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EU settled status scheme—what will happen to those who ‘fall between the cracks’?

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The Migration Observatory has warned that the new EU settled status scheme may result in tens of thousands of EU citizens living in the UK losing their legal status. Lawyers at Carter Thomas Solicitors, Eversheds Sutherland and Lewis Silkin discuss what will happen to the EU citizens who ‘fall between the cracks’, and how the government should address this aspect of the scheme.

The Home Office published a statement of intent concerning the EU settlement scheme, which outlined details of how citizens can apply, and how the scheme will be implemented (see LNB News 21/06/2018 75).

The Migration Observatory has said it will not be ‘entirely straightforward’ to calculate how many people miss out on settled status, because there is a lack of precise figures on how many EU citizens currently live in the UK and plan to stay. Furthermore, factors such as a lack of awareness, to a fear of rejection, means that some eligible EU citizens will not apply for settled status.

The think-tank recommends that much more demographic information should be available, to include age, gender, location of residence in the UK and whether they previously held permanent residence documents.

‘A mammoth task ahead’

Audrey Elliot, partner at Eversheds Sutherland, explains the settled status system: ‘The system has two limbs. If an EU citizen applies having lived continuously in the UK for five years—and assuming the other (limited) criteria are met—they will be granted settled status. An applicant with less than five years’ continuous residence will be granted pre-settled status and be able to apply for settled status at the five-year juncture.

‘Alongside a commitment to simplicity delivered for example through the Home Office checking residence via employment and benefits records, the Home Office has said it will be for reasons to grant settled or pre-settled status not for reasons to refuse.

‘This message of ease and reassurance is partly to encourage EU citizens to apply in good time before the deadline of 30 June 2021. There will also be communication plans with employers, local networks and to those EU citizens who have registered with the Home Office to received update.’

Nicholas Gore, associate at Carter Thomas Solicitors, says the Migration Observatory has highlighted an ‘important point’ in the new settled status scheme, given that the Home Office has a poor history in recording immigration data—including failing to record exit checks. As the Home Office is often over-stretched and under-resourced, Gore questions whether the Home Office will be able to handle the potential ‘huge influx in the volume and complexity of cases’ once the new settled status scheme is live.

Naomi Hanrahan-Soar, managing associate at Lewis Silkin, notes that the suggestion of capturing necessary data to analyse and address the issue is ‘vital’: ‘We live in a data-based world and should be able to both capture relevant data and use this in aid of helping people through the mammoth task ahead.’

‘Further guidance urgently needed’

Gore adds that there will be people who ‘fall between the cracks’, due to inabilities to access the system, as well as more complex cases that will require the ‘submission of a variety of documents across their leave, under a new system that will take time for applicants and advisors to understand.

‘Confusion and the lack of familiarity with the new system could lead to delays in applications, or repeated attempts at an application. Further guidance before the system becomes live is urgently needed.’

Hanrahan-Soar agrees that it will be difficult for EU citizens to now engage with the ‘bureaucracy of visas’, as it requires a ‘shift in thinking’ to now document their status: ‘For decades, European citizens have not had to think about UK immigration documentation because their nationality provided the right to live in the UK.

‘I have come across many people that have been caught out by the current system. People generally do not keep their paperwork from a few years ago, let alone decades ago. For those without a HMRC record, for example if

they were financially self-sufficient, there is little to record their presence in a manner the Home Office typically accepts.

'Let's hope caseworkers really will be understanding of this and shift from the overly zealous culture that has pervaded the visa application assessment system over recent years.'

Hanrahan-Soar adds that it would be 'heartening' for data on the reasons being allocated to the 'complex' pile to be collected and made public: 'This is all too often a catch-all phrase to be used when simply overwhelmed and falling behind service standards.'

Elliot argues that promoting the scheme 'through as many avenues as possible' will be 'vital' to ensure the majority of citizens in employment, and those active in the community, are made aware. Yet, Elliot warns that this method cannot be 'fool proof'.

Gore questions what will happen to those who 'fall through the cracks': 'Presumably, if they do not acquire this status, they will be at risk of deportation. This would be a drastic move for those that may have lived and worked in the UK for their entire lives and would have done so legally until 1 July 2021.'

Elliot also notes that those who fail to register will not have legal status in the UK: 'It will be the times when they need to produce this evidence that become an issue—beginning a new job, opening a new bank account, renting a new home and travel of course. All of these events require scrutiny on the part of the employer, the bank, the landlord and the immigration officers of legal status in the UK.'

The Migratory Observatory concludes: 'If planning starts well in advance, it should in principle be possible to put in place a carefully designed set of statistics to ensure that policymakers can evaluate one of the biggest programmes the immigration system has had to handle.'

Source: [Report: Measuring success—will we ever know how many eligible EU citizens did not apply for settled status?](#)

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