

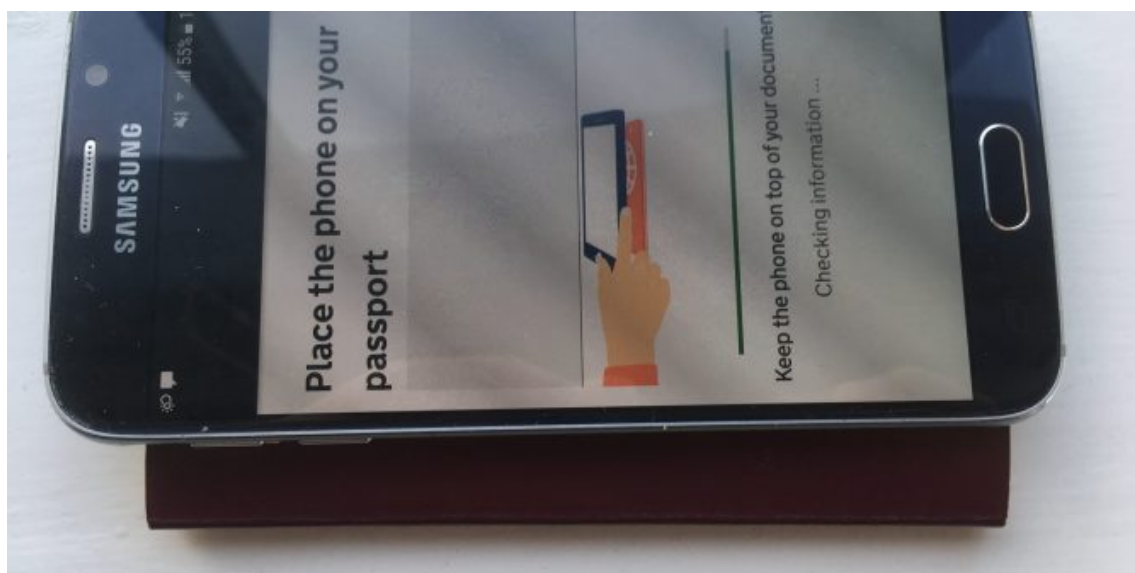
# Long read | Poverty, vulnerability, and criminal records will turn EU citizens into unauthorised migrants, at risk of deportation

*Freedom of movement in the UK will end on 31 December, 2020 – the date on which the transition period finishes. EU citizens will need a visa in order to migrate to the UK. Those who currently live in Britain will need to get pre-settled or settled status. **Agnieszka Radziwinowiczówna** (University of Wolverhampton) explains which groups of EU citizens will be particularly vulnerable to losing their immigration status and becoming liable to deportation.*

Starting on 1 January 2021, after the Brexit transition period ends, mobility of EU citizens will be regulated together with other foreigners by new Immigration Rules. The Immigration Bill will introduce a [points-based immigration system](#) whereby the candidates will need a job offer at an appropriate skill level, meet a £25,600 salary threshold, and know English. Factors that will give additional points will be a job on the shortage occupation list, and a PhD. If these requirements remain unchanged when the points-based system becomes operative, many new migrants wishing to work in the UK will have no choice but be undocumented.

The status of EU citizens who currently live in the UK and of the EU 'newcomers' who will migrate after the transition period will differ. The former should get either settled or pre-settled status under the EU Settlement Scheme (EUSS), which [requirements](#) and [legal consequences](#) have been previously described on this blog. During the current public health crisis, the telephone helpline for the EUSS enquiries [was closed and documents were not accepted by post](#) for over a month. Although these disruptions have complicated the application process, the deadline for submission has not been changed and remains 30 June 2021.

Only time will tell if the lack of this will lead to deportations. The Home Office is increasingly targeting the EU citizens with hostile environment and not even the national lockdown has stopped them from [deporting 35 Polish nationals in April](#). UK policy toward the EU citizens who fail to secure the new status may depend on the future economic and political situation, which during a [crisis](#) may become more hostile. In the following sections, I explain which groups will become particularly vulnerable under the EUSS and new regulations. Although politicians have been giving [contradictory answers](#), when asked if EU citizens who do not secure a new status might be deported, the Home Office secretary has recently [confirmed](#) that they will become unauthorized after June 2021.



## Rejected applications

Incorrect applications in the EUSS may lead to refusal of (pre-)settled status. Individuals who deliberately provide false or misleading information or documents, or on behalf of whom such documents are provided, may be rejected. For instance, using false documents to demonstrate continuous five years in the UK [could be classified as misleading information](#).

All adult applicants are required to provide information about criminal convictions in the UK and overseas. The Home Office checks all applicants against the UK Police National Computer and the overseas convictions are expected to be declared. For individuals with prior prosecutions, which previously were not a cause for removal, applying to the EUSS may result in deportation. The Home Office caseworkers are instructed to refer such cases to Immigration Enforcement. Therefore, even during the transition period, the EUSS can potentially create a group of newly deportable EU citizens.

The Home Office has proudly announced that only as little as 0.01% applications are refused and demonstrated that it complies with the [official policy](#) of 'looking to grant status, not for reasons to refuse'. However, in [March 2020](#), 9% of the applications still awaited conclusion. More complicated cases of applicants with criminal convictions [cause the backlog](#). While in January 2020 only six applications were officially rejected, a month later this number grew to 300. In February 2020, the Home Office picked up the [complicated](#) cases and started rejecting them. The number of successful appeals is not known.

## People who do not apply under the EUSS

It is difficult to estimate how many people have not yet applied to the EUSS, because the number of EU citizens in the UK [is not known](#) and the Home Office publishes information about the [number of applications and not applicants](#). Hence, it will be impossible to know the exact number of people who will not have applied for the new status and who will remain in the UK after the EUSS closes on 30 June 2021.

A criminal record may be an important factor contributing to [abstaining from applying](#). Applicants with an arrest warrant, European Arrest Warrant or unspent convictions can be easily detained by the police, as the application to EUSS provides the Home Office information about criminal convictions, personal details, face scans and current pictures.

Under the lockdown, the application to the EUSS has become more difficult. Lacking a biometric passport or a national ID card is a serious obstacle. [Not all](#) the EU member states issue national ID cards with a chip and older passports do not have it either. These applicants can post their documents to the Home Office, and individuals who do not have a document at all can apply in paper form (provided by the Home Office only upon individual request, usually with delay). However, the EUSS Resolution Centre helpline was closed between March and early May and paper documents were not accepted, which has caused a [lag in processing the applications](#). Under the physical distancing measures, [getting a new passport](#) may be impossible. Before the lockdown, this had already been a challenge for poorer and digitally excluded people because of having to apply online for a consulate appointment, passport fees, and travel expenses. The situation of children living with a single parent is even more complicated should the other parent not consent to the passport application.

## People who will lose their status

Pre-settled status will expire after two years spent overseas and settled status after five years. EU citizens' [enjoy the EU Freedom of Movement in their family and professional life](#) and some may not even be aware of the [immobility the new status involves](#). Current travel restrictions caused by COVID-19 can also contribute to unplanned, longer, absences of EU citizens from the UK and breaks in continuous residence, but the Home Office [has failed to address this problem](#).

The people who will not be able to update their status from the temporary pre-settled to the indefinite settled one will be another vulnerable EU group in the post-transition UK. [41%](#) of the people who have applied under the EUSS must re-apply in order to stay in the UK for more than 5 years. It is the applicant who must demonstrate continuous 5-year residence should the information automatically retrieved by the Home Office do not reflect the correct length of their stay. EU citizens often fail to prove a five-year residence and thus [are only given the pre-settled status](#). [Stijn Smismans](#) writes that, '(t)hese people are likely to face similar problems when applying for settled status later on. There is a risk that all the more difficult cases will resurface within five years'. Children and carers who joined family members but never planned to work, rough sleepers, and people who worked in the shadow economy, or were unemployed for long periods, will be especially impacted by this.

Pre-settled status holders who cannot upgrade to settled status because they lack documentation, are digitally excluded, or simply forget to apply will likely become unauthorized migrants in the UK. For instance, rough sleepers often change telephone numbers and [do not have an e-mail account](#), which are necessary to access their on-line EUSS profile, as well as for the purpose of upgrading pre-settled to settled status. Furthermore, the Home Office may withdraw the [financial assistance provided to most vulnerable EU citizens](#) before the pre-settled statuses expire.

By the end of the transition period, convictions that did not qualify an individual for deportation should not be a basis for refusal of settled and pre-settled status. However, the pre-settled status holders who will be upgrading to settled status [will be evaluated under the UK criminality test from 2021 onward](#). As a result, individuals who are now legally living and working in the UK will be subject to criminality and security check which overnight may make them deportable. It is also to be expected that the EU citizens will now be deported on the basis of general prevention and not on the basis of forward-looking assessment, as it is currently the case for non-EU citizens.

## New EU migrants

Settled and pre-settled status holders [will](#) be able to bring their close family members into the UK. EU citizens who will not be joining their family members in the UK [will](#) be able to enter visa-free for up to six months but longer stays will require a leave to enter/remain. Those who do not qualify in the points-based system may still want to use the visa-free entry in order to remain and work in Britain. Obviously, upon overstaying the allowed length of visit they [will become unauthorized](#). New Immigration Rules will be laid out later in 2020, but it is possible that the EU citizens working without a permit may be criminalized, as it [happens now with non-EU citizens](#).

## Conclusion

Vulnerable EU citizens often do not speak good English and do not understand the EUSS. If not duly supported when applying, they are likely to be granted pre-settled instead of settled status. In future, they will be upgrading to settled status under different economic and political circumstances. Refused applications will not necessarily lead to automatic deportation of applicants, as this would be expensive and overwhelm the UK immigration detention system. Instead, individuals denied the new residence status might either remain as undocumented or will leave the UK, self-deporting themselves for fear of prosecution. However, the Home Office may try to deport more EU citizens, for instance, to relieve the UK economy, disrupted by COVID-19 and Brexit. The EUSS gives the UK authorities access to personal details, biometric data, history of contribution to the fiscal system and criminal record of over three million non-UK citizens.

A significant share of EU citizens living in Britain has benefited from European Freedom of Movement for a relatively short time – Poles for fifteen years, Romanians for just six. Before that, numerous people from Central and Eastern Europe were undocumented in the UK, after having crossed the border as tourists or students. The memories of those who had been forcibly returned upon crossing the UK border or apprehended in immigration raids are still vivid in some communities. After the end of the Brexit transition period, people from poorer 'new member states' may be more likely to continue to migrate to the UK, despite not having proper immigration status.

*This post represents the views of the author and not those of the Brexit blog, nor LSE.*



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