <li>- question moved: <a href="#">15.1 Comprehensive sickness insurance</a> – moved from <a href="#">11.6</a></li> <li>- new question: <a href="#">15.2 Voting Rights</a></li> <li>- new question: <a href="#">15.3 Right to stand for election</a></li> <li>- new question: <a href="#">15.4 Maintenance of settled status database</a></li> <li>- new question: <a href="#">15.5 University tuition fees</a></li> </ul>
1.2	01 July 2018	<ul style="list-style-type: none"> <li>- updated all questions to have traffic-light red/amber/green coding, after the Statement of Intent (SOI) was published on 21<sup>st</sup> June 2018.</li> <li>- new question: <a href="#">1.30 Suitability Check – misuse of rights under Directive 2004/38/EC</a></li> <li>- new question: <a href="#">2.25 Future children</a></li> <li>- new question: <a href="#">4.6 Legality of pre-WA voluntary scheme</a></li> <li>- new question: <a href="#">4.7 Right of appeal during pre-WA voluntary scheme</a></li> <li>- new question: <a href="#">14.7 Information Commissioner - notification of SARs refusals</a></li> <li>- new question: <a href="#">14.8 Information Commissioner – review SARs refusals</a></li> <li>- new question: <a href="#">14.9 Information Commissioner – review time limits</a></li> <li>- new question: <a href="#">14.10 Information Commissioner - budget</a></li> <li>- new section: <a href="#">16 Ambiguities in the SOI</a></li> <li>- new question: <a href="#">16.1 Length of absence</a></li> </ul>

# Questions to the Home Office on 'Settled Status'



		<ul style="list-style-type: none"> <li>- new question: <a href="#">16.2 Prison sentence breaking continuity of residence</a></li> <li>- new question: <a href="#">16.3 Suitability Criteria</a></li> <li>- new question: <a href="#">16.4 Relatives of non-EU spouse or partner</a></li> </ul>
1.3	27 February 2018	<ul style="list-style-type: none"> <li>- updated questions, after the publication of: <ul style="list-style-type: none"> <li>o <a href="https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance">https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance</a> and <a href="https://www.gov.uk/government/publications/eu-settlement-scheme-view-and-prove-your-rights-in-the-uk/view-and-prove-your-rights-in-the-uk">https://www.gov.uk/government/publications/eu-settlement-scheme-view-and-prove-your-rights-in-the-uk/view-and-prove-your-rights-in-the-uk</a></li> <li>o <a href="https://www.gov.uk/guidance/using-the-eu-exit-id-document-check-app">https://www.gov.uk/guidance/using-the-eu-exit-id-document-check-app</a></li> <li>o <a href="https://www.gov.uk/government/publications/eu-settlement-scheme-assisted-digital-service/eu-settlement-scheme-assisted-digital-service">https://www.gov.uk/government/publications/eu-settlement-scheme-assisted-digital-service/eu-settlement-scheme-assisted-digital-service</a></li> <li>o <a href="https://www.gov.uk/government/news/new-fund-to-support-vulnerable-eu-citizens-apply-for-settled-status">https://www.gov.uk/government/news/new-fund-to-support-vulnerable-eu-citizens-apply-for-settled-status</a></li> <li>o <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752872/181031_PB1_Report_Final.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752872/181031_PB1_Report_Final.pdf</a></li> <li>o <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772099/EUSS-public-beta-caseworker-guidance.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772099/EUSS-public-beta-caseworker-guidance.pdf</a></li> <li>o <a href="https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report">https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report</a></li> </ul> </li> <li>- new question: <a href="#">1.31 Calculation of absence</a></li> <li>- new question: <a href="#">2.26 PR invalid</a></li> <li>- new question: <a href="#">2.27 Lacking mental capacity</a></li> <li>- new question: <a href="#">3.10 Rejection due to absence since PR or ILR</a></li> <li>- new question: <a href="#">3.11 Compatible app devices</a></li> <li>- new question: <a href="#">7.6 British citizenship – PR</a></li> <li>- new question: <a href="#">9.4 Pre-settled status and allowable absence</a></li> <li>- new question: <a href="#">10.23 Home Office records of ILR / ILE / PR</a></li> <li>- new question: <a href="#">15.6 Change of name in settled status database</a></li> <li>- new question: <a href="#">15.7 Access to health and benefits</a></li> <li>- new section: <a href="#">17 Questions on Private Beta Testing Phase 1 Report</a></li> <li>- new question: <a href="#">17.1 Applicants with PR/ILR</a></li> <li>- new question: <a href="#">17.2 Applicants where decision was not made</a></li> <li>- new question: <a href="#">17.3 Applicants given unexpected status</a></li> <li>- new question: <a href="#">17.4 Advice to children</a></li> <li>- new section: <a href="#">18 Questions on Private Beta Testing Phase 2 Report</a></li> <li>- new question: <a href="#">18.1 Additional evidence: file limits</a></li> <li>- new question: <a href="#">18.2 Settled status issued with incorrect details</a></li> <li>- new question: <a href="#">18.3 Consistency of metrics provided</a></li> <li>- new question: <a href="#">18.4 NINO for PR/ILR holders</a></li> </ul>

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