

Automated data checks in the EU Settlement Scheme

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The current version of this document can always be found as below:

<http://www.InfiniteIdeasMachine.com/2019/01/settled-status>

Executive Summary

Some 3.7 million EU nationals currently reside in the UK.¹ In order to access their right to stay in the country after Britain leaves the EU, most will be required to apply to the UK Home Office's EU Settlement Scheme and be granted either Settled or Pre-Settled Status.

This report concerns the Settlement Scheme application process and asks questions which will need to be answered for the scheme to be fair, impartial and supportive of vulnerable people.

What are the UK's obligations?

Article 18 of the Withdrawal Agreement states,² *“any administrative procedures for applications are **smooth, transparent and simple, and that any unnecessary administrative burdens are avoided**”, and “forms shall be **short, simple, user friendly** and adapted to the context of this Agreement; applications made by families at the same time shall be considered together”.*

The Settled Status application process checks three things – identity, residency and criminality. In an effort to meet its commitment that “any unnecessary administrative burdens are avoided”, the Home Office has decided to automate the residency checking process, linking the online Settled Status application form to data held on individuals by HMRC and DWP.

Risk to vulnerable people

From the outset, it has been predictable that certain groups – often vulnerable individuals – would be less likely to have, or may struggle to access, documentation from these two sources. It is therefore likely that a significant number of applicants will not find the process “short, simple [and] user friendly”. The degree to which this has been considered, and whether any action has been taken to mitigate it, comprise many of the questions raised in this report.

Clarity is also lacking for many groups, including those under the age of 21. It is unclear, for example, whether any evidence of residence will be required for the children of those who receive settled status or if automated data checks will be run on every individual in a family who has a National Insurance Number (Q24). But due to lack of HMRC and DWP data on them, such checks are unlikely to result in a pass for anyone under 21.

Some key questions are:

- **For those in identified vulnerable groups, which entity of the State or other recognised authority that individuals in that group deal with is capable of providing the evidence that they have been present, in line with Home Office requirements? (Q26)**

¹ ONS, Population of the UK by country of birth and nationality, July 2017 to June 2018: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

- **What, if any, evidence of residence will be required for the children of those who receive settled status?(Q24)**

Broadening the range of allowable evidence

To meet the obligation that the process is “smooth, transparent and simple” for as many applicants as possible, public bodies with records about entirely lawful residents should be encouraged to provide formal paperwork to the citizen, copies of which can be provided by the citizen to the Home Office for it to process should the automated checks fail.

We should not force vulnerable people through a process we can anticipate they will fail, through no fault of their own. Broadening the range of allowable evidence will make the process fairer and more effective.

Our key questions on this are:

- **Is there an official template of such a letter to ensure schools, colleges, universities and other accredited educational or training organisations provide the required evidence? (Q27)** We have created a sample template to aid this process.
- **Will the Home Office accept a letter or standard declaration from a local authority as proof of continuous residence of someone who has been ‘looked after’ but who is no longer in care? (Q28)**

Lack of transparency creates risks to applicants

Information the Home Office has made available about the system suggests a risk of discrimination against vulnerable groups. Unfortunately, there is much about the system that is currently not transparent. These factors make it hard to predict problems which may arise and also cause concern as to an individual’s ability to get redress should the system fail.

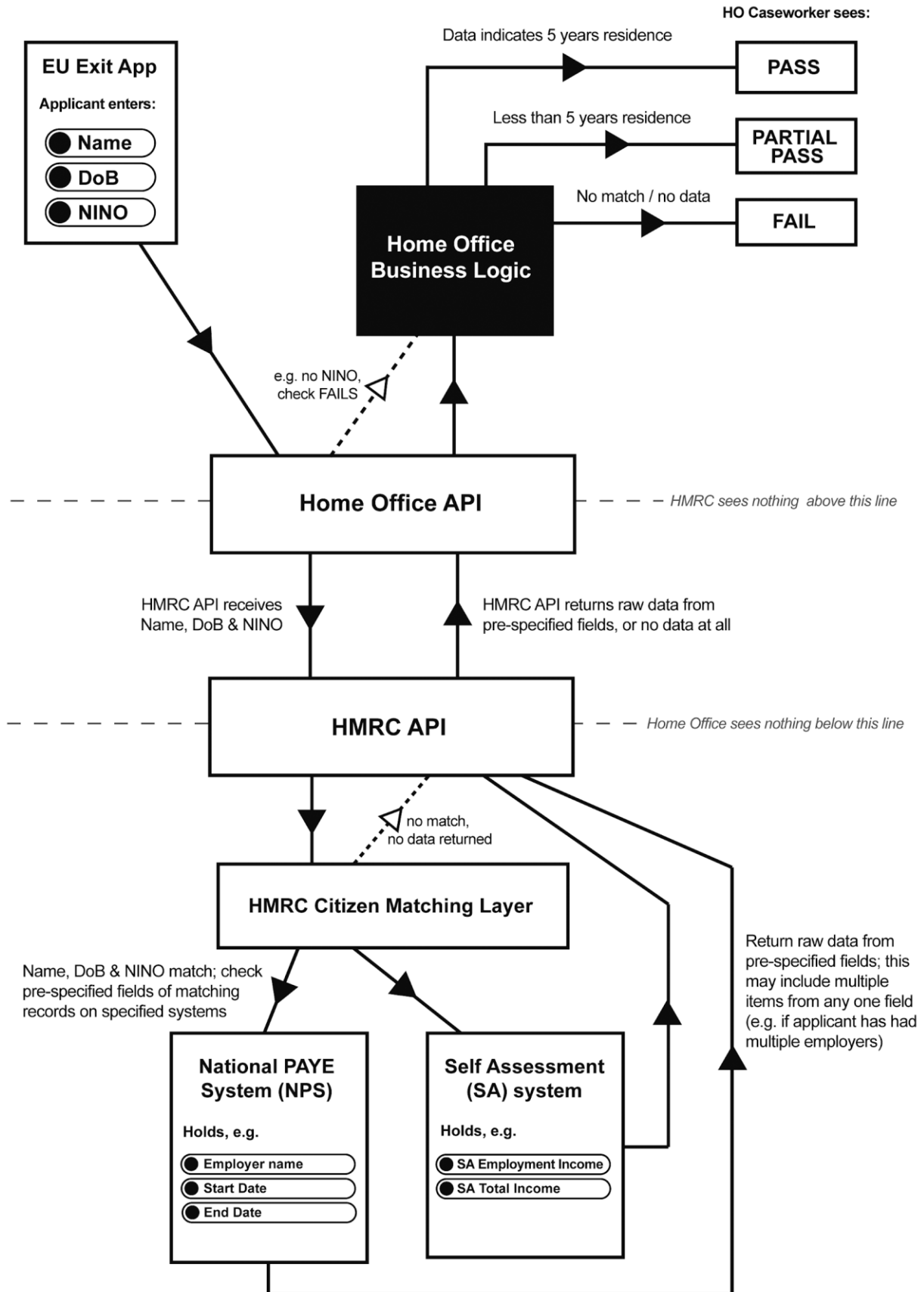
With so much that is both automated and not understood, who is responsible for failures, and how will they even be identified?

Key questions include:

- **Will the Home Office publish full details of the ‘business logic’³ it applies to the data it receives from HMRC and DWP, to allow for independent review, and how it has been tested? (Q1-2)**
- **How far back will each database be checked, and why are some records checked but some not? (Q16-17)**
- **Will the Independent Monitoring Authority have sufficient powers to be able to scrutinise the business logic that the Home Office and DWP are so secretive about? (Q38-39)**

³ Given its use in the MoU between the Home Office and HMRC, use of the term ‘business logic’ here and throughout refer to any and all algorithm(s) applied to data returned by either HMRC or DWP.

Diagram indicating how Home Office and HMRC systems exchange data via APIs for EU Settled Status checks; Home Office business logic is a 'black box'.



Part 1 - Questions for forthcoming Legislation and Available Next Steps

There will be a number of opportunities for policy engagement and influencing, primarily the Withdrawal Agreement and Implementation Bill the Government committed to in its Statement of Intent – but also around the Immigration and Social Security Co-ordination (EU Withdrawal) Bill⁴ and further anticipated immigration legislation implementing the UK's “future skills-based immigration system” white paper.⁵

We have identified in Part 2 a number of groups most likely to be affected by problems with the automated checks, or who will most likely not be able to pass the automated checks as designed. Questions relating to these groups appear below under the heading ‘Non-automated processes’, highlighting specific issues with the process that NGOs working with those constituencies may wish to consider.

Debate about the settled status programme has primarily engaged with groups who the Home Office have dealt with around immigration. The Home Office appears to expect every resident to know about any new policy it introduces, without accepting the burden of telling them about it before its immigration enforcement staff get in touch in 2021. Organisations which work with other parts of the public sector may seek to encourage use of our template letters and answers to questions that affect them.

It is unlikely that this the rollout of this programme will contain no unanticipated problems. We hope that the Home Office is prepared for that, which requires a Home Office that, to reuse a phrase, is “fit for purpose”. As Sajid Javid’s post-appointment review continues, and if the programme goes as badly as predicted, this programme should be within the remit of whatever inquiry comes after that review.

Questions and obligations on HMG

Throughout the more detailed walk-through in Part 2, we identify questions arising around the settled status checks which we collect here under thematic headings.⁶ These are all questions that require urgent answers from the Government if the system is not going to fail for people, especially given the current lack of transparency around the EU Settlement Scheme and its operation in practice.

⁴ <https://services.parliament.uk/Bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal.html> - published 20 December 2018. Further information here: <https://www.gov.uk/government/publications/immigration-and-social-security-co-ordination-eu-withdrawal-bill>

⁵ <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system> - published 19 December 2018.

⁶ Questions are numbered sequentially under the topics in part 1; some therefore appear in a different order in the narrative of part 2.

Automated data checks in general

*The new application system will be **streamlined and user-friendly and draw on existing government data**, to minimise the burden on applicants to provide evidence of their residence. This streamlined process will take applicants through three simple stages: **proving their identity, checking they are not a serious criminal, and evidencing their residence in the UK**. To make the process as simple as possible for the great majority of EU citizens, **we will check employment and benefits records for proof of residence**.*

EU Settlement Scheme: Statement of Intent, 21 June 2018

- 1) Will the Home Office publish full details of the 'business logic'⁷ it applies to the data it receives from HMRC and DWP, to allow for independent review?
- 2) Will the Home Office publicly cite how its business logic been tested? What further and ongoing tests will be applied as applications for settled status scale up?
- 3) Will the Home Office publicly cite the information with which an applicant is provided in the case of a Partial Pass? (The only indication we have seen in this regard suggests the Home Office caseworker and applicant will see only the periods of residence, i.e. the information on which the business logic has made a decision, but not the data on which it is based, or its source.)
- 4) Will the Home Office publicly cite whether its business logic is designed to identify or in any other way treat differently those who qualify for settled status under one of the exemptions to the requirement for 5 years continuous residence?
 - a) For example, is any information returned with a Partial Pass result from the automated checks that indicates an applicant may qualify for settled status under a relevant exemption, or are all such decisions made manually?
- 5) Will the Home Office publicly cite the steps it will take to correct what may be systemic problems in cases where its 'business logic' makes a mistake that denies someone settled status?
- 6) Conversely, should the 'business logic' make a mistake and grant someone settled status, will the Home Office publicly cite the consequences that will have for the EU citizen in future?
- 7) Will the Home Office publicly cite the legislative test and oversight required to ensure the automated data checks occur only ever in the context of an application for settled status?
- 8) As well as the business logic, will the Home Office publish the full specification of the database in which it holds the details of those awarded settled status?

⁷ Given its use in the MoU between the Home Office and HMRC, use of the term 'business logic' here and throughout refer to any and all algorithm(s) applied to data returned by either HMRC or DWP.

- 9) Will the Home Office publicly cite how it proposes to track or follow up those applicants who are granted pre-settled status?

HMRC-specific

- 10) In addition to the business logic itself, will the Home Office publicly cite the rationale used to define which fields of information would be used to infer residence?
- a) Will the Home Office publicly cite the specific justification for the request of “Income” fields from HMRC, when settled status is not contingent on income?
 - b) If the intention is to make the automated data checks as “streamlined” and “user friendly” as possible, will the Home Office publicly cite why it chose to exclude periods in which a person received income from a Partnership (vs. Employment or Self Employment), or received or made contributions to UK Pension or State Benefits, where such data is held by HMRC?
- 11) Will the Home Office publicly cite the threshold between a Pass and a Partial Pass as derived from HMRC data? For example, does an applicant simply have to have made a tax return for or within a relevant year or is the precise date of that tax return also a factor in the calculation?
- 12) Will the Home Office cite on which basis its business logic will return a Fail? Is this exclusively due to a failure to match any record at HMRC, and therefore no raw data is returned, or are there circumstances in which raw data is returned but the business logic can still determine a Fail?
- 13) Will the Home Office publicly cite its rationale for not checking information held by HMRC that may also be held by DWP? (For example, HMRC holds and can readily make available to individuals information on their National Insurance contributions, Benefits and State Pension – and it holds Working Tax Credit, Child Tax Credit and Child Benefit records.)
- 14) Will the Home Office publicly cite its rationale for not taking into account any voluntary NI contributions?
- a) Will the Home Office publicly cite the process by which voluntary NI contributions or any other additional check can be added to the fields requested from HMRC or DWP?

DWP-specific

- 15) Will DWP publish its MoU with the Home Office or, at the very least, the specification of its EU Exit API – including the fields provided, and any business logic applied – so those in vulnerable groups can be properly advised and assisted?

16) Will DWP or the Home Office publicly cite the databases checked, and how far back the records go in each database from which the DWP EU Exit API will return data?

- a) Does, for example, DWP's Customer Information System hold information for longer than 3 years that would be available to the Home Office, but not to the individual?
- b) Where records of up to ten years⁸ past actions by DWP were retained by the citizen but not DWP, would that evidence be accepted by the Home Office?
- c) Will the Home Office publicly cite any weightings applied to data provided from DWP systems, and the rationale for each such weighting? (For example, due to the period of operation of a database or the granularity of the data they contain.)

*(n) for cases other than those set out in points (k), (l) and (m), **the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate** to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled;*

Withdrawal Agreement, Article 18 (1), 25 November 2018

17) Will the Home Office publicly cite the rationale for the fields it has chosen to include, and to exclude, from the specification for the DWP EU Exit API?

- a) Could, for example, automated checks on information held in DWP CIS be used to establish evidence other than dates of residence, e.g. proof of durable relationship?

As per the Withdrawal Agreement, Article 10, Personal scope:

*5. In the cases referred to in paragraphs 3 and 4, the host State **shall undertake an extensive examination of the personal circumstances of the persons concerned** and shall justify any denial of entry or residence to such persons.*

- b) Will the Home Office cite its rationale for information from one arm of the State not carrying as much weight as that from another?

*(c) the deadline for submitting the application referred to in point (b) shall be extended automatically by 1 year where the Union has notified the United Kingdom, or the United Kingdom has notified the Union, that **technical problems prevent the host State either from registering the application or from issuing the certificate of application***

⁸ HO caseworker guidance, p40, states: "Where these checks indicate that the applicant has been continuously resident in the UK for 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." https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf - which implies that DWP & HMRC should be checking back over the past **ten** years of records, on the basis that 5 years continuous residence with up to 5 consecutive years absence following that still qualifies a person for settled status.

referred to in point (b). The host State shall publish that notification and shall provide appropriate public information for the persons concerned in good time;

Withdrawal Agreement, Article 18 (1), Issuance of residence documents

- 18) Will the Home Office publicly cite the success/failure rates for matching applicants' name, date of birth and NINo with records held by both DWP and HMRC for the Phase 2 Beta Test, as it did for HMRC in Phase 1?
- a) Will the Home Office publicly cite, on an ongoing basis, the success/failure rates for matching applicants' name, date of birth and NINo with both DWP records and HMRC records?
- 19) Will the Home Office publicly cite its targets for the number of applicants expected to meet the Pre-Settled Status residency requirements on the basis of the automated data checks with HMRC and DWP?
- a) Will the Home Office publicly cite its targets for the number of applicants expected to achieve only Settled Status on the basis of automated data checks for residency requirements?

Criminality and security checks:

*(p) **criminality and security checks may be carried out systematically on applicants**, with the exclusive aim of verifying whether the restrictions set out in Article 20 of this Agreement may be applicable. For that purpose, applicants may be required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of the application.*

Withdrawal Agreement, Article 18 (1), 25 November 2018

- 20) Will the Home Office publicly cite any and all differences between the criminality and security checks done for the EU Settlement Scheme and the processes that are followed on entry to the UK?

Non-automated processes

*5.5. Where the automated checks of HMRC and DWP data do not indicate that the EU citizen has been continuously resident in the UK, or indicate that they have been continuously resident here for a period of less than five years, **the applicant will then be able to upload documentary evidence of their continuous residence...***

EU Settlement Scheme: Statement of Intent, 21 June 2018

- 21) Will the Home Office publicly cite the data retention policy for any copies or scans of documents uploaded as evidence of residency?

- a) Will the Home Office publicly cite the purposes to which applicants are consenting when they upload copies of documents that may include, e.g. bank statements, GP letters, etc.?
- 22) Will the Home Office publicly cite the information applicants are given in relation to the documents that they have uploaded?
- a) For example, in the case of gaining pre-settled status, is the applicant given the earliest date of the period of their continuous residence from a document that has been accepted as evidence, as well as the date of the decision?
- 23) Will the Home Office publicly cite what, if any, checks (automated or otherwise) will be performed on sponsors whose details appear on documents provided as evidence?

3.7. If the person is a *child under the age of 21 years of an EU citizen (or of their spouse or civil partner) who is continuously resident in the UK, they will be eligible for settled status with less than five years' continuous residence if:*

- *the relevant EU citizen (or their spouse or civil partner) has been or is being granted settled status under the scheme (or, in the case of an Irish citizen, they would be so if they made a valid application under the scheme)*

EU Settlement Scheme: Statement of Intent, 21 June 2018

- 24) Will the Home Office publicly cite what, if any, evidence of residence will be required for the children of those who receive settled status?
- a) Will, for example, automated data checks be run on every individual in a family who has a National Insurance Number, or only if an individual chooses to apply independently?
- 25) Will the Home Office publicly cite whether automated data checks will be performed only on the applicant themselves or, e.g. can consent be sought to check relevant fields of the DWP records of a parent or carer?
- 26) Will the Home Office cite, for those in identified vulnerable groups, the entity of the State or other recognised authority that individuals in that group deal with which is capable of providing the evidence that they have been present, in line with Home Office requirements?

Documents that cover a longer time period between 2 dates include:

- *letters or certificates from your school, college, university or other accredited educational or training organisation showing the dates you enrolled, attended and completed your course*

EU Settlement Scheme: evidence of UK residence, updated 22 December 2018

27) Has the Home Office provided, or does it intend to provide, a template of such a letter to ensure schools, colleges, universities and other accredited educational or training organisations provide the required evidence?

*4.4. ...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.*

EU Settlement Scheme: Statement of Intent, 21 June 2018

28) Will the Home Office accept a letter or standard declaration from a local authority as proof of continuous residence of someone who has been 'looked after' but who is no longer in care?

a) Has the Home Office provided, or does it intend to provide, a template of such a letter or declaration?

Appeals and disputes

29) Will the Home Office cite the procedure that applicants are expected to follow when they believe the data held by HMRC or DWP, on which the Home Office business logic operates, are incorrect (e.g. when the automated data checks unexpectedly return a Fail or Partial Pass)?

a) Will applicants be required to pursue a full administrative review⁹ in such cases?

30) If a decision is made based on information from HMRC or DWP that the applicant knows is incorrect but which HMRC/DWP corrects only after the settled status application has been completed, will the Home office cite the consequences that places on the individual, both now and in the future?

Data sharing

31) Will the Home Office publicly cite or provide Parliament with a complete list of the uses of settled status applicants' data?

a) Will the Home Office publicly cite the change process for that list of uses?

Settled status checking service

32) Will the Home Office publicly cite the guarantees that will be provided in law for the ongoing correct operation of the settled status checking service?

⁹ <https://visas-immigration.service.gov.uk/product/admin-review> - while the service to apply for administrative review of your EU Settlement Scheme decision is currently in Beta, it refers only to the full Home Office administrative review guidance, published in April 2017, that makes no mention of the automated data checks.

- 33) Will the Home Office publicly cite the abuse detection processes that it has in place for the settled status checking service?
- a) How may Home Office responses to actual or suspected abuse affect innocent settled status holders (e.g. could people be temporarily 'shut out' of the checking service)?
- 34) Will the Home Office publicly cite whether a resident with settled status will be able to tell when their settled status record has been checked?
- 35) Will the Home Office publicly cite what prevents this checking service being 'expanded' to other groups over time at the whim of a mere policy decision, e.g. what protections in law are there against checking British citizens' HMRC or DWP records under the hostile environment, or against the future merger of the settled status database with registers of non-EEA citizens?

Oversight

*1.9. The draft Withdrawal Agreement sets out that **citizens' rights are to be monitored in the UK by a new Independent Monitoring Authority (IMA)**. Primary legislation will be required to create the IMA. **Ahead of that, the implementation of the EU Settlement Scheme will be monitored by the Independent Chief Inspector for Borders and Immigration (ICIBI)**. The ICIBI inspects all elements of the UK borders and immigration system, and is independent of the Home Office, providing impartial reports for the Home Secretary which are laid in Parliament.*

EU Settlement Scheme: Statement of Intent, 21 June 2018

- 36) Will the Home Office confirm when the ICIBI's independent report of the EU Settlement Scheme will be laid before Parliament, and if they intend that to be before the scheme fully opens?
- a) Will the Home Secretary be able to make any redactions before the ICIBI's report is laid?
- 37) Does the ICIBI believe that EU citizens' rights, and the UK's obligations to uphold them, have been fully met up to this point by the Home Office? For example, has running pilots with only the HMRC data checks operational proved unnecessarily burdensome to some applicants?
- 38) Given its broader remit, will the Independent Monitoring Authority determine that EU citizens' rights, and the UK's obligations to uphold them, have been fully met by the Home Office throughout the process?
- a) Will the Home office publicly cite the consequences and possible remedies should the IMA's judgement not concur with that of the ICIBI?

- 39) Should the Home Office choose not to publish its business logic – so it can be independently verified, and so as to properly inform applicants about the processing of their personal data – will the IMA be able to require the Home Office to do so?
- 40) Will the IMA have the power to require the Home Office to change its business logic, if it determines the business logic or the rationale behind its design does not meet the obligations required?

Citizenship

- 41) Will the Home Office publicly cite the legislative text and oversight that will ensure the awarding of settled status will be taken as official proof of continuous residence for the entire 5 year period in case of a later application for citizenship?
- 42) Will the Home Office publicly cite the estimate it or HM Treasury have made of the impact on the tribunal system for cases where appeal tribunals find persuasive evidence rejected by the Home Office?
- a) Has any estimate been made of the costs for the victims of such settled status automated process failures, both financially and beyond?
- 43) Will the relationship between settled status and citizenship be clarified in primary legislation to avoid any future ‘downgrading’ of official decisions made in 2019-21, as per Windrush?

Reciprocity

Adjacent to the scope of our work, given statements from the EU about reciprocity,¹⁰ British citizens in EU countries may have to follow a process similar to settled status. The Settled Status process requires that citizens of other countries must have a current passport or equivalent, even where age prevents them from any form of travel.

- 44) Will the Home Office and the Foreign Office confirm they have the ability to meet the same requirements for UK citizens living in the EU that we are demanding from EU citizens living here?
- a) Will elderly Britons be required to satisfy the obligations of the Home Office’s hostile environment in order to receive current papers, even where their age or mental state prevents them from doing so?

¹⁰ <https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/1439.pdf>

Conclusions

5.1. The application process we are designing for EU citizens and their family members applying for status under the EU Settlement Scheme will be straightforward and streamlined. The scheme will be delivered through a digital application process which will be available from late 2018 so that EU citizens and their family members can begin to obtain their new UK immigration status at their earliest convenience. There will be assistance available for those who need it to complete the online application process.

EU Settlement Scheme: Statement of Intent, 21 June 2018

While the application process for settled status may be “straightforward and streamlined” for individuals about whom the Government already holds accurate and relevant data, this will not be the case for those who for any of a host of lawful reasons have not been employed or self-employed and paid tax, or received one or more of an as-yet-unspecified number of state benefits over the past five years, or for a continuous period of five years within the last nine.

The technology envisioned for this scheme is, to a large extent, untested and is not known to be reliable.¹¹ Smaller and less ambitious systems have encountered substantial technological and operational problems that are likely to be amplified in a large-scale, national system. The use of ‘the mobile phone app’ gives rise to particular concern because this technology has never been used at such a scale outside of official environments where control is specific.

Until the Home Office publishes its business logic and the rationale for checking the specific fields of data chosen for the automated checks, it is impossible to tell whether the checks meet every commitment in the Withdrawal Agreement – a necessary prerequisite for independent review and oversight – or even the Home Office’s own policies. With thousands of changes to UK immigration rules since 2010,¹² and a new immigration white paper published in late 2018,¹³ (the first since Theresa May became Home Secretary in 2010) the latter may prove to be the more arduous task.

While the MoU between HMRC and the Home Office implies the cost of an automated check will be significantly lower than any form of manual check,¹⁴ the Home Office has given no estimate or target for the numbers of applicants expected to Pass, Partial Pass or Fail the automated process. Its business case must rely on such estimates, which should be published before the scheme is fully open, if only to avoid attempts to shift blame between Whitehall departments in case of overrun.

¹¹ <https://www.freemovement.org.uk/computer-says-no-digitised-immigration-system/>

¹² <https://www.theguardian.com/uk-news/2018/aug/27/revealed-immigration-rules-have-more-than-doubled-in-length-since-2010>

¹³ <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

¹⁴ While no unit cost is given, Section 9, ‘Costs/charges’ states: “Estimated API development and delivery charges in respect of Income Verification and EU Exit Settlement Schemes are estimated @ £1.1m”

Part 2 - Walk through of the settled status data checks

The Home Office Statement of Intent, published 21 June 2018, states (our emphasis):¹⁵

*The new application system will be **streamlined and user-friendly and draw on existing government data**, to minimise the burden on applicants to provide evidence of their residence. This streamlined process will take applicants through three simple stages: **proving their identity, checking they are not a serious criminal, and evidencing their residence in the UK.***

*To make the process as simple as possible for the great majority of EU citizens, **we will check employment and benefits records for proof of residence.***

In fact, the process is somewhat more complicated and will involve additional steps for many people. The automated checks of data held by HMRC, “and in due course” DWP, are intended to streamline evidencing proof of residence, but the process begins with other checks:

1) Proof of identity

A person will in the first instance be expected to prove their identity with their passport or (for EU citizens) their national identity card or (for non-EU citizens) a biometric residence card or biometric residence permit.¹⁶

At its current state of development, as of mid-December 2018, the settled status digital system does not appear to be able to handle special characters (e.g. letters with accents) in at least part of the process. Evidence of this is shown by views of the official electronic document received by those with settled status¹⁷, and raises concerns that the name data which the Home Office attempts to match with other sources may not be captured in the form in which it is held on other systems. As the applicant’s name is one of the three items or ‘fields’ of data used to match with HMRC and DWP records, this could be a critical failure point.

Similar issues could arise were someone to enter, e.g. an Anglicised name into the Home Office form, that does not precisely match their name as recorded on their passport or in other official records. Government is notoriously bad at capturing and storing data in even the most common fields in a consistent manner across Departments; absent any published definition of the algorithms, it is impossible to know whether name checks are performed using exact string matches (i.e. each character must be identical) or whether some logic is applied to allow for common variations. The difference between the two could be the difference between Passing or Failing the automated data checks for hundreds, possibly thousands, of applicants.

¹⁵ p2, <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

¹⁶ Statement of Intent, para 1.13 - in line with Withdrawal Agreement, Article 18, 1 (i).

¹⁷ <https://twitter.com/The3Million/status/1070266300931473410>

Others, including the 3 million¹⁸, have noted significant issues with the functioning of the ‘EU Exit: ID Document Check’ app – not least that it only works with mobile phones containing an NFC chip¹⁹ (which excludes all iPhones²⁰) that will therefore require many applicants to either attend a Home Office registration centre or post in their actual passport. The Statement of Intent says that *“the Home Office may accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document”*²¹ but this will clearly not be part of the digital process, and is most likely to affect those whose ability to travel is limited, e.g. the elderly.

(While beyond the scope of this research, we note potential issues with the use of third party providers’ software, such as IdentityReach,²² to read and perform matching of information including the facial biometric held on the chip in the passport with the live facial image or “selfie” the applicant is required to take.

The Home Office appears to be relying entirely upon commercial partners’ capabilities to do this matching, no contracts or specifications have been published, and there is no indication of what happens, e.g. when the data matching for the identity check fails. This problem may be further exacerbated by the fact that the RFID chips embedded in many first-generation biometric passports had only a 2 year warranty from the manufacturer. While a failed chip would not prevent a person from travelling with that passport, it would rule out their use of the app at the very first step.)

While the Statement of Intent allows that *“a principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens”*²³, the digital application process is at every stage binary – data either matches, or it doesn’t – and in this respect the Home Office provides its staff no discretion.

Having established one’s identity to the satisfaction of the Home Office, one must then traverse an endlessly narrowing automated path²⁴ to success – the automated data checks, which we now consider in more detail before returning to evidence that requires a human decision.

2) HM Government data checks

The automated data checks are designed to establish applicants’ **eligibility** for settled status – primarily, 5 years continuous residence in the UK – and their **suitability** – i.e. that they are not serious or persistent criminals.

Parliament and the public have been told “we will check employment and benefits records for proof of residence”,²⁵ i.e. information received from HM Revenue and Customs and the

¹⁸ <https://twitter.com/The3Million/status/1070601470184226816>

¹⁹ NFC, or Near-Field Communication, is a method of wireless data transfer that evolved from RFID (Radio Frequency IDentification) – an RFID chip is embedded into modern biometric passports.

²⁰ <https://www.wired.co.uk/article/brexit-app-home-office-eu-citizens>

²¹ Statement of Intent, para 4.8.

²² <http://worldreach.com/products/identityreach/>

²³ Statement of Intent, para 5.15

²⁴ <https://xkcd.com/931/>

²⁵ p2, Statement of Intent.

Department of Work and Pensions, but full details of the checks and in particular the business logic of the decision-making algorithm have not been published. We have therefore had to infer

the operation of the automated data checks, in large part from the Memorandum of Understanding between HMRC and the Home Office released under FOI in July 2018, in order to highlight critical questions that must be answered and make recommendations along the way. An identical request to DWP was refused.

While no such information has been published by DWP, or about the DWP checks, we work on the assumption the same basic principles will apply.

2a) HM Revenue & Customs

The automated data check is initiated by the applicant providing their name, National Insurance Number (NINo) and date of birth – either via the app or to a caseworker, who enters it into the system. The Home Office then calls the HMRC Application Programming Interface (API)²⁶, providing these three pieces of information. Most obviously, people without a NINo will therefore be excluded from the automated data checks; this could include some of the most vulnerable, such as victims of people trafficking, those working in the informal economy, carers, etc.

As we understand it, the check should always and only be initiated by the applicant – were HO officials to be able to check independently, outside of the application session, the system could clearly be used in a hostile manner at any point in the future.

- Q7) Will the Home Office publicly cite the legislative test and oversight required to ensure the automated data checks occur only ever in the context of an application for settled status?

If, and only if, all three pieces of information match at HMRC's 'citizen matching layer' – i.e. if HMRC is able to identify a matching record for an individual on its systems – then HMRC's API will send the following *raw data* about that individual from the National PAYE Service (NPS) and Self Assessment (SA) systems to the Home Office API:

- Employer Name*
- Employer Reference*
- Employer Address*
- Start date*
- Leaving date*
- Taxable payment*
- Payment frequency*
- Date SA [Self Assessment] record set up*
- SA Employment Income*
- SA Self Employment Income*
- SA Total Income*
- Tax year*
- Tax Return Date of Receipt*

²⁶ An Application Programming Interface is a way for two systems or pieces of software to communicate with each other; an API requires input of a specified type and form, only if it receives data in that form will it perform an action / return data that is also of a predefined type and form. Unlike, e.g. a general search, an API is designed to return only pre-specified pieces of information, and only if its conditions are met.

These 13 fields are not the only fields the Home Office could have chosen, as evidenced by the extended list of fields given for Phases 1 and 3 of the 'Income Proving Service',²⁷ of which the EU Exit Application programme is defined as Phase 2. Of the ten additional fields in the extended list, e.g. *SA Partnership Income* or *SA UK Pensions & State Benefits*, associated with a Tax year, would appear to offer as much of an opportunity to infer residence as *SA Employment Income*, *SA Self Employment Income* or *SA Total Income*.

- Q10) In addition to the business logic itself, will the Home Office publicly cite the rationale used to define which fields of information would be used to infer residence?
 - a) Will the Home Office publicly cite the specific justification for the request of "Income" fields from HMRC, when settled status is not contingent on income?
 - b) If the intention is to make the automated data checks as "streamlined" and "user friendly" as possible, will the Home Office publicly cite why it chose to exclude periods in which a person received income from a Partnership (vs. Employment or Self Employment), or received or made contributions to UK Pension or State Benefits, where such data is held by HMRC?

On receiving the raw data²⁸, the Home Office system then applies its business logic to it – returning an output of Pass / Partial Pass / Fail to the Home Office caseworker. Without publication of the algorithm for determining the period of residency from these raw data, it is impossible to know that the Home Office business logic is correct – let alone being applied correctly.

- Q2) Will the Home Office publicly cite how its business logic been tested? What further and ongoing tests will be applied as applications for settled status scale up?
- Q3) Will the Home Office publicly cite the information with which an applicant is provided in the case of a Partial Pass? (The only indication we have seen in this regard suggests the Home Office caseworker and applicant will see only the periods of residence, i.e. the information on which the business logic has made a decision, but not the data on which it is based, or its source.)
- Q11) Will the Home Office publicly cite the threshold between a Pass and a Partial Pass as derived from HMRC data? For example, does an applicant simply have to have made a tax return for or within a relevant year or is the precise date of that tax return also a factor in the calculation?

There is much room for confusion if the applicant is given only the result of the Home Office business logic – and every detail matters in what they are told. For example, "HMRC says you were resident from May 2012 to Oct 2014, and April 2016 to Dec 2018" might let an individual know they need to find evidence of their employment for 2015 (assuming the months aren't a factor) but, e.g. failing to reveal it was the HMRC checks, not DWP, on which these periods

²⁷ p2, MoU between HMRC & HO:
<https://www.whatdotheyknow.com/request/498639/response/1197308/attach/3/FINAL%20HO%20MOU%20V%200%2016%20P1%20P2%20P3.pdf>

²⁸ By 'raw data', we presume this will be every data item held by HMRC in each of the 13 specified fields for the matched record, i.e. the applicant may have had multiple employers, etc.

were determined or the precise 'missing' time period at the level of granularity the HO business logic works at puts an undue burden on the individual.

- Q12) Will the Home Office cite on which basis its business logic will return a Fail? Is this exclusively due to a failure to match any record at HMRC, and therefore no raw data is returned, or are there circumstances in which raw data is returned but the business logic can still determine a Fail?

The HMRC-HO MoU further states, "*The data **will not be viewed nor retained** by the Home Office... Once the output is received **the raw data disappears.***"²⁹

This is important in two regards: firstly, if the data from HMRC is not retained and the applicant wishes to challenge the result of the check – e.g. in case of a suspected error – what audit trail exists for the output of the business logic? How can an applicant challenge the outcome of the automated data checks – how can they even know if the problem lies with the Home Office business logic, or with the data held by HMRC? As currently described, it appears the applicant must accept the result of the automated decision regardless of how it was arrived at.

Secondly, while the raw data may "disappear", it is unclear precisely what information will be retained by the Home Office. Clearly, HO is creating a new database of EU citizens – if only of the official electronic documents they will receive with their settled status. But in the section regarding GDPR and HRA obligations, the MoU states:

Home Office will become the Data Controller of any personal data derived from amalgamating HMRC data with Home Office data under the terms of this MOU. Similarly, HMRC will become the data controller of information created from combining Home Office data with HMRC data.

It may not store the raw data from HMRC, but will HO be storing the outputs of its business logic (e.g. inferred periods of residence) and/or any other information other than that gathered by the app / form for use on the official electronic document?

The creation of any new population database – especially one that will be used to establish / demonstrate the entitlement of millions of people to employment, housing, and public services – requires appropriate transparency and governance from the outset. The public view of a database is one thing; what else it contains, or enables to be tracked is quite another. The Home Office is creating a new automated 'gateway' between it and HMRC – a gateway which, as noted above, could be used in future to monitor anyone registered on the system. Or for whom the Home Office has a name, date of birth and National Insurance number...

- Q8) As well as the business logic, will the Home Office publish the full specification of the database in which it holds the details of those awarded settled status?
- Q9) Will the Home Office publicly cite how it proposes to track or follow up those applicants who are granted pre-settled status?

²⁹ HMRC-HO MoU, p6.

While it may become important in case of a Fail or Partial Pass, for those concerned that HMRC may not hold the correct information – e.g. where an applicant already knows of a PAYE error – or for reassurance where the applicant is certain they meet the criteria but is not sure what HMRC holds on them, people may wish to consider undertaking a ‘pre-flight check’ with HMRC before applying for settled status. This may also be helpful for those assisting others who may struggle to find paper evidence.

HMRC offers UK residents a way to check what information it holds about them, through an online ‘Personal Tax Account’.³⁰ You will need either³¹ a Government Gateway account (which you will have if you, e.g. file your Self Assessment tax return online) or a GOV.UK Verify account (which uses a small number of certified ‘identity providers’, including the Post Office and Royal Mail, to assure your identity) to sign in online, and then you will be able to view what HMRC has recorded as your current and previous years’ PAYE and/or Self Assessment income and National Insurance contributions, as well as Benefits – currently Tax Credits, Child Benefit and Marriage Allowance – and State Pension.

That HMRC holds, and can readily make available to individuals, information on their National Insurance contributions, Benefits and State Pension begs the question as to why the Home Office chose not to check any of these fields held by HMRC for evidence of residence. National Insurance records in particular might help those who have been in low-paid or voluntary work, as many choose to make voluntary contributions.

- Q13) Will the Home Office publicly cite its rationale for not checking information held by HMRC that may also be held by DWP? (For example, HMRC holds and can readily make available to individuals information on their National Insurance contributions, Benefits and State Pension – and it holds Working Tax Credit, Child Tax Credit and Child Benefit records.)
- Q14) Will the Home Office publicly cite its rationale for not taking into account any voluntary NI contributions?
 - a) Will the Home Office publicly cite the process by which voluntary NI contributions or any other additional check can be added to the fields requested from HMRC or DWP?

2b) Department for Work and Pensions

No information similar to the MoU published by HMRC has been published by DWP, and we therefore do not know any of the fields of DWP data that the Home Office intends to check for evidence of continuous residence. It is reasonable to assume, however, that at least the same three items of information about each applicant will be sent to the DWP API (i.e. name, date of birth and NINo).

³⁰ <https://www.gov.uk/personal-tax-account>

³¹ Currently, German citizens can use their ‘Online-Ausweis’ identity; identity schemes from other countries will become available later.

- Q15) Will DWP publish its MoU with the Home Office or, at the very least, the specification of its EU Exit API – including the fields provided, and any business logic applied – so those in vulnerable groups can be properly advised and assisted?

It is also highly likely that these identifiers will be used to attempt a match with a record held on DWP's Customer Information System (CIS)³² – the database that contains a record for every individual who has registered for and been issued with a National Insurance number.³³ As details previously published about electoral registration indicate, CIS identity matching can be heavily address dependent,³⁴ so applicants may also be required to provide at least a partial address. CIS has the capacity to do “fuzzy matching” on names, e.g. for misspellings, but the system it uses is recognised to be Western English biased.

A full list of the data fields on DWP's Customer Information System is available,³⁵ which suggests – when and if the EU Exit API is ready – that automated checks could be made on the time periods in which an applicant has received a number of benefits or tax credits, the details of which are held on up to seven other DWP systems.

These include:

- Disability Living Allowance or Attendance Allowance
- Income Support and Pension Credit
- Retirement Pension, Incapacity Benefit and other short-term benefits
- Jobseekers Allowance and Employment Support Allowance
- Carer's Allowance
- Working Tax Credit and/or Child Tax Credit
- Personal Independence Payment
- Universal Credit

One major difference between DWP CIS and HMRC systems is that CIS apparently only holds information for up to the past 3 years.³⁶ It may be that DWP has other databases which hold information for longer periods, and that such data could be returned by its EU Exit API – but it would be important to establish at the earliest opportunity whether an applicant would be able to gain anything other than a Partial Pass from the Home Office business logic, based on DWP data alone.

- Q16) Will DWP or the Home Office publicly cite the databases checked, and how far back the records go in each database from which the DWP EU Exit API will return data?

³² <https://data.gov.uk/dataset/a93f7cb6-86f7-4f8c-89aa-f91cee9475be/customer-information-system>

³³ Those born in the UK are assigned a 'Child Reference Number' at the point that child benefit is first claimed. Three months before their 16th birthday, HMRC notifies each child with a CRN of his or her National Insurance Number (NINo). People to whom a number was not initially allocated as children, or those from abroad who wish to work in the UK, apply for a NINo from the Department for Work and Pensions – thus many of those who apply for settled status will have been assigned their NINo by DWP.

³⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262931/ERTP_CONFIRMATION_DATA_MATCHING_METHODODOLOGY.pdf

³⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729893/customer-information-system-the-data-held-about-you.pdf

³⁶ Page 5, *ibid.*

- a) Does, for example, DWP's Customer Information System hold information for longer than 3 years that would be available to the Home Office, but not to the individual?
- b) Where records of up to ten years³⁷ past actions by DWP were retained by the citizen but not DWP, would that evidence be accepted by the Home Office?
- c) Will the Home Office publicly cite any weightings applied to data provided from DWP systems, and the rationale for each such weighting? (For example, due to the period of operation of a database or the granularity of the data they contain.)

As well as limited details of benefits and tax credits, DWP CIS does hold other information that might be used to infer residence – such as the Account Creation Date, i.e. the date your record was created on CIS. It also records Civil Partnership and Marital Status, and Relationship (including parent/guardian, dependent, appointee³⁸) details that could help “streamline” proof of durable relationship for some applicants.

This may potentially speak to obligations under Article 18 of the Withdrawal Agreement:

*1 (n) for cases other than those set out in points (k), (l) and (m), the host State shall not require applicants to present supporting documents that go beyond what is **strictly necessary and proportionate to provide evidence** that the conditions relating to the right of residence under this Title have been fulfilled;*

*(o) the competent authorities of the host State shall **help the applicants to prove their eligibility and to avoid any errors or omissions in their applications**; they shall give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions;*

where an arbitrary choice of data fields imposes a disproportionate effort on someone to provide documentary evidence of information that another arm of the State already holds and accepts.

- Q17) Will the Home Office publicly cite the rationale for the fields it has chosen to include, and to exclude, from the specification for the DWP EU Exit API?
 - a) Could, for example, automated checks on information held in DWP CIS be used to establish evidence other than dates of residence, e.g. proof of durable relationship?

As per the Withdrawal Agreement, Article 10, Personal scope:

*5. In the cases referred to in paragraphs 3 and 4, the host State **shall undertake an extensive examination of the personal circumstances of the persons concerned** and shall justify any denial of entry or residence to such persons.*

³⁷ HO caseworker guidance, p40, states: “Where these checks indicate that the applicant has been continuously resident in the UK for 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.” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf - which implies that DWP & HMRC should be checking back over the past **ten** years of records, on the basis that 5 years continuous residence with up to 5 consecutive years absence following that still qualifies a person for settled status.

³⁸ Page 41, Section 6, *ibid*.

b) Will the Home Office cite its rationale for information from one arm of the State not carrying as much weight as that from another?

DWP data quality is notoriously poor – the number of National Insurance numbers in use is tens of millions more than people of working age, for example – and with ongoing problems and disruption around the Universal Credit IT systems,³⁹ it is becoming increasingly urgent that DWP and/or Home Office publish details of what they are attempting to build. Any Member of Parliament need only look at their casework to see the quality of DWP decisions based on DWP data; it is impossible for Home Office decisions based on that data to be any better.

While the Private Beta Testing Phase 1 report⁴⁰ indicated that 96% of the applicants checked with HMRC were “automatically matched” to a record, with a further 3% requiring “some form of intervention” to achieve a match, and 1.4% unable to match, no such information was provided in the Phase 2 report.⁴¹ Given the differences between HMRC and DWP systems, the impact on an individual should no match be found on one or other system, or both, and the need for public confidence in the Settled Status application process, the success/failure rates for matching individuals to records on both systems are an important metric for both the public and independent monitors to be able to assess the performance of the process.

- Q18) Will the Home Office publicly cite the success/failure rates for matching applicants’ name, date of birth and NINo with records held by both DWP and HMRC for the Phase 2 Beta Test, as it did for HMRC in Phase 1?

a) Will the Home Office publicly cite, on an ongoing basis, the success/failure rates for matching applicants’ name, date of birth and NINo with both DWP records and HMRC records?

The Private Beta Testing reports suggest that, on the performance of the process thus far, roughly two-thirds⁴² of applicants may receive Settled Status and one-third⁴³ Pre-Settled Status. What is not at all clear is how many applicants awarded Pre-Settled Status on the basis of the automated residency checks would actually qualify for Settled Status but fall short of the required period of proof purely due to, e.g. missing data in either HMRC or DWP records.

That 10 of the 11 cases brought to administrative review in Phase 2 resulted in the applicant receiving Settled Status, when the process had initially resulted in them receiving Pre-Settled Status, suggests a significant number of people may have grounds for challenging a Pre-Settled Status result. Just because the automated checks return a result that says an individual has been resident in the UK for less than 5 years does not necessarily mean that this is the case, but applicants receiving Pre-Settled Status may be put off challenging the result for a number of reasons – from the additional complexity and cost (£80)⁴⁴ of applying for an administrative review, to the lack of transparency when ‘the computer says no’.

³⁹ <https://www.theguardian.com/society/2018/jul/22/universal-credit-it-system-broken-service-centre-whistleblowers-say>

⁴⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752872/181031_PB1_Report_Final.pdf

⁴¹ <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report>

⁴² 64% in Phase 1, 70% in Phase 2.

⁴³ 36% in Phase 1, 30% in Phase 2.

⁴⁴ <https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review>

This problem cannot have been unforeseen when designing the EU Settlement Scheme. While a proportion of EU citizens will have been living in the country for less than 5 years, this is not the only group that will have to go through the Pre-Settled Status process (i.e. make a further application for Settled Status). The automated data checks ensure that anyone for whom HMRC or DWP is missing data for any of the previous 9 years will also fall into this category as well. At the very least they will be forced to provide additional evidence, and many may simply accept the Pre-Settled Status result – not realising this is due to a Government error.⁴⁵

- Q19) Will the Home Office publicly cite its targets for the number of applicants expected to meet the Pre-Settled Status residency requirements on the basis of the automated data checks with HMRC and DWP?
 - a) Will the Home Office publicly cite its targets for the number of applicants expected to achieve Settled Status on the basis of automated data checks for residency requirements?

On the basis of the MoU that HMRC has published, there appears to be no reason why DWP should not be able to answer the same questions about what it is building, to at least the same level of detail. The answers would therefore include:

- Procedure and processes, including high level description of the API:
 - Data provided by HO to DWP;
 - Fields of raw data to be shared with HO;
 - IT systems/infrastructure involved, provisioning;
 - Security policies, role-based (read only) access and support model;
 - Data retention and destruction, other restrictions
- Legal basis, including confirmation of necessity and proportionality;
 - including Human Rights Act 1998
- Data governance, including monitoring and audit arrangements;
 - GDPR 2018, FOIA 2000
- Project phasing, timescales and evaluation;
- Costs / charges;
- Written assurances.

Just as HMRC allows individuals to check what information it holds about them, DWP also allows you to request a copy of the information that it holds about you.⁴⁶ Given the lack of

transparency around the DWP side of the automated data checks, the generally poor quality of DWP data, and the lack of insight into any Home Office business logic and how it interacts with DWP, we would recommend that those seeking to apply for settled status check their DWP information before applying.

⁴⁵ One estimate of the error rate for the automated checks could be derived by subtracting the official estimated number of EU citizens who have lived in the UK for less than 5 years from the number of applicants being awarded Pre-Settled Status. The larger the deviation, the more significant the issue.

⁴⁶ <https://www.gov.uk/guidance/request-your-personal-information-from-the-department-for-work-and-pensions>

2c) Criminality and security checks

While not entirely within the scope of this research, there is another set of automated data checks that applicants must pass in order to receive settled or pre-settled status. As stated in the Withdrawal Agreement, Article 18:

*1 (p) **criminality and security checks may be carried out systematically on applicants**, with the exclusive aim of verifying whether the restrictions set out in Article 20 of this Agreement may be applicable. For that purpose, applicants **may be required to declare past criminal convictions** which appear in their criminal record in accordance with the law of the State of conviction at the time of the application. The host State may, if it considers this essential, apply the procedure set out in Article 27(3) of Directive 2004/38/EC with respect to enquiries to other States regarding previous criminal records;*

Though this remains a huge sticking point with the EU and many EU citizens, the Government has stated that “Police checks will be carried out on all applicants over 10 (parents fill in the form for children)”.⁴⁷

- Q20) Will the Home Office publicly cite any and all differences between the criminality and security checks done for the EU Settlement Scheme and the processes that are followed on entry to the UK?

In May 2018, the Public Accounts Committee published a damning review of the modernisation of the Home Office’s Disclosure and Barring Service (DBS)⁴⁸ – the primary system for checking criminal records – deeming it a “a masterclass in incompetence... marred by poor planning, delays, spiralling costs, and a failure to understand what service users want”.

The system is still not fully digital, and the processes for matching across different Home Office and police systems such as the Police National Computer (PNC) are still unreliable – misspelt surnames being one of the most common causes of error. Given the issues noted above about different Anglicisations of people’s names, and special characters, it is likely that such checks on millions of people are going to result in a significant number of errors.

This being the case, one clear concern must be the disputability of these checks. An individual is able to pay to check their own criminal record, through a “basic disclosure” from the Disclosure and Barring Service (DBS),⁴⁹ but while there are procedures to report problems about a criminal record check or barring decision to DBS it is unclear that the Home Office check for settled status will generate a DBS certificate that can be disputed, or provide people with enough information to even know that this is what they can do.

Large backlogs – “around 25,600 open cases”⁵⁰ – have been reported for the security vetting of government employees, which may include caseworkers being hired for EU Exit applications. While it is unlikely the Home Office will be using United Kingdom Security Vetting (UKSV)⁵¹ for settled status security checks, it is unclear precisely which checks will be made, on which

⁴⁷ https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/143905.htm#_idTextAnchor012

⁴⁸ <https://publications.parliament.uk/pa/cm201719/cmselect/cmpublic/695/69502.htm>

⁴⁹ <https://www.gov.uk/request-copy-criminal-record> - costs £25, and you must be 16 or over to apply.

⁵⁰ <https://www.civilserviceworld.com/articles/news/watchdog-sounds-alarm-security-vetting-failings>

systems, and what the impact of such a large volume of applications will be on those systems – especially if they are having difficulty handling checks for tens of thousands of civil servants.

- Q5) Will the Home Office publicly cite the steps it will take to correct what may be systemic problems in cases where its ‘business logic’ makes a mistake that denies someone settled status?
- Q6) Conversely, should the ‘business logic’ make a mistake and grant someone settled status, will the Home Office publicly cite the consequences that will have for the EU citizen in future?

3) Human decision-making

As the Immigration Minister put it, in July 2018: “*discretion being given to caseworkers is a new concept*”.⁵² Despite the assertion in the Home Office Statement of Intent.⁵³

*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.***

it is entirely unclear what, if any, discretion caseworkers will be able to apply in the case of the automated checks. Any “discretion” would be within the business logic applied to the raw data provided by HMRC and (in due course) DWP, i.e. the algorithm that the Home Office has refused to publish, that results in a Pass / Partial Pass / Fail determination.

So, undermining the promises of Ministers and obligations to EU citizens under the Withdrawal Agreement, the Home Office continues to act in a hostile and untransparent manner, removing agency from its (newly-recruited) staff as far as possible.

We further note that anyone who fails to pass every single one of the automated data checks listed above will create additional costs to the Home Office budget and HM Treasury. Positive reports of the pilots thus far fail to address the fact that the process has to this point only been tested on small numbers of people most likely to have data on HMRC systems.⁵⁴

⁵¹ <https://www.gov.uk/guidance/security-vetting-and-clearance>

⁵² https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/143905.htm#_idTextAnchor013

⁵³ Page 21, <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

⁵⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-12-20/HCWS1226/> - Written Statement, 20 December 2018

4) Non-automated processes

The Home Office Statement of Intent is clear that *“applicants will be able to upload additional evidence to fill in gaps in residence or where there is no government data”* (para 1.13) and that *“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”* (para 1.15).

In the case that the automated data checks return no data for an individual – which could be because HMRC and/or DWP systems are unable to find a match for the details provided by the Home Office, or that no data has been recorded for that individual – the applicant will be required to provide documentary evidence of their continuous residence in the UK. Applicants for whom the data checks return insufficient evidence (i.e. where the Home Office business logic results in a Partial Pass) will also be required to provide additional evidence, for those periods during which data was not found on HMRC or DWP systems.

Applicants can “upload photos or scans of documents” from the list of evidence of UK residence,⁵⁵ or send copies in by post, or may be required to “attend an interview with the decision-maker”.⁵⁶ While the raw data processed by the Home Office business logic is said to “disappear” after a determination has been arrived at, whether or not uploaded digital copies of documents are retained by the Home Office is unclear.

- Q21) Will the Home Office publicly cite the data retention policy for any copies or scans of documents uploaded as evidence of residency?
 - a) Will the Home Office publicly cite the purposes to which applicants are consenting when they upload copies of documents that may include, e.g. bank statements, GP letters, etc.?
- Q22) Will the Home Office publicly cite the information applicants are given in relation to the documents that they have uploaded?
 - a) For example, in the case of gaining pre-settled status, is the applicant given the earliest date of the period of their continuous residence from a document that has been accepted as evidence, as well as the date of the decision?
- Q23) Will the Home Office publicly cite what, if any, checks (automated or otherwise) will be performed on sponsors whose details appear on documents provided as evidence?

A number of groups of people are predictably likely to fail the automated data checks through an absence of data recorded on HMRC or DWP systems. These include people identified in the ‘Unsettled Status?’ report⁵⁷ by The Migration Observatory at the University of Oxford as

⁵⁵ <https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence> - first published on 22 October 2018, last updated 14 November 2018.

⁵⁶ Annex 2 – Consideration of a valid application, <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent/annex-b-draft-immigration-rules-for-the-eu-settlement-scheme>

⁵⁷ <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

disproportionately likely to fail to secure settled status, including those who might not realise they need to apply, vulnerable groups, people with barriers to accessing or understanding the system, those who cannot provide evidence, and people who do not meet the eligibility requirements.

We shall consider several of these groups in more detail, with particular regard to the automated data checks, as well as drawing out issues common across all groups.

a) Children (pre-working dependents)

Children under the age of 21 of an EU citizen (or of their spouse or civil partner) who has been granted settled status will themselves be eligible for settled status – subject to criminal and security checks – so long as they are continuously resident in the UK.⁵⁸ They will not need to prove 5 years continuous residence, but it is unclear what proof of residence they will need to provide where applications are submitted as a family – or individually, later relying on their relationship to someone who has already secured settled status.

It is also unclear whether children in the latter category (i.e. those making an application separately to other family members) will be required to undergo the automated data checks, or whether the process will ‘fast track’ to simply establishing their relationship with the family member who has received settled status.

- Q24) Will the Home Office publicly cite what, if any, evidence of residence will be required for the children of those who receive settled status?
 - a) Will, for example, automated data checks be run on every individual in a family who has a National Insurance Number, or only if an individual chooses to apply independently?

Children are also able to apply for settled status in their own right, but anyone under the age of 21 is likely to find it almost impossible to establish 5 years continuous residence through the automated data checks. One only receives a National Insurance number at age 16, and very few children are likely to have been in paid employment every year from then until they are 21 – hence checks of HMRC data will at best provide only a Partial Pass.

Similarly, DWP checks are unlikely to return data for those under 21 for benefits that would have been paid to their parent or carer, such as Child Tax Credit, Income Support, or Universal Credit. Without seeing the specification of the DWP EU Exit API, it is impossible to know if one is even able to provide details (age, date of birth, NINo) of someone other than the applicant to perform a check of relevant DWP records.

- Q25) Will the Home Office publicly cite whether automated data checks will be performed only on the applicant themselves or, e.g. can consent be sought to check relevant fields of the DWP records of a parent or carer?

This being the case, it seems likely that the vast majority of independent applicants under the age of 21 will be forced to use the non-automated processes – uploading scans or photos of

⁵⁸ Paragraph 3.7, Statement of Intent

documents from their school, college, or university, or from their GP or bank. This could prove especially difficult for young people who have left home or fallen out with their family, who have been homeschooled or who have not continued with formal education, as well as young people not in employment, education or training who have no paperwork in their name.

One thing that would be helpful is the creation of a template letter that meets the evidential requirements, for schools, colleges, universities or other accredited educational or training organisations to be able to fill in and provide to current and former students. Every educational establishment should have a Management Information System containing the dates a student enrolled, attended and completed a course or period of education – and the checks involved should be far less onerous than those preferred by the Home Office.

- Q27) Has the Home Office provided, or does it intend to provide, a template of such a letter to ensure schools, colleges, universities and other accredited educational or training organisations provide the required evidence?

b) Elderly (retired dependents)

One group who are likely to be heavily dependent upon the DWP, as opposed to the HMRC, automated checks is those older people seeking to establish 5 years residence from their pension details. The HMRC API only returns data to do with employment or self employment so should the DWP API not be ready, or fail to perform correctly, this could affect over 100,000 people across the UK.⁵⁹

While the Home Office list of acceptable evidence includes “letters from a registered care home confirming your residence there”, this will be of little help to those who live independently or who are more isolated. There is also a question whether very long term residents⁶⁰ will even realise they need to apply – let alone be able to provide appropriate documentation. The Migration Observatory points out that “older foreign born residents were among those more likely to report not having a passport in the 2011 Census”, citing figures of around 12,000 in the 70+ age bracket.⁶¹

As with children under the age of 21, there is an exemption to the requirement for 5 years continuous residence for applicants who have reached the age of entitlement to a state pension within that period. Also for people who had been “*a worker or self-employed person in the UK for at least the 12 months and had been continuously resident in the UK for more than the preceding three years*” or who had an accident at work or occupational disease entitling them to a pension, or “*permanent incapacity to work, having been continuously resident for more than the preceding two years*”.⁶²

For these people, the HMRC checks will be relevant in establishing their periods of employment and residence. What is not clear is how – or if – the Home Office business logic distinguishes between those applicants who qualify for settled status on this basis, and those who receive a

⁵⁹ Table 5 of the Migration Observatory’s ‘Unsettled Status?’ report (see footnote 34 for link) indicates there were 54,000 non-Irish EU nationals aged 65-74, and 56,000 aged 75+ living in the UK in 2017.

⁶⁰ By 2017, 92,000 EU citizens had lived in the UK for at least 40 years, 146,000 for at least 30 years, and 284,000 for at least 20 years - Table 1, Ibid.

⁶¹ Table 12, Ibid.

⁶² Paragraph 3.17, Statement of Intent

Partial Pass on the basis of the automated checks returning less than 5 years continuous residence.

- Q4) Will the Home Office publicly cite whether its business logic is designed to identify or in any other way treat differently those who qualify for settled status under one of the exemptions to the requirement for 5 years continuous residence?

a) For example, is any information returned with a Partial Pass result from the automated checks that indicates an applicant may qualify for settled status under a relevant exemption, or are all such decisions made manually?

c) Partners (non-working dependents)

Another group disproportionately likely to fail the automated checks are partners who raise a family (“stay-at-home parents”) or who care for elderly relatives or other dependents but have not worked in formal employment, or who may have done some low-paid work – e.g. in the informal economy, or as a non-PAYE employee – but not enough to register in HMRC systems, as well as those who have simply chosen not to sign on for benefits who will not therefore have records on DWP systems.

This is an issue overwhelmingly affecting women: in 2017, more than 90% of the estimated 144,000 non-Irish EU citizens not working because they were looking after family members were women.⁶³ While reasons for economic inactivity vary – long term sickness, or disability, or retirement, as well as caring roles – the EU Exit automated data checks are predicated entirely upon official records of employment or benefits. If you didn’t pay tax or receive a state benefit, according to the Home Office business logic, you weren’t here.

There is an exemption from having to prove 5 years continuous residence if applicants meet very particular requirements, e.g. if they are a family member of an individual who has received settled status under one of the other exemptions around reaching pensionable age, or due to incapacity, or who has died. If someone does wish to rely on their relationship to an EU citizen in these circumstances, they will have to provide evidence establishing “durable relationship” as described in Article 18 (1) (l) & (m) of the Withdrawal Agreement. As has been documented by immigration lawyers with experience in this particular area,⁶⁴ Home Office rules and requirements around durable relationship are “labyrinthine”, often far exceed what is required in EU law, and have as a consequence resulted in an ever increasing number of split families.

Unlike children under 21, however, every adult family member must go through the full application process – including the automated data checks. That their partner receives settled status will not assist them in securing settled status of their own, except in the very limited instances described above.

Some of this group may be especially vulnerable, such as victims of domestic abuse who could find it difficult to provide any evidence in their own name. Also those without a bank account, or where all household bills and other proofs of address are in the name of their partner.

⁶³ Table 10, Ibid.

⁶⁴ e.g. <https://www.freemovement.org.uk/surinder-singh-immigration-route/>

d) Vulnerable groups

For reasons similar to all three groups described above, a number of especially vulnerable groups are disproportionately likely to fail the automated data checks.

One of these is children in care, or those leaving care, who – quite aside from the problems with the automated checks already facing those under 21 – may have great difficulty providing evidence of residence, especially if they have moved frequently between care homes, foster homes, schools and local authorities. The automated data checks appear designed for those in employment, or with a ‘regular’ family life; as the legal duty of care resides with the local authority, information such as Child Benefit which might be checked for other children may not be available. Without seeing the data fields provided to the Home Office by the DWP EU Exit API, it is impossible to know which data may be available for looked after children.

- Q28) Will the Home Office accept a letter or standard declaration from a local authority as proof of continuous residence of someone who has been ‘looked after’ but who is no longer in care?
 - a) Has the Home Office provided, or does it intend to provide, a template of such a letter or declaration?
- Q15) Will DWP publish its MoU with the Home Office or, at the very least, the specification of its EU Exit API – including the fields provided, and any business logic applied – so those in vulnerable groups can be properly advised and assisted?

We have already mentioned those in abusive or controlling relationships, overwhelmingly women, who not only may not appear in HMRC or DWP systems – coercive partners can tightly limit access to money from all sources – but who are less likely to have documentary evidence such as household bills in their name as well. A smaller, but no less vulnerable group is victims of exploitation or trafficking. These people may not have been paid for their work at all, and may struggle for other reasons, including a lack of any documentary evidence that they have been living in the UK; this being the case, the likelihood of them appearing on HMRC or DWP systems is remote.

Another group that may have limited paperwork – and who are also less likely to have data available for the automated checks – are those without bank accounts, who conduct their daily life with cash rather than using electronic payments. This could include casual workers whose employers do not have proper payroll systems, where the employer is not providing them with payslips, or not paying the required tax and National Insurance contributions – as well as self-employed people in low-skilled jobs such as cleaning, construction or childcare.

Others, including the Migration Observatory, have noted that those with mental health problems may struggle with the application process, especially if their cases are severe or complex. And that those with language barriers, low literacy, disabilities or low digital knowledge could also face difficulties completing the process. The general point here is that all of these groups are already known to be vulnerable, yet no particular account seems to have been taken by the Home Office in choosing the evidence that may be provided – certainly not in the automated checks, but also in the form in which supplementary evidence can be provided.

- Q26) Will the Home Office cite, for those in identified vulnerable groups, the entity of the State or other recognised authority that individuals in that group deal with which is capable of providing the evidence that they have been present, in line with Home Office requirements?

e) Lawful residents who fear being rejected

People who have previously applied and been rejected for permanent residence may also have concerns. The lack of transparency around the automated data checks does not inspire confidence; those who have failed previous paper-based checks may be significantly less likely to expose themselves to an automated process, the rules and operation of which are entirely obscure.

Article 18 of the Withdrawal Agreement is quite clear that redress procedures must include the ability to examine the facts on which the decision to award (pre)settled status or not is based:

*1 (r) the applicant shall have access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status. **The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based.** Such redress procedures shall ensure that the decision is not disproportionate.*

Transparency of, and throughout, the process makes sense both in terms of the ease and confidence of those applying and – in the case of disputed decisions – is an obligation under the Withdrawal Agreement in any case.

For people who are concerned their official records may not be correct, we strongly recommend a ‘pre-flight check’ of the data on them held by HMRC and DWP. Such checks would be greatly assisted by the publication of the Home Office business logic, so that applicant and/or those advising individuals who may have difficulties applying independently can check the likely result on the basis of the information received.

f) Innocent beneficiaries of mistakes by DWP / HMRC

One group for whom the automated data checks may be especially problematic are those who, for any reason, are in dispute with either HMRC or DWP. To make it a condition of settled status that you are checked against official records which you believe or know to be incorrect seems unduly harsh, and highlights the very real problem that the Home Office business logic relies in the first instance on ‘official truth’ (i.e. data that is held on government systems) rather than what is actually the case in the real world.

- Q29) Will the Home Office cite the procedure that applicants are expected to follow when they believe the data held by HMRC or DWP, on which the Home Office business logic operates, are incorrect (e.g. when the automated data checks unexpectedly return a Fail or Partial Pass)?

a) Will applicants be required to pursue a full administrative review⁶⁵ in such cases?

- Q30) If a decision is made based on information from HMRC or DWP that the applicant knows is incorrect but which HMRC/DWP corrects only after the settled status application has been completed, will the Home office cite the consequences that places on the individual, both now and in the future?

g) Consequences for those who may seek citizenship in future

The ‘granularity’ of the automated data checks for settled status – i.e. evidence of residence being required for each month – is different from that required, e.g. for applications for citizenship, where periods of absence are counted in whole days.

This raises the issue of how people’s settled status will be treated when they later apply for citizenship; will passing the automated data checks for settled status still be considered to have established 5 years continuous residence, or will any ‘discrepancies’ between the result of the automated checks and any absences counted in days rather than months have an impact on the person’s citizenship application, or – especially in the case of a failed application for citizenship – on their settled status?

HMG has to do this in the Withdrawal Implementation Bill, not any future Immigration Bill, as the former is the only legislation the EU can pay attention to and influence on behalf of EU citizens.

- Recommend: a probing amendment, attached to a question about a clause that states Settled Status is a statement *from the Home Office* that the person was resident in the country for that period of 5 years.

The automated data checks for settled status set up a situation where it is quite possible for there to be two different ‘official truths’. In such cases, it is most often the individual who suffers the consequences, and so it is important that clarity is given from the outset.

Given that EU citizens and their family members who have previously been issued a permanent residence document can exchange these free of charge for settled status, and “*The assessment of their previous UK residence which we will have done before issuing their permanent residence document will not be repeated*”⁶⁶ will this precedent be reciprocated for settled status?

- Q41) Will the Home Office publicly cite the legislative text and oversight that will ensure the awarding of settled settled status will be taken as official proof of continuous residence for the entire 5 year period in case of a later application for citizenship?

⁶⁵ <https://visas-immigration.service.gov.uk/product/admin-review> - while the service to apply for administrative review of your EU Settlement Scheme decision is currently in Beta, it refers only to the full Home Office administrative review guidance, published in April 2017, that makes no mention of the automated data checks.

⁶⁶ Paragraph 5.3, Statement of Intent.

- Q42) Will the Home Office publicly cite the estimate it or HM Treasury have made of the impact on the tribunal system for cases where appeal tribunals find persuasive evidence rejected by the Home Office?
 - a) Has any estimate been made of the costs for the victims of such settled status automated process failures, both financially and beyond?
- Q43) Will the relationship between settled status and citizenship be clarified in primary legislation to avoid any future ‘downgrading’ of official decisions made in 2019-21, as per Windrush?

5) Data sharing

The Data Protection Act 2018, implementing the General Data Protection Regulations (GDPR), requires public services to give users information on how their personal data will be used. The information provided thus far by the Home Office is vague and detail-free, which has caused unnecessary public concern.⁶⁷

Any competent agency should be able to provide a list of how personal data is used. The Home Office is required to use applicants’ data in line with its legal obligations, which are defined in the Withdrawal Agreement as well as in existing law. While some uses of applicants’ data may be subject to National Security redactions, the Home Office has admitted it has more information on how it can use the data.⁶⁸

Should that information not be cited, the forthcoming Withdrawal Implementation legislation should explicitly constrain the uses of applicants’ data – and the personal data of those granted settled and pre-settled status – in law. Should it not do so, a future international treaty with the EU may be required to protect their citizens.

Given past actions of the Home Office around data copying – including where a database was limited in statute by Parliament, but was duplicated under a different name immediately before the limit became active (hence putting the copy outside the limits imposed by Parliament)⁶⁹ – such legislation must be carefully written.

- Q31) Will the Home Office publicly cite or provide Parliament with a complete list of the uses of settled status applicants’ data?
 - a) Will the Home Office publicly cite the change process for that list of uses?

⁶⁷ e.g. <https://twitter.com/The3Million/status/1078721176829153281>

⁶⁸ FOI response, 13 December 2018: <https://www.whatdotheyknow.com/request/533866/response/1285781/attach/html/2/FOI%2051188%20Response.pdf.html>

⁶⁹ See paragraphs 8.2 and 8.5 of https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/637283/35-NDNAD-Ethics-Group-meeting-minutes16-0913_09_16_final.pdf

a) The settled status checking service

Online checks do not end once someone has been granted settled status. In fact, they will only just have begun. People with settled status will be required to prove their status to a wide range of people in a whole host of different circumstances – to employers, landlords, educational establishments, doctors and public officials.

The proposed method is by checking an ‘official electronic document’, held online by the Home Office: *“Successful applicants will get **digital proof of their status through an online service**. Once you receive your status, details will be provided on how to access it on GOV.UK”*⁷⁰

This lack of transparency to applicants about how this “digital proof of status” will work in practice has already raised concerns amongst some who were, for example, not told in advance that the photo they provided to the Home Office on their application for settled status would be viewed by others indefinitely into the future.⁷¹ With online checks for employers being live as soon as 29 January 2019, according to some guidance,⁷² much greater clarity as to the working of and safeguards around settled status checks is required.

It seems unreasonable not to provide an example of the official electronic document for which someone is applying, and paying – as well as how they will be able to use it – before the applicant enters the process, rather than only at the end.

Further to this – not least to establish trust in the system, and to help mitigate fraud, misuse and abuse – it is vital that those with settled status will be able to see how their record was used by third parties, including government agencies. Only if people know that these checks are working and being administered properly will the system maintain public trust.

- Q32) Will the Home Office publicly cite the guarantees that will be provided in law for the ongoing correct operation of the settled status checking service?
- Q33) Will the Home Office publicly cite the abuse detection processes that it has in place for the settled status checking service?

a) How may Home Office responses to actual or suspected abuse affect innocent settled status holders (e.g. could people be temporarily ‘shut out’ of the checking service)?

- Q34) Will the Home Office publicly cite whether a resident with settled status will be able to tell when their settled status record has been checked?
- Q35) Will the Home Office publicly cite what prevents this checking service being ‘expanded’ to other groups over time at the whim of a mere policy decision, e.g. what protections in law are there against checking British citizens’ HMRC or DWP records under the hostile environment, or against the future merger of the settled status

⁷⁰ <https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit/leaflet-2-steps-to-apply-for-settled-status#viewing-and-proving-your-status> - last updated 3 December 2018

⁷¹ <https://twitter.com/skaface/status/1070270999780823040>

⁷² https://www.rec.uk.com/data/assets/pdf_file/0006/474612/New-Home-Office-guidance-on-online-right-to-work-checks-21.12.18.pdf

database with registers of non-EEA citizens?

6) Oversight of every step above

As is clear from the consideration above, there are many ways in which the settled status system could go wrong and – with under 12 weeks to go – still many untested aspects and unanswered questions. A transparency thus far lacking, as well as rigorous oversight and accountability are vital for EU citizens and the public at large to have confidence in the system.

Though “Monitoring of EU Settlement Scheme registration” is currently listed as a “live inspection”⁷³ by the Independent Chief Inspector of Borders and Immigration, no actual report has yet been published. Prospective applicants will likely to want more than reassurances from a Home Office Minister that the scheme is operating well, or even correctly; independent evaluation is key.

- Q36) Will the Home Office confirm when the ICIBI’s independent report of the EU Settlement Scheme will be laid before Parliament, and if they intend that to be before the scheme fully opens?
 - a) Will the Home Secretary be able to make any redactions before the ICIBI’s report is laid?
- Q37) Does the ICIBI believe that EU citizens’ rights, and the UK’s obligations to uphold them, have been fully met up to this point by the Home Office? For example, has running pilots with only the HMRC data checks operational proved unnecessarily burdensome to some applicants?

The Statement of Intent, meeting the obligation in Article 159 of the Withdrawal Agreement, acknowledges the creation of a new Independent Monitoring Authority:

*1.9. The draft Withdrawal Agreement sets out that citizens’ rights are to be monitored in the UK by a new **Independent Monitoring Authority (IMA)**. **Primary legislation will be required to create the IMA**. Ahead of that, the implementation of the EU Settlement Scheme will be monitored by the Independent Chief Inspector for Borders and Immigration (ICIBI). The ICIBI inspects all elements of the UK borders and immigration system, and is independent of the Home Office, providing impartial reports for the Home Secretary which are laid in Parliament.*

And it is vital that Withdrawal Implementation legislation does indeed provide the IMA with “powers equivalent to those of the European Commission acting under the Treaties to conduct inquiries on its own initiative”.⁷⁴ It should be noted, for example, that ICIBI is only empowered to inspect the Home Office – it has no powers over the other parts of the system, such as HMRC or DWP.

⁷³ <https://www.gov.uk/government/news/work-in-progress>

⁷⁴ Withdrawal Agreement, Article 159 (1)

In order to be effective, so it can investigate and where necessary pursue complaints and alleged breaches of citizens' rights, the Independent Monitoring Authority must be fully empowered across central Government wherever settled status data is requested – at the very least wherever any automated data checks are being made, but for other checks as well. An

acid test that the powers of the IMA are sufficient would be the publication of the Home Office business logic, and the implementation of any changes deemed necessary as a result.

- Q38) Given its broader remit, will the Independent Monitoring Authority determine that EU citizens' rights, and the UK's obligations to uphold them, have been fully met by the Home Office throughout the process?
 - a) Will the Home office publicly cite the consequences and possible remedies should the IMA's judgement not concur with that of the ICIBI?
- Q39) Should the Home Office choose not to publish its business logic – so it can be independently verified, and so as to properly inform applicants about the processing of their personal data – will the IMA be able to require the Home Office to do so?
- Q40) Will the IMA have the power to require the Home Office to change its business logic, if it determines the business logic or the rationale behind its design does not meet the obligations required?

While the ICIBI looks at what the Home Office actually does, and the IMA should have powers to make it correct errors after the fact, the Migration Advisory Committee (MAC) can say what the Home Office *should* be doing.

This is all the more critical given serious omissions from Withdrawal Implementation legislation – such as the right of appeal against refusal of leave for EU citizens applying under the settled status scheme, that should be in primary legislation but which does not appear in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.⁷⁵ Beyond the Withdrawal Implementation legislation itself – as some, notably the Institute for Government,⁷⁶ have proposed – by putting MAC on a statutory footing, the 2019 Immigration Bill could provide it with a stronger basis for influencing policy, insulated from transitory political mood swings.

⁷⁵ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/18309.pdf> - published 20 Dec 2018

⁷⁶ e.g. https://twitter.com/tom_sasse/status/1074785097558167552