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REPORT

How Secure is Pre-Settled Status for EU Citizens After Brexit?

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Executive Summary

The EU Settlement Scheme (EUSS), which gives EU citizens and their family members a new immigration status following the UK's departure from the European Union, has had more than five million applicants since it opened fully in early 2019. Policy and public debate about the scheme have focused heavily on the June 2021 deadline and the substantial challenge of including everyone who needed to make an initial application by that date. But while the first EUSS deadline may have passed, the inclusion challenge is far from over. This is both because some people have not yet applied to the EUSS, which is still accepting late applications, but also because—crucially—more than two million people held only temporary, pre-settled status by the end of September 2021. These people need to apply to again if they want to become permanent residents with 'settled status' in the UK.

Pre-settled status holders who do not reapply successfully risk losing their rights to live, work, and access services in the UK. This report examines the challenges that some residents with pre-settled status will face to secure settled status, focusing on institutional features related to the design and implementation of the EUSS. The focus of the report is thus not to identify the cohorts at risk—this has been already done elsewhere (e.g. Sumption and Fernández-Reino, 2020). Rather, it is to examine what factors affect pre-settled status holders' ability to secure permanent, settled status—including the risks that they fail to reapply, have difficulties proving their eligibility, or become ineligible.

Drawing on qualitative evidence about the challenges that vulnerable applicants face engaging with the EU Settlement Scheme, the report identifies several features of the EUSS that will impact the ability of vulnerable residents to upgrade their status:

- **A double application process with multiple individual deadlines.** A system with two different status outcomes instead of one inevitably increases the complexity of the scheme and the risk that some people fail to understand the differences between the two statuses, including the need to reapply if they hold pre-settled status.
- **A digital application process and only-digital status.** An entirely digital scheme (i.e. digital application and digital proof of status) is convenient for many applicants, but makes it harder for some to understand their current status and the need to reapply to the EUSS.
- **A more onerous application process for settled than for pre-settled status.** When automated checks are not accurate or not available, applicants must provide their own evidence of five years of continuous residence in the UK. This is more difficult than providing the single piece of evidence that could be used to obtain pre-settled status in an initial application. Providing evidence is more difficult for some groups who do not engage regularly with public bodies, e.g. homeless people, workers in informal employment, or some non-working women caring for children.
- **Uncertainty about the level of support that will be available in the future, including interpretation and translation services.** The availability of face-to-face assistance will continue to be relevant for some applicants for several years to come but, at the time of writing this report, financial help to support vulnerable applicants (via organisations with Home Office grants) is expected to end by end of March 2022. Caseworkers in contact with EUSS applicants also identified language barriers and limited interpretation and translation services as one of the main challenges in their work.
- **Breaks in continuous residence.** The duration of absences allowed has been a source of confusion for many pre-settle status holders. Residents with pre-settled status can lose their path to settlement—that is, their ability to secure settled status in the future—if they spend more than 6 months abroad every 12-month period (with some exceptions). Seasonal workers and other circular migrants with pre-settled status will be at greater risk of not qualifying for settle status. Prison sentences will also break periods of continuous residence regardless of the duration of the sentence.

The challenges facing pre-settled status holders are in many respects conceptually similar to those facing initial applicants to the EUSS, and many of the at-risk groups identified are the same (see the Migration Observatory report [Unsettled Status-2020](#) for an overview of the groups at risk). However, the nature of the challenge facing the Home Office, vulnerable applicants and those who support them is somewhat different for pre-settled status holders who need to upgrade to settled status.

On one hand, the fact that pre-settled status holders have engaged with the scheme before should mean that the initial hurdle has been cleared: they have been in contact with the government already and the Home Office can prompt them to reapply when the time comes. On the other hand, for many vulnerable applicants, the application for settled status is harder. The threshold for demonstrating their residence in the UK is higher (i.e. five continuous years) and the level of face-to-face support available—which was already uneven and in some cases reduced due to Covid-19—may be reduced following the end of Home-Office grant funding. And awareness about the need to reapply is expected to be lower as Brexit and the public communications about the June 2021 deadline recede into distant memory.

Understanding the evidence

This report draws on various sources evidence. First, it brings together information about what is known about barriers to securing settled status among people who already hold pre-settled status, including from previous research either on the EU Settlement Scheme (EUSS) or on the experiences of EU citizens and their family members post-Brexit. This includes both academic research and reports from civil society organisations (e.g. Barnard et al., 2019; Every, 2021; Jablonowski and Pinkowska, 2021; Morris and Qureshi, 2021; O'Brien and Welsh, 2021; Revealing Reality, 2018; Sumption and Fernández-Reino, 2020), as well as reports by the Home Office (e.g. Home Office, 2020) and the Independent Chief Inspector of Borders and Immigration (ICIBI) (2019, 2020, 2022). Second, the first author conducted 15 qualitative interviews with practitioners who work with EUSS applicants, including immigration lawyers and charities providing support services. Interviewees were asked about the barriers that EUSS applicants were already facing, and issues they were expected to face in future, including during the process of upgrading from pre-settled to settled status. The list of people or organisations interviewed can be found at the end of this report. Finally, members of EU countries' embassies in the UK answered a short online questionnaire about the most important factors explaining why some pre-settled status holders may fail to upgrade their status and the groups more at risk of losing their residence rights. The issues highlighted by the embassies very much overlapped with those identified by caseworkers and members of support organisations.

Data on pre-settled status applications come from Home Office [EU Settlement Scheme quarterly statistics December 2021](#) as well as data requested by the Migration Observatory to the Home Office through Freedom of Information Requests (number 66678 , 68019, 68029 and 66890), which are based on the EUSS quarterly statistics September 2021. As discussed in the Migration Observatory report, [Not settled yet?](#), there are no figures on the share of the eligible resident population who has applied for status nor the share of applicants with pre-settled or settled status who are no longer residing in the UK (see also [Lindop, 2021](#)). The Home Office does not collect data on applicants' characteristics other than their local authority, nationality, sex, and age, so there are no data on the number of applicants who could be considered vulnerable.

Data on individual applicants are more limited in terms of the breakdowns provided than data on the total number of applications, which double count people submitting more than one application (e.g. moving from pre-settled to settled status). In this report, we use a combination of figures depending on data availability as of early 2022, and readers should note that some figures are for applicants and others are for applications.

Understanding the policy

The EU Settlement Scheme (EUSS) is based on the [EU-UK Withdrawal Agreement](#) and brought into force by the [Appendix EU of the UK Immigration Rules](#). The scheme is designed to give a new immigration status to EU citizens and their non-EU family members who were living in the UK by 31 December 2020, so they can continue to live, study, work and travel freely between the UK and the EU after the end of free movement. To maintain these rights, EU citizens and their non-EU family members who were UK residents before 1 January 2021 need to apply for residence through the EUSS. Note that, after 1 January 2021, EU or non-EU family members of residents with status living abroad need to apply for a EUSS family permit if they want to move to the UK. For ease of understanding, this report refers to 'EU citizens', but the reader should note that the scheme also covers citizens of EEA countries (Iceland, Liechtenstein and Norway) and Switzerland.

The EUSS is a mandatory scheme; that is, applying to the EUSS is compulsory for all eligible applicants who were resident in the UK by 31 December 2020, with some small exceptions (Irish citizens are not required to apply, for example). Eligible applicants had until 30 June 2021 to make an application, although the Home Office must accept late applications in cases where an applicant has [reasonable grounds](#) for missing the deadline. Note that while EU applicants are eligible for status if they were residents in the UK before 31 December 2020, the eligibility of non-EU applicants is based on their present or past close relationship to an EU citizen (and in some cases UK citizens). For a detailed description of which non-EU family members are eligible to apply to the EUSS, see the [UK government website on this issue](#).

The EUSS gives successful applicants one of two statuses: pre-settled status and settled status. Pre-settled status was designed for anyone who had been living in the UK for less than five years, while settled status was for those living here for five years or more, with some limited exceptions (e.g. children under 21 with a parent with settled status are not required to fulfil the residence requirement). For non-EU family members, eligibility for the EUSS is not only based on the total period of residence in the UK, but also how on them being a close family member of an EU citizen, or on having a retained or a derivative right to reside. For simplicity, this report simply refers to 'five years of continuous residence' but readers should bear in mind of the additional (family) relationship requirement for non-EU family members.

The conditions and rights attached to pre-settled status are less secure than those of settled status and reflect the temporary nature of this residence permit:

- First, pre-settled status is only granted for five years and can be lost if the person leaves the UK for two consecutive years. UK residents with pre-settled status will need to reapply to the EUSS and receive settled status before their pre-settled status expires if they want to continue living lawfully in the UK. By contrast, people with settled status can be outside the UK for up to 5 years without losing their status.
- Second, pre-settled status holders can lose their path to permanent residence if they spend more than 6 months in any 12 month period overseas, unless the absence is for an [important reason or is Covid-19 related](#). Pre-settled status holders who are doing compulsory military service, are in crown service, or work in the UK's marine area are allowed unlimited amount of time outside the UK without breaking continuous residence.
- Third, people with pre-settled status cannot become a UK citizen – they first need to apply for settled status.
- Finally, by contrast to settled status, pre-settled status does not count as proof of 'right to reside', which is a requirement to access welfare benefits in the UK. Some pre-settled status holders have not been considered to have Withdrawal Agreement rights and thus cannot access benefits; this is the case of, for example, people without Comprehensive Sickness Insure when economically inactive. However, on 10 March 2022, the Court of Justice of the European Union ruled that eligibility for NHS treatment does count as CSI and that the UK should not have imposed the CSI requirement.

In December 2021, the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) – which is the public body responsible for protecting the rights of EU citizens and their family members – issued a [Judicial Review Claim against the Home Office](#). It argued that, according to the Withdrawal Agreement, pre-settled status holders can only lose their residence rights in limited circumstances (e.g. criminality, fraudulent applications, and extended absences), and that these circumstances do not include failing to apply for settled status. At the time of writing, the outcome of this case is not yet known.

1. What is pre-settled status and why does it matter?

One of the consequences of the UK leaving the EU is that EU citizens and their non-EU family members living in the UK have been required to apply to the EU Settlement Scheme (EUSS) in order to secure their residence rights and continue living, working or studying in the UK.

The EUSS gives successful applicants one of two statuses: pre-settled status or settled status. *Pre-settled status* is a temporary residence authorisation that was designed for anyone who had been living in the UK for less than five years, while *settled status* is a permanent residence authorisation designed for eligible applicants who have been living here for at least five years. Applicants must have evidence of five years of continuous residence in the UK (which entails not being abroad for more than 6 months every 12-month period, with some limited exceptions for a longer absence), in order to qualify for the more secure settled status.

One crucial difference between settled and pre-settled status is that settled status is permanent while pre-settled status is not (see the 'Understanding the Policy' section above for more detail on the rights associated with pre-settled status). Pre-settled status holders who want to remain in the UK beyond the five years for which the immigration status is valid must make a new application to the EUSS and receive settled status. If they do not, they will automatically become irregular migrants and lose their residence rights. This includes their right to live, work, rent accommodation or access public services in the UK. Under the current policy design, the stakes attached to the second EUSS application for pre-settled status holders are therefore high.

The purpose of this report is to examine the logistical and policy challenges associated with the need for people with pre-settled status to reapply to the EUSS if they want to continue living lawfully in the UK.

2. How many people have pre-settled status?

Currently, nobody is yet required to have upgraded from pre-settled to settled status, because pre-settled status lasts for five years and the first EUSS grants were only given in the second half of 2018 during the early Testing Phase of the scheme. Most grants of pre-settled status took place later, in 2019 and 2020. However, substantial numbers of pre-settled status holders will be required to apply again to the EUSS in the coming years—starting from the second half of 2023.

By the end of September 2021, an estimated 2,380,700 people had been granted the temporary pre-settled status, and further grants of pre-settled status were expected as the Home Office worked through a backlog of 315,300 applications that had not yet been concluded as of 31 January 2022. After accounting for 247,000 people who had already upgraded from pre-settled to settled status, an estimated 2,133,700 still held pre-settled status by the end of September 2021 (Home Office EUSS quarterly statistics, September 2021).

Most people who upgraded from pre-settled to settled status will have previously held pre-settled status because they had not yet lived in the UK for 5 years at the time of their first application. However, some will have held pre-

settled status because they were not able to *demonstrate* how long they had lived in the UK when they first applied. There is no available data on how many people fall into that second category—i.e. people who were eligible for settled status but received pre-settled status. Research by the EU Brexit Hub (2021) has presented evidence that some applicants experienced this situation, and caseworkers and others interviewed for this report had also encountered such cases in which vulnerable applicants struggled to prove their eligibility for settled status.

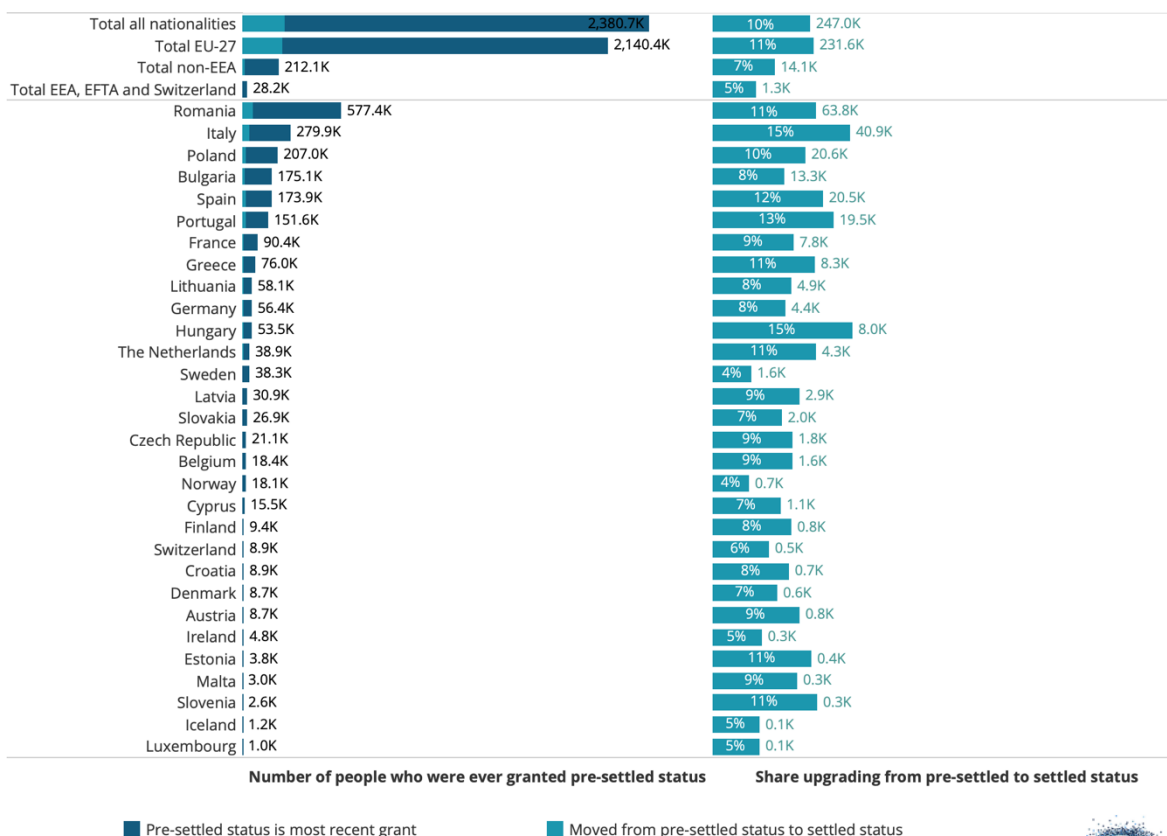
3. Characteristics of pre-settled status holders

3.1. People with pre-settled status and number moving from pre-settled to settled status, by nationality

Almost 60% of pre-settled status holders at the end of September 2021 were of five nationalities: Romanian, Italian, Polish, Bulgarian and Spanish. Among people who were ever granted pre-settled status, 10% (247,000) had upgraded to settled status as of 30 September 2021 (Figure 1). Non-EU applicants were less likely to have upgraded their status compared to citizens of EU-27 countries (11% vs 7%).

Figure 1

Number of people ever granted pre-settled status and percentage who have upgraded from pre-settled to settled status, by nationality, as of 30 September 2021



Source: Migration Observatory analysis of sheet EUSS_RA_04, EU Settlement Scheme Quarterly Statistics, September 2021, and data provided by the Home Office (FOI Case Ref 66890 & 66678)
 Note: excludes people granted 'other outcomes' (refused, withdrawn/void, and invalid) as their most recent grant.



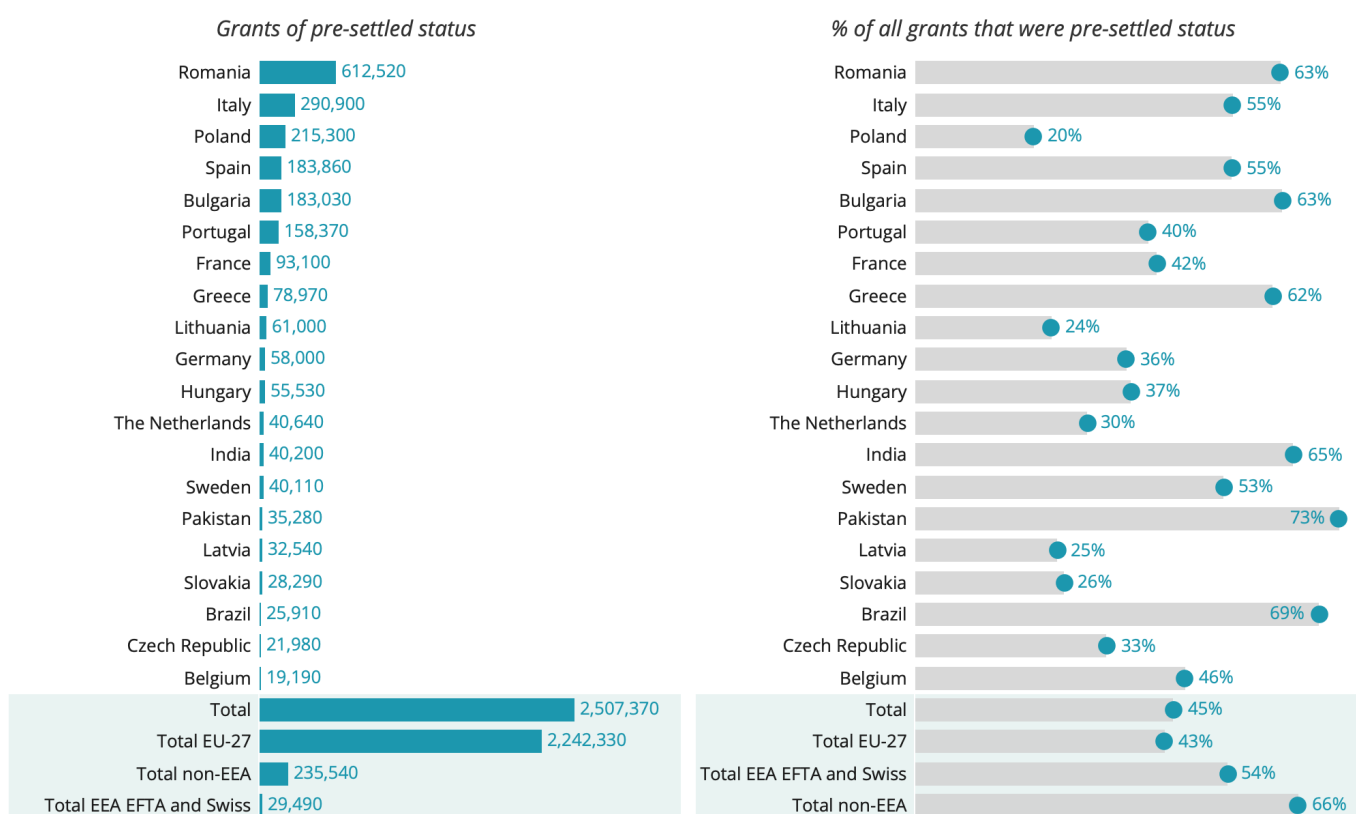
Citizens of some countries were more likely to receive temporary pre-settled status. By the end of December 2021, 45% of all EUSS grants were of pre-settled status, but the figure was 66% for non-EU applicants (Figure 2). The share of grants with pre-settled status was also higher than the EU-27 average (43%) among Romanian and Bulgarian (63%), Greek (66%), and Italian and Spanish (55%), applicants (Figure 2). Note that these statistics are for applications rather than people, and thus double count people making more than one application.

The high share of pre-settled status grants among some migrant communities is likely to reflect differences in their average length of time living in the UK. For example, citizens of EU-8 countries had been in the UK for 11 years on average in 2020, while Bulgarians and Romanians had 6 years of residence on average (authors' calculations based on the Annual Population Survey 2020).

Higher shares of pre-settled status holders among some nationalities may also reflect differences in the extent to which migrants from different communities have experienced difficulties providing evidence of their continuous residence, although this phenomenon is difficult to measure and its scale is not known.

Figure 2

Grants of pre-settled status among top 20 nationalities with a concluded application to the EUSS, as of 31 December 2021



Source: Migration Observatory analysis of EU Settlement Scheme Quarterly Statistics, December 2021, EUSS_03_UK and EUSS_NON_EEA_02.
 Note: numbers refer to *applications* instead of *applicants*, so there is double counting of people making more than one application

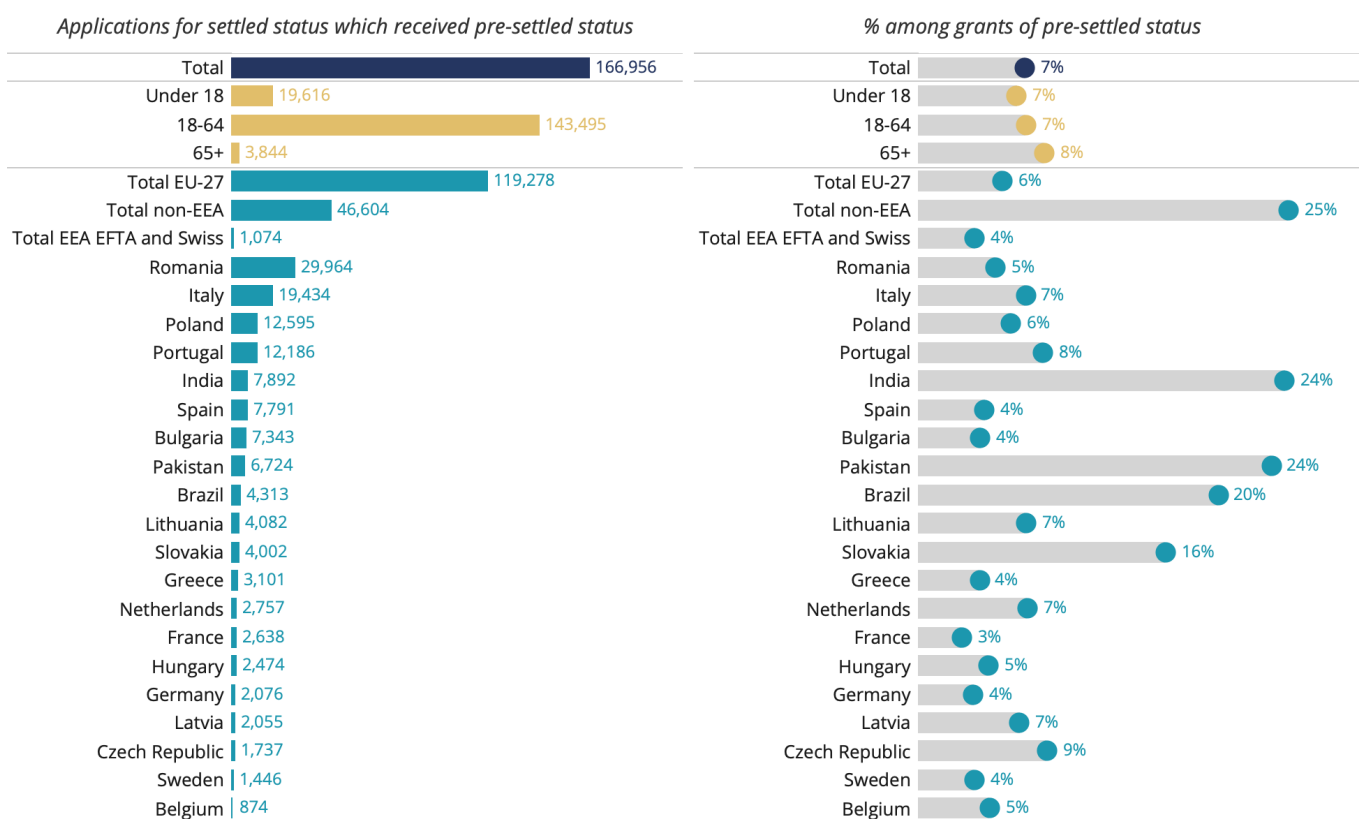


Among EU applicants with pre-settled status, the available EUSS statistics at the time of writing this report do not include information about the share who self-reported a period of residence in the UK of 5 years or longer in their application. However, based on data provided by a Freedom of Information request (68019) submitted to the Home Office, there were 166,956 applications for settled status which received a pre-settled status outcome (7% of all pre-settled status grants), as of 31 December 2021 (Figure 3). According to the Home Office, this type of information is collected since 30 January 2019 (Freedom of Information Request 68512). Non-EEA citizens were significantly more likely to receive pre-settled status when they applied for settled status as compared to other nationalities (Figure 3). These applicants may have had problems proving their eligibility for settled status, although some may have also been ineligible, most notably due to breaks in continuous residence in the UK.

Figure 3

Applications for settled status which received settled status ('variations of leave'), as of 31 December 2021

Data on variations on leave collected by the Home Office since 30 January 2019



Source: Migration Observatory analysis of data provided by Home Office FOI 68019. According to the Home Office (FOI 68512), these data are collected since 30 January 2019

Note: numbers refer to applications instead of people, so there is double counting of people making more than one application



Over time, more UK residents with pre-settled status will move to settled status. The share of people with pre-settled status who upgrade to settled status will, however, *never* reach 100%. This is because some pre-settled status holders have left the country with no plans to return and thus will never apply for permanent status, while others will become ineligible if they break their continuous residence in the UK. In addition, the Home Office will continue issuing grants of pre-settled status to joining family members in the next years, as they can come to the UK *any time in the future* and get pre-settled status as long as their relationship to a qualifying EU citizen existed by 31 December 2021).

It is not clear how many pre-settled status holders have left the UK since they were granted status, and how many will remain in the country in the longer term and will need to upgrade. Previous research has shown that many migrants stay in the destination country only for a few years before coming back to their origin country (Borjas and Bratsberg, 1994; Dustmann and Weiss, 2007; Kone et al., 2021). In the year ending March 2020 alone, ONS estimates that more than 200,000 long-term EU migrants emigrated from the UK. In addition, the number of EU citizens making short-term visits to England or Wales of at least a month but less than a year averaged an estimated 370,000 in the most recent two years of data (years ending June 2018 and 2019).

This means that unless new data sources are developed—for example, by drawing on government tax records to identify whether someone is still active in the UK—we will not know how many people with pre-settled status are living abroad and how many are still residing in the UK at the time when their status expires.

3.2. People with pre-settled and settled status, by age group

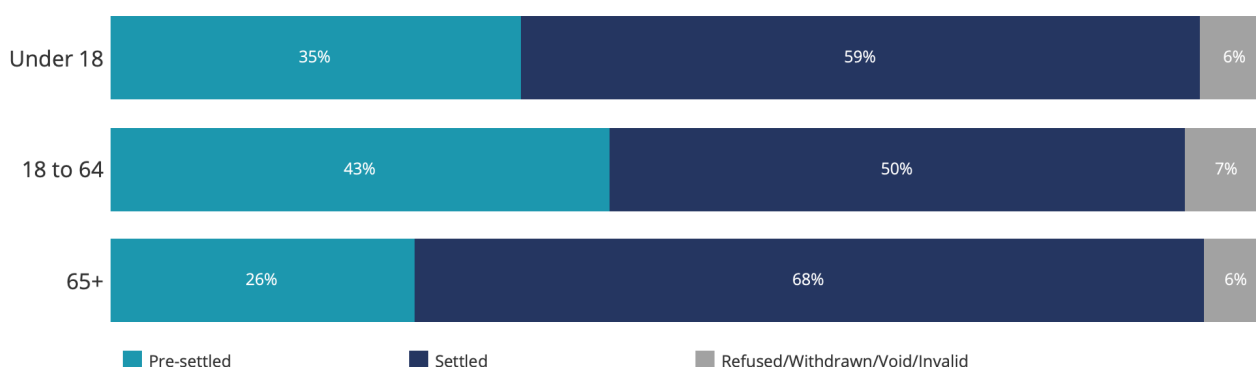
Children and older residents are less likely to have pre-settled status, on average. As of 31 December 2021, 68% of applications made by people age 65 and above, and 59% made by children, were granted settled status, compared to 50% among adults aged 18 to 64 (Figure 4). Older people with non-UK nationalities are more likely to be long-term residents than younger adults, so they are logically more likely to receive settled status. In 2020, an estimated 92% of non-Irish EU citizens aged 65 and older were born in the UK or had been living in the UK for more than 5 years, but this share was 72% among adults aged 18-64 (authors’ calculation based on the Annual Population Survey 2020). Most EU children under 18 have their application to the EUSS linked to their parents or legal guardians and they receive the same or better status as them regardless of their length of residence.

Some of our interviewees highlighted that some elderly people and children have faced specific barriers to the scheme discussed later in this report (see also Barnard and Costello, 2021a). However, if they apply, they are less likely to receive pre-settled status compared to applicants aged 18 to 64.

Figure 4

Share of applications with pre-settled and settled status across age groups, 31 December 2021

Concluded applications by age group



Source: Migration Observatory analysis of sheets EUSS_04, EU Settlement Scheme Quarterly Statistics, December 2021
 Note: numbers refer to applications instead of people, so there is double counting of people making more than one application

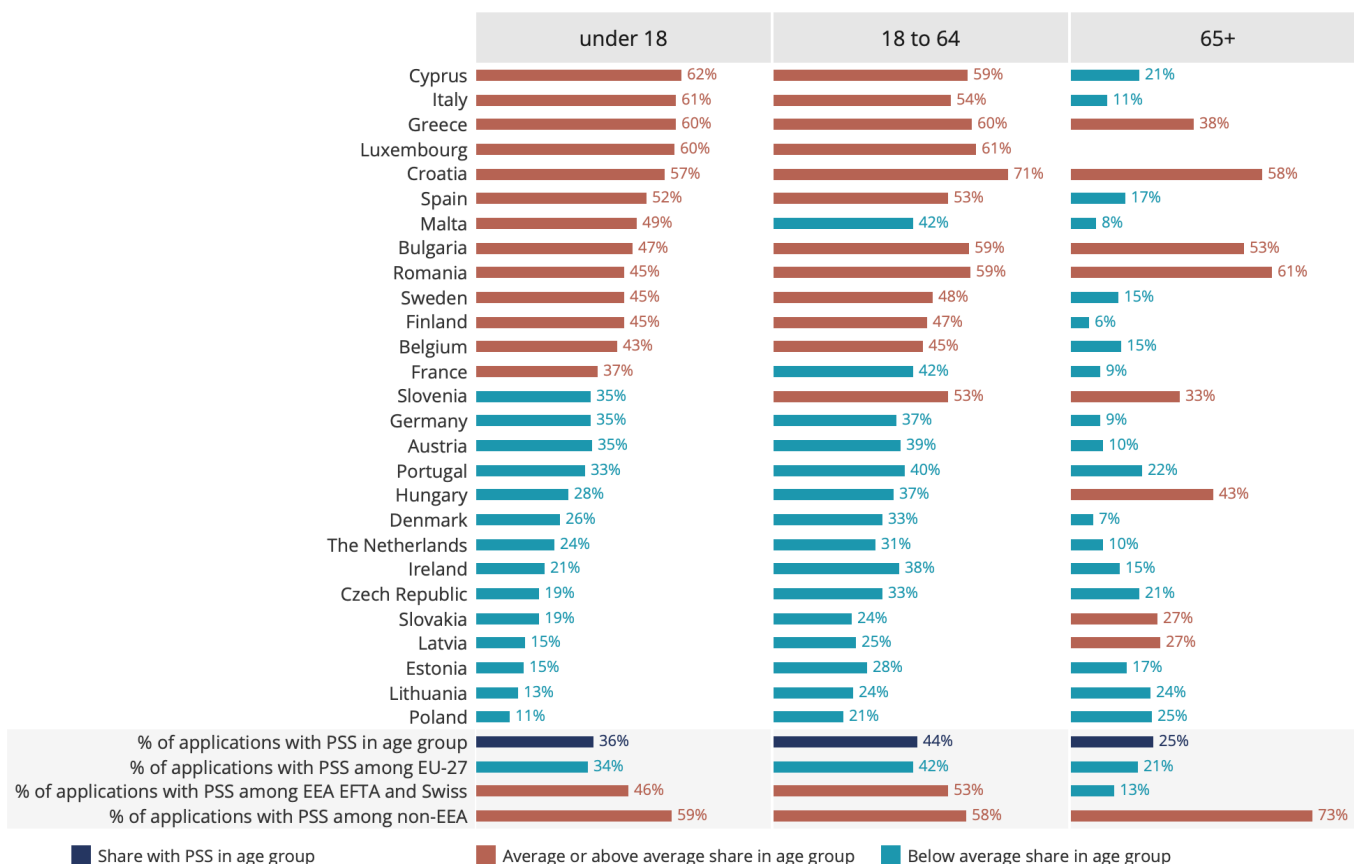


3.3. People with pre-settled status in each age group, by nationality

The share of applications from children and people over 64 receiving a grant of pre-settled status varies considerably across nationalities (Figure 5). For example, on average, 36% of children’s applications receive a grant of pre-settled status, but this share is larger for applications of this age group from Italy (61%), Spain (52%) or Romania (45%). Among applications of people over age 64, an average of 25% receive a grant of pre-settled status, but this share is much larger for applicants from non-EU countries (73%) and nationalities such as Romania (61%) or Bulgaria (53%). There are multiple factors that could explain the higher shares of applicants with pre-settled status among some age groups and nationalities, including a shorter length of residence in the UK or more breaks in continuous residence.

Figure 5

Share of pre-settled status grants in each age group, as of 30 September 2021



Source: Migration Observatory analysis of data from Home Office FOI 68029 based on the EU Settlement Scheme quarterly statistics, 30 September 2021.
 Note: share of total applications, including those with refused/invalid/withdrawn outcomes.
 Numbers refer to applications instead of people, so there is double counting of people making more than one application



4. Upgrading from pre-settled to settled status: new or old challenges?

A major point of discussion about EUSS over the past three years has been how it can ensure inclusive coverage and deal with the inevitable risks that some people who are eligible would not secure status.

In many respects, the EUSS can be considered a significant success with more than 5.6 million grants of status as of 31 December 2021. However, regardless of how well a programme is designed, no large-scale government programme of this nature will achieve 100% coverage (Clay et al., 2019; Daigneault et al., 2012), as discussed in the Migration Observatory report [Unsettled Status – 2020](#). The number of eligible residents who have not yet applied to the scheme at all is still unknown, so it is not possible to estimate its degree of coverage (ICIBI, 2022: 6). However, considering that, as of the end of December 2021, 160,600 late applications had been submitted following the 30 June 2021 deadline, there is evidence that meaningful numbers did in fact miss the deadline.

Various reports have examined potential barriers to securing status through the EUSS, including lack of awareness of the scheme, vulnerabilities that reduce people’s autonomy or capacity to apply, or difficulties providing identity or residence evidence (e.g. Barnard et al., 2019; Jablonowski and Pinkowska, 2021; Morris and Qureshi, 2021; O’Brien and Welsh, 2021; Sumption and Fernández-Reino, 2020). The Home Office also provided a list of vulnerable groups in their EUSS Vulnerability Strategy from 2018 – which has not been published – and the [Policy Equality Statement](#). These analyses have identified a diverse range of groups who are expected to be at greater risk of failing to secure

their status through the EUSS, including elderly people, socially isolated people, victims of abuse or exploitation, people with limited language skills or literacy, those who lack digital skills, people with serious health conditions or disabilities, victims of modern slavery and/or trafficking, victims of domestic violence, people with no fixed abode, and children. While the total number of vulnerable applicants is not known, the Home Office initially estimated that it could be around 200,000, although this estimate did not include eligible applicants with language and literacy problems (ICIBI, 2022: 21), and did not account for the fact that the total number of people applying to the EUSS turned out to be notably higher than initially forecasted.

The Home Office acknowledged the EUSS inclusion challenge and provided £21.5 million of grant funding to a [list of organisations](#) to reach and provide support to vulnerable groups in their application process (ICIBI, 2022: 6). It also set up a Settlement Resolution Centre to help applicants use the scheme—something that does not exist for other types of immigration application.

Despite these efforts, civil society organisations and the ICIBI have expressed concern about the problems that vulnerable applicants have been experiencing while applying to the scheme, especially to secure settled status. Researchers and charities supporting people to apply to the EUSS have identified cases in which applicants were not aware of the need to apply, or struggled to produce documentation to prove their eligibility (see e.g. Barnard and Costello, 2021a). Many of the groups that were originally identified as potentially at risk have indeed been those who have needed to draw on support from charities in order to engage with EUSS, including homeless EU citizens, people with limited literacy or English proficiency, and those with mental health problems (Jablonowski and Pinkowska, 2021).

A lack of data makes it difficult to measure the scale of any difficulties EU citizens and their family members have faced applying to the EUSS, and which groups are most affected. However, there is one group for which quantitative data were collected. The Home Office surveyed local authorities (and Health and Social Care Trusts in Northern Ireland) during 2020 and 2021 to produce an estimate of the [number of looked after children and care leavers](#) who were eligible to apply to the EUSS, and to learn about the barriers that local authorities experienced submitting those applications. Initial rounds of the survey found that large shares of identified children in care and care leavers had not applied, but this improved to 95% of the 3,895 eligible children identified by November 2021. Following a similar data collection exercise, the Children's Society (2020) expressed concern about eligible children not being identified by local authorities. And importantly, the Home Office data show that new eligible children were still being identified throughout 2021, including 170 identified in the 5 months after the deadline. The data illustrate the kinds of problems that vulnerable applicants can face even when they fall into a category that receives substantial attention from public authorities.

Other analyses have highlighted administrative challenges in the EUSS. In particular, the ICIBI expressed concerns about the capacity of the EU Settlement Resolution Centre to handle the high volume of applications received (ICIBI, 2022: 8), inconsistencies in advice and caseworkers' decisions on complex cases (2022: 27), and a lack of data to identify the number of applicants who may be considered vulnerable (2022: 22) based on the cohorts identified by the Home Office in the EUSS Vulnerability Strategy and the [Policy Equality Statement](#).

4.1. Vulnerable applicants in the transition from pre-settled to settled status

As people with pre-settled status move towards their deadline for reapplying to the EUSS, many of the same factors that affected some applicants' ability to engage with the scheme in the first place are also affecting their ability to upgrade to settled status. However, there are also some specific features of the EUSS upgrade process that exacerbate the challenge for pre-settled status holders. There are three main reasons why some residents with pre-settled status, especially those who are vulnerable, will fail to secure settled status in the future:

- **Failure to reapply:** some pre-settled status holders do not realise or remember that they must apply for a second time to continue living lawfully in the UK. Even if they do, some will face some barrier to doing so (e.g. they may not be able to access the support they need).
- **Difficulty proving eligibility:** some applicants struggle to provide evidence of their residence, and this is *more* difficult at the settled status stage when 5 years of continuous residence in the UK is required. Some non-EU applicants also struggle to provide evidence of their past or present relationship with an EU citizen. While many EU applicants rely on [automated checks](#), others will have to produce and submit their [own documentary evidence of their UK residence](#) in order to qualify for the settled status upgrade.
- **Becoming ineligible:** some pre-settled status holders will inadvertently become ineligible for settled status due to, for example, a long absence from the UK, a prison sentence, or the breakdown of a family relationship with an EU citizen.

The Home Office did not systematically collect data on applicants' vulnerability indicators, the degree of assistance they required during the application, or the effectiveness of the support measures they put in place, so it is not possible to produce a reliable estimate of the number of vulnerable pre-settled status holders who are likely to require support upgrading their status.

In the rest of the report, we provide an overview of the institutional factors related to the EUSS policy design and implementation that, based on our interviews and documentary evidence, will put some pre-settled status holders at risk of failing to secure settled status for the reasons mentioned above.

5. Policy factors affecting the transition from pre-settled to settled status

This section examines the features of the EUSS policy design that affect the ability to secure settled status among some groups of pre-settled status holders, especially those experiencing some vulnerability. The institutional features described here present no problems for many applicants, but will nonetheless create challenges for specific groups of people due to their personal situations or characteristics.

5.1. A double application process with multiple individual deadlines

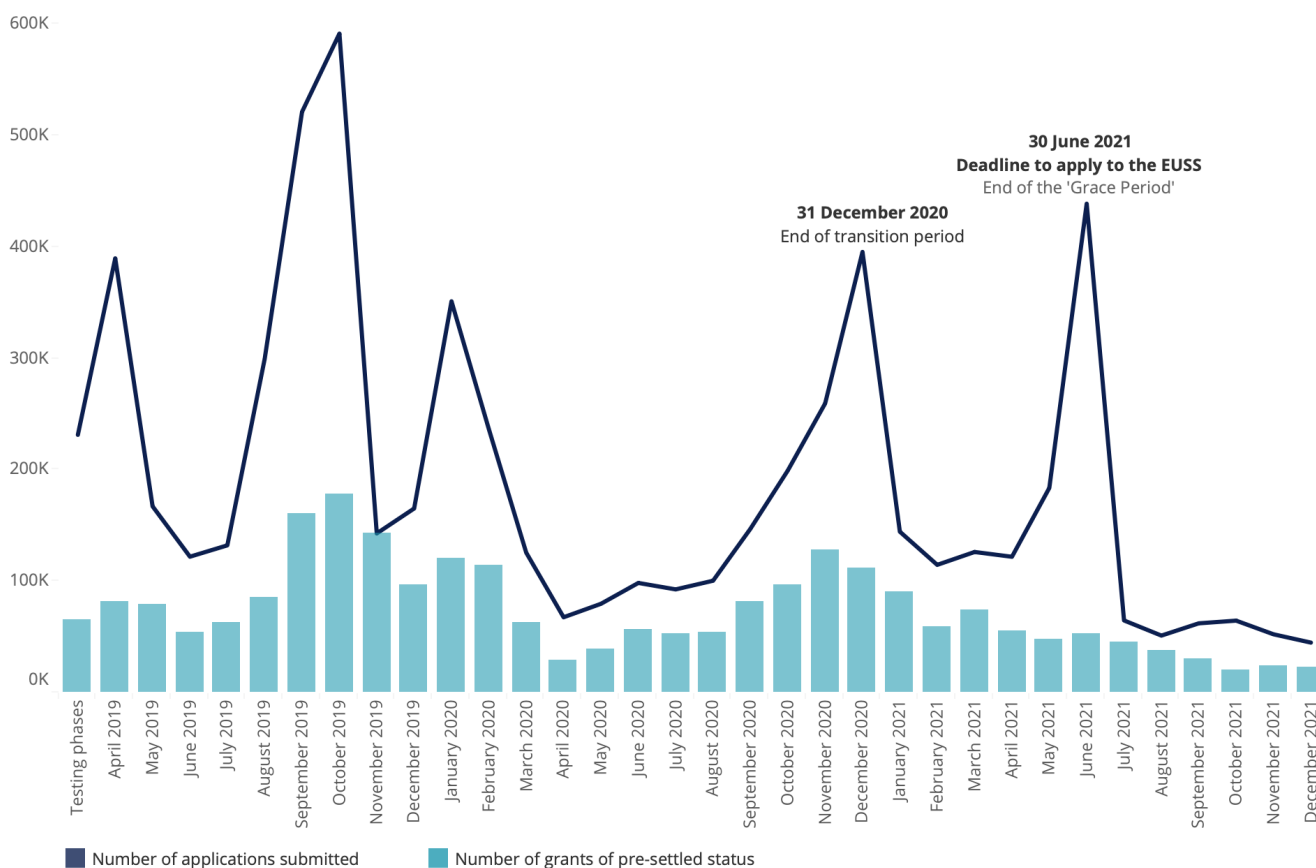
Pre-settled status holders must reapply to EUSS from scratch and are not automatically given settled status over time. A system with two different status outcomes instead of one inevitably increases the complexity of the scheme and the risk that some people fail to understand the differences between the two statuses, including the need to reapply if they hold pre-settled status.

The first EUSS application deadline (30 June 2021) was shared by all EU citizens and their non-EU family members living in the UK by 31 December 2020. A single deadline made it easier for the Home Office, public authorities and civil society organisations to run outreach campaigns. Indeed, applications surged immediately before the deadline: in June 2021, the number of applications was more than three times the average of the previous five months (Home Office, 2021), indicating a likely 'deadline effect' (Altmann et al., 2021) (Figure 6). Even though the 30 June 2021 deadline was the same for all eligible residents, the Home Office received 160,600 late applications between 1 July 2021 and 31 December 2021, a third of which received settled status (EU Settlement Scheme quarterly statistics

December 2021, table post 30 June). This indicates that a substantial number of people missed the deadline despite the outreach campaigns. Research on people who received support from organisations to apply found that children and old people were among those who had faced barriers to submitting an in-time application (Barnard and Costello, 2021a).

Figure 6

Monthly applications to the EUSS and grants of pre-settled status, testing phases to December 2021



Source: Migration Observatory analysis of sheet EUSS_MON, EU Settlement Scheme Quarterly Statistics, December 2021



Pre-settled status holders, on the other hand, have their own individual deadlines to upgrade their status before it expires depending on when it was granted. This will make outreach and awareness campaigns more challenging, as there is not a single deadline that applies to all residents with pre-settled status. The first cohort of pre-settled status holders (those receiving pre-settled status during the Testing Phases of the EUSS between August 2018 and March 2019) will have to apply for settled status between August 2023 and March 2024, five years after their status was granted, although many will upgrade as soon as they are eligible. It is uncertain which will be the last cohort of pre-settled status holders, as the Home Office is still issuing grants of status and many people are applying after the 30 June 2021 deadline, including joining family members of EU citizens with status, who can apply at any time in the future. For example, applicants whose pre-settled status was granted in January 2022 will not be legally required to upgrade their status until January 2027.

People granted pre-settled status do not necessarily have to wait five years to reapply; they become eligible for settled status as soon as they have five years of continuous residence in the UK. Some applicants will not be aware of their pre-settled status expiry date nor their settled status eligibility date, however. In fact, support organisations

interviewed for this project expressed concerns that some of those receiving pre-settled status have not properly understood that it was temporary and that they needed to apply a second time to be permanent residents. Likewise, the ICIBI has also provided evidence of vulnerable applicants with limited English proficiency not being able to understand the difference between settled and pre-settled status (ICIBI, 2022: 81).

The Home Office has committed to alerting pre-status holders of they need to apply for settled status before their temporary status expires (Home Office, 2020: 20), though these alerts would only be effective for applicants who can be reached using the contact details the Home Office holds. Some of the people interviewed for this report mentioned that elderly applicants or applicants in a precarious economic situation do not always have a mobile phone (or they share it with other people), and some did not have an email account, which would need to be created ad hoc for their application. Many of these applicants will lose access to their contact details over time and thus will not receive Home Office alerts for upgrading their status before it expires. Women in abusive relationships are another vulnerable group who in some cases will not be aware of the Home Office alerts, as their identity documents and online accounts are often controlled by the perpetrator of abuse.

5.2. A digital application process and only-digital status

The EUSS is the first entirely digital immigration scheme in the UK. The application process itself is online; and applicants and status holders need to use the 'View and Prove' platform in the UK government website in order to access and prove their status to third parties (e.g. employers or landlords). For this they need to have their log-in details (identity document used at the time of application and date of birth), as well as access to the email account or mobile phone used in their application so they can receive a security code.

Paper forms are available in [specific cases](#) and need to be requested. They are the norm among non-EU applicants who are applying on the basis of a derivative right to reside, such as non-EU carers of an EU child. EU applicants can also request paper forms if they do not have an identity document and cannot obtain one, or if they cannot be supported to submit their online application. By the end of February 2021, 17% of the total number of paper applications to the EUSS (14,460) were submitted by EU citizens, with Poland, Romania and Italy being in the top 10 nationalities of paper applications (Barnard and Costello, 2021b).

Most of the interviewees for this report considered that the lack of a physical document with an expiry date on it increases the risk of people forgetting or not realising that they need to reapply. Having a physical document would have more impact for pre-settled status holders who (1) cannot access their status online due to, for example, poor English skills, low digital literacy or lack of internet access; (2) changed their contact details (home and email addresses and telephone) since their last application and did not inform the Home Office of that change; or (3) could not access the contact details used for their pre-settled status application, as has sometimes been the case for applicants who do not own a mobile phone and/or are not internet users.

While an entirely digital scheme (i.e. digital application *and* digital proof of status) is convenient for some applicants, representatives of charities supporting vulnerable residents to apply are concerned about the effects on people with low digital literacy or poor access to digital devices and the internet. In the UK, non-internet users are increasingly concentrated among vulnerable groups, which include older people, the socioeconomically disadvantaged, people with poor health, or the socially isolated (Helsper and Reisforf, 2017). There is evidence that applicants without digital skills and/or with low English language proficiency have in some cases been abused by so-called 'advice sharks', who charged extortionate fees to provide advice and apply for status on their behalf and can abuse them in other ways (Barnard et al., 2021). This can make it difficult for people to access and check their status. See [Tomlinson and Welsh \(2021\)](#) for a comprehensive review of the rationale behind the Home Office transition to a digital-only immigration system and its potential impact on vulnerable groups.

5.3. A more onerous application process for settled than for pre-settled status

Applicants who want to move from pre-settled to settled status must currently reapply to the scheme again from scratch. That is, there is currently not a separate process for converting from one status to the other. This means that applicants who are required to provide their own evidence of residence in the UK must do so again.

The residence evidence required to receive a grant of settled status is much more extensive than for pre-settled status. Pre-settled status could be acquired on the basis of a single piece of evidence covering a short period of time, such as a travel receipt to the UK. Settled status, by contrast, requires evidence for a full five years of residence, among EU applicants; or five years of residence in the UK as a family member of an EU citizen, or as a person with retained or derivative rights, among non-EU applicants.

Applying to the EUSS has been easy and relatively fast for applicants with a valid identity document and whose residence in the UK was correctly captured by the automatic checks alone, and this will continue to be the case for pre-settled status upgraders. During the Testing Phases of the EUSS, 73% of concluded applications did not require to provide additional evidence after the automated checks (Home Office, 2020: 16). [Automated checks](#) use applicants' National Insurance Number (NINo) to search HMRC and DWP databases and identify the months for which the government holds records on applicants. This information is then used to calculate the length of residence in the UK. Automated checks do not always properly reflect the entire time of residence in the UK of some applicants, however. For example, 16% of applications during the testing phase of the EUSS in November–December 2018 needed to provide additional evidence of UK residence because the automated checks were not accurate (Home Office, 2019: 7). This number may now be higher, given that a large share of applicants during the Testing Phases were public sector employees, whose residence is typically properly captured by the automated checks. In addition, organisations such as Rights of Women, have noted that the automated checks are less effective at identifying residence for women, because, among other reasons, they do not check for tax credits or child benefit.

When automated checks are not accurate or available, applicants must prove their residence using [other types of evidence](#) covering long periods of time (e.g. annual bank statements, council bill tax, school or university attendance documents, letter from a care home); or shorter periods (e.g. utility bills, travel tickets, letter from the GP), which count as evidence for one month if they only have a single date on them. Many pre-settled status upgraders will obtain their own evidence covering long periods of residence without difficulties. Others will, however, struggle to provide documentary evidence covering five years of residence, particularly those who do not engage with public bodies, e.g. homeless people, workers in informal employment, or some non-working women caring for children. Several of the interviewees for this report highlighted that some vulnerable long-term residents who could not secure settled status in their first application will have the same problems providing evidence in their second application. Non-EU victims of abusive relationships were identified as a group facing particular challenges to secure settled status, as they need to provide evidence of that relationship (e.g. marriage certificate), of the domestic abuse, the abuser's identity and status or residence before the relationship broke down (so they can have be recognised a retained right of residence), as well as their own length of residence, which makes these applications especially complex.

5.4. Uncertainty about the level of support that will be available for pre-settled status upgraders

Since April 2019, the Home Office has given £21.5 million of funding to multiple [organisations](#) across the UK to help people with a range of vulnerabilities apply to the EUSS (ICIBI, 2022). At the time of writing, this funding was set to continue until at least [31 March 2022](#).

Considering that the Home Office is still accepting late applications and that a joining family member can come to the UK at any time under a EUSS family permit (and then apply for pre-settled status), many pre-settled status holders will not be required to reapply until at least 2027 and beyond. Grant-funded organisations have raised concerns about

their future work helping applicants to apply, including those who have pre-settled status and need to reapply. Pre-settled status holders who were assisted in their first application are expected to require more assistance for upgrading to settled status, given the more demanding application process in terms of the amount of evidence required. The availability of face-to-face assistance at the local level will thus continue to be relevant for some applicants for several years to come, although there is some uncertainty about whether this funding stream will continue.

5.5. Limited translation and interpretation services

The application to the EUSS is entirely in English, although the Home Office provided [online guidance](#) for applicants in the 26 official languages of the EU following a recommendation from the ICIBI first report on the EUSS (ICIBI, 2020). The translated online guidance has been unavailable for periods of time while it was being updated, which some of our interviewees said had created barriers to making an application. Others have noted that some aspects of the guidance were mistranslated in some languages (ICIBI, 2022: 85) and argued for materials in non-EU languages, given that 7% of applications (443,380) by the end of September 2021 were submitted by non-EU citizens; our interviewees also highlighted this issue.

Staff at the Settlement Resolution Centre and EUSS caseworkers have also identified language barriers as one of the main challenges in their work (ICIBI, 2022: 84–86). Language barriers will continue to hinder the application process among some pre-settled status upgraders, especially because applying for settled status is more demanding, as discussed earlier. Interpretation services in the most common languages used by applicants are, however, available in many of the charities helping applicants to apply to the EUSS, which makes the continuity of the Home Office funding stream for these organisations particularly relevant.

Applicants with limited English language proficiency are likely to be disadvantaged in other respects, and this may amplify difficulties securing settled status. For example, the share of adults with low or no educational qualifications is much higher among people with low English proficiency (see Migration Observatory briefing [English language use and proficiency of migrants in the UK](#)). Poor English skills have also been linked to worse health outcomes and lower employment rates (ONS, 2015), which make these applicants more vulnerable.

5.6. Breaks in continuous residence due to confusion over permitted absences

Pre-settled status holders with breaks in continuous residence after the end of the transition period (31 December 2020) cannot initiate a new continuous qualifying period, so they effectively lose their right to permanent residence.

Under the EUSS, people with pre-settled or settled status have different residence requirements. Those with settled status can only lose their residence rights if they leave the UK for a period of five consecutive years. By contrast, pre-settled status holders will automatically lose their right to live in the UK if they leave the country for a period of two consecutive years.

However, residents with pre-settled status will lose their path to settlement – that is, their ability to secure settled status in the future – with shorter absences than the widely publicised 2 years. In fact, they break their continuous residence if they spend more than 6 months abroad in a 12-month period overseas. The Home Office makes some exceptions to this rule in the case of [absences of up to 12 months](#) for important reasons such as pregnancy, childbirth, serious illness, study, or for a coronavirus-related reason. Some [absences of more than 12 months](#) for coronavirus-related factors may also be accepted, although as the pandemic recedes, it will be harder for settled status applicants to rely on this concession. Pre-settled status upgraders must provide evidence of the causes of the extended absence in their application for settled status.

Many of the people interviewed for this report said that pre-settled status holders often are not aware of the rules

regarding absences and thus inadvertently become ineligible for settled status. For example, pre-settled status holders who moved to their origin country during a period of unemployment for longer than the durations identified above would become ineligible to upgrade their status when they reapply, even if they were working again the UK at time of application for settled status. In addition, it is not possible for them to check with the Home Office prior to an extended absence whether or not it will fall into a permissible important reason category.

EU seasonal workers and other EU circular migrants who move back and forth between their origin country and the UK are a group who are expected to face greater challenges upgrading their status as a result of absences. Research on EU seasonal workers found that an estimated 15% did not know how to manage their EUSS digital status and how to prove their right to work (Barbulescu et al., 2021), making it more likely that they are also not familiar with the rules on permitted absences.

5.7. Breaks in continuous residence due to a prison sentence of any length

Residents with pre-settled status who have been convicted for an offence and receive a prison sentence, or have been detained in a young offender institution, will be considered to have broken their continuous residence regardless of the duration of the prison sentence or detention. As a result, they will not qualify for settled status and would lose their residence rights. These residents will not receive a deportation order if the offence is not sufficiently serious to trigger one, so they would not necessarily be aware that they have lost their right to be permanent status in the future. For example, a 20-year-old with pre-settled status may receive a few weeks sentence for possession of drugs if they had a past conviction (e.g. for shoplifting). This short sentence represents a break in continuous residence which would make them ineligible for settled status.

6. Conclusion

Table 1 presents a summary of the different institutional factors that have been identified as potential barriers to upgrading from pre-settled to settled status, and indicates groups of pre-settled status holders that are expected to experience them. However, note that vulnerabilities will often create more than one barrier. For example, a person living in poverty and working informally may lack a detailed understanding of the requirements associated with pre-settled status, and also have limited evidence of their continuous residence.

Table 1. EUSS features affecting the risk of not upgrading from pre-settled to settled status

Reasons why some pre-settled status holders will fail to upgrade their status	EUSS policy features increasing the risk	Cohorts at risk of failing to upgrade their status
Failure to reapply due to: - Lack of awareness - Lack of capacity and/or autonomy	A double application process with multiple individual deadlines	<ul style="list-style-type: none"> • Some elderly people • Children, including children in care and care leavers • People facing economic or social exclusion • People with limited English skills • People without (digital) literacy • People in abusive relationships • People with addictions, mental health problems or cognitive disabilities • People with derivative or retained rights of residence • People facing economic or social exclusion • People with derivative or retained rights of residence
	A digital application process and only-digital status	
	Uncertainty about the level of support that will be available for pre-settled status upgraders	
	Limited interpretation and translation services	
Difficulty proving eligibility	A more onerous application process for settled than for pre-settled status	<ul style="list-style-type: none"> • People with breaks in continuous residence due to a non-permitted absence (e.g. circular migrants) • People with a prison sentence or detention in a young offender institution
	Uncertainty about the level of support that will be available for pre-settled status upgraders	
Becoming ineligible	Breaks in continuous residence due to confusion over permitted absences	
	Breaks in continuous residence due to a prison sentence	

The challenges facing pre-settled status holders are in many respects conceptually similar to those facing initial applicants to the EUSS, and many of the at-risk groups identified are the same. However, the nature of the challenge facing the Home Office, vulnerable applicants and those who support them is somewhat different for pre-settled status holders who need to upgrade to settled status.

On one hand, the fact that pre-settled status holders have engaged with the scheme before should mean that the initial hurdle has been cleared: they have been in contact with the government already and the Home Office can prompt them to reapply when the time comes, providing that their contact details are the same (which is not always the case, as discussed in the report). On the other hand, for some more vulnerable applicants, the second application is harder. First, the threshold for demonstrating their residence in the UK is higher (i.e. five continuous years); second, the level of face-to-face support at the local level (including interpretation services when necessary) is likely to decrease in the next years; and finally, awareness about the scheme and the need to reapply is expected to be lower as Brexit and the public communications about the June 2021 deadline recede into distant memory. In other words, it would be wrong to assume that because the large majority of EU citizens in the UK have applied to the EUSS, the policy challenge of securing their status is over: for many of those with pre-settled status, the challenge is yet to come.

Evidence gaps and limitations

If policymakers want to understand the number and characteristics of pre-settled status holders who are UK residents and do not upgrade their status on time, new data is required. One way of gaining some statistical insight into this issue would be to link anonymized data on EUSS status to other administrative data sources that give some indication of whether people are in the UK, such as HMRC, DWP and NHS records. This would not help to identify UK residents who do not engage with either the tax, benefits or health systems (e.g. non-working people who do not receive benefits and are not registered in a GP surgery), but will be effective for quantifying the number of residents who do not upgrade their status despite having recent records in these administrative databases.

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