



PLP RESEARCH PAPER

Digital Immigration Status: A Monitoring Framework

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Introduction

With government increasingly moving to a digital footing, many important government-produced documents, that were traditionally on paper, are being moved to digital formats.

Despite the promises of benefits such as convenience and security, there are anxieties that such changes may lead to those with digital-only documentation being put at a disadvantage in societies which are still culturally attached to paper.¹ These changes also raise the prospect of a new site of digital discrimination and, in turn, the question of whether the law could be called upon to prohibit digital-only documentation and perhaps even mandate paper-based alternatives—something which is already beginning to occur.²

The roll out of digital status is also occurring in the wake of a scandal where migrants of the Windrush generation were systematically denied rights and, in many cases, wrongly removed from the UK due to the Home Office's failure to recognise their status.³ This episode—alongside persistent concerns about, amongst other issues, the accuracy of its records, a lack of institutional responsiveness to individual circumstances, and general procedural issues such as delay—means that the Home Office faces acute challenges in establishing public confidence in its new role as guardian of digital status.

In this report, we scrutinise the case for the transition to digital status. First, we explain how digital status operates, drawing upon the prominent recent example of the EU Settlement Scheme. We then move on to examine each of the central policy justifications supporting this shift, as they have been set out in official documents and ministerial statements. In respect of each of these justifications, we show that, while they may have some merit, there are also a range of potentially problematic aspects, some of which ultimately risk discriminatory and otherwise harmful effects. Based on our analysis of the tradeoffs involved, we provide a framework suitable for monitoring the implementation of digital status in the coming years.

The mechanics of digital status

It is important to understand clearly the mechanics of digital status. At present, the most prominent immigration scheme in the UK which has adopted digital status is the EU Settlement Scheme ('EUSS')—the system established to allow EU citizens to apply to remain in the UK after Brexit.⁴

The Withdrawal Agreement between the EU and the UK requires the new residence status to be accompanied with a document evidencing that status 'which may be in a digital form.'⁵ Under the EUSS, the UK has opted to provide EEA and Swiss nationals who get settled or pre-settled status with both confirmation and proof of their status only in digital form.⁶ Confirmation arrives in a letter sent via email. The letter states that it is not proof of status. Instead, proof of status can be accessed online, supposedly at any time, with the correct log-in details and also shared with third parties (e.g. employers) via an online platform. In the words of the Home Office, digital status means that '[e]vidence of... status will be given to EU citizens in digital form; no physical document will be issued to them. They will control who they wish to share this with.'⁷ By the 30th June 2020, some 3,403,000 individuals in the UK held settled status and rely on this system.

The ambition behind the move to digital status is not limited to the EUSS. It also extends to the new immigration system that will be brought in to replace EU free movement. In the Government's White Paper on *The UK's future skills-based immigration system*, it is stated that:

Online status checking services will continue to be developed to allow individuals to share their status with employers, landlords and other service providers who have legal responsibility for confirming an individual's status. This approach will remove the current reliance on individuals having to produce documentary evidence of their status, or service providers having to interpret a myriad of documents.⁸

As well as reaching across different immigration schemes, the Government's vision also includes much further development of digital infrastructure than may be apparent on the face of such statements. For instance, for applicants who apply to the EUSS, it is not just that their status, once granted, that will arrive by email and be checked online, the whole process they go through has gone digital. Those who get digital status after applying to the EUSS will have already applied online and been processed through an automated decision-making system that is built on extensive data-sharing arrangements between the Home Office, the Department for Work and Pensions, and HM Revenue & Customs.⁹ As part of the digital status element of this infrastructure in particular, the direction of travel is towards '[r]eal time verification of status [that] will give other government departments and delivery partners, including employers and landlords, the tools to establish genuine, lawful, residence and rights.'¹⁰

At the ground level, an individual's digital status will need to be provided for right to work and right to rent checks. While these checks already occur, they can currently be met by showing proof of EEA nationality. The introduction of the EUSS and the digital only status changes the process. With digital status, such checks will require individuals to access their status and pass on a digital access code to employers or landlords. Under such a system, many private actors—such as landlords and employers—are effectively enlisted to enforce immigration law and policy *and* directed to use an online system to do so. While status will also be checked for other services, such as access to healthcare, social security, and housing, these checks are supposed to be done by the relevant departments through government databases and this will supposedly not require individuals to provide evidence of their immigration status at all. Nonetheless, while waiting for this system to be functional, there is a general mechanism for proving status in such circumstances which is currently available for those with digital status under the EUSS.

When called upon to prove their status, individuals will have to take a series of steps. It is important to be clear on what these steps are. Take for instance, somebody with settled status who is required to prove their right to work for the purposes of a new job. They will have to take the following steps:

1. Search, identify, and open the correct website;
2. Select the option to start the process;
3. Confirm that they have status under the EUSS;
4. Confirm which ID document was used in the original EUSS application (if this ID document is replaced or updated, the status holder must update the information by logging in to their digital status. This process can also be used to update their email address and phone number);
5. Find or remember the document number to input into the system (if this ID document is lost or stolen then an applicant is redirected to a general enquiry form, where they must select which option is most suitable. This form is then sent to the EU Resolution Centre which seeks to resolve the problem. It is not clear how long the EU Resolution Centre will remain open, or what will replace it should it close. Many will be relying on this status and digital access for many years after the Scheme closes);
6. Request a security code to confirm identity, which is then sent to the phone number or email address associated with the EUSS application (if these contact details are no longer in use or available, it is possible to rely on the security questions set up at the time of application);¹¹
7. Find and input the security code into the website; and
8. Input and confirm the employer's email address into the system, which then automatically sends the employer a link to the right to work check.

Those with status under the EUSS must then rely on third parties—a prospective employer in this example—to check their status. To do so, third parties will have to complete the following steps:

1. Request the code from the applicant;
2. Wait for an email with a link to arrive;

3. Open and read the email;
4. Search, identify, and open the correct website (there is no link in the email);
5. Start the checking process;
6. Enter the share code from the email;
7. Enter the applicant's date of birth;
8. Enter their company name; and
9. Check that the photo on their screen looks like the person applying for the job and keep a secure copy of the online check, either electronically or in hard copy.

These may seem like technical details but, as will become apparent, such details are a critical part of understanding the impacts of the shift to digital status.

The case for digital status

What are the policy justifications advanced for this transition to digital status? To date, there has been no clear, overarching statement of all of the justifications so we have instead extracted the most common rationales advanced in official documents and ministerial statements. From this exercise, we understand there to be five main justifications.

The primary argument advanced in favour of digital status is convenience and efficiency—a claimed benefit for holders of status, the government, and the third parties required to check status. The suggestion here is that:

Moving to a model of electronic permissions accessed online means that users will be able to view, understand and update their information from a single place. Users will not have to resubmit information or prove things again in subsequent applications where there has been no change.¹²

In this sense, the adoption of digital status allows for the Home Office to generate ‘customer intimacy’ by offering a more personalised service that is easier to access and use.¹³ It is also intended to reduce errors in proving status by reducing ‘piecemeal interactions, services and paper products’ which should make it ‘easier for users to transact with... services in a streamlined, seamless way.’¹⁴ From the perspective of third-party checkers, they should ‘see only the information that is relevant and proportionate to their need.’¹⁵ The outcome of the switch to digital status, on this reasoning, should be that is more convenient and efficient for all involved to share and check status resulting in a situation where ‘what has been proved once should not have to be proved again.’¹⁶ For the government, managing digital status is likely to prove significantly more cost efficient than a paper-based system. Evidence provided by the Home Office shows that since 2008, one million residence cards have been issued.¹⁷ The provision of residence cards to a cohort of over 3.5 million applicants to the EU Settlement Scheme would be a substantial expansion of this and could result in significant costs, especially as the Withdrawal Agreement places a limit on the amount member states can charge for new residence documentation.¹⁸

A second prominent justification for adopting digital status is that it enhances security. The reasoning here is that traditional paper documentation is at risk of being undermined because it is ‘lost, stolen, damaged, expired or in the process of being renewed,’ whereas digital status does not carry such risks (or not to the same extent) as the status exists only in digital form.¹⁹ There have also been examples, with paper-based proof of immigration status, where access to relevant documents has been controlled by others, including in cases of domestic violence, modern slavery, and human trafficking.²⁰ For those in such

circumstances, the government's adoption of digital status is intended give them firmer control of their proof of status. The enhanced security of the digital code system is also thought to reduce the possibility of forgery and fraud.²¹

Another argument routinely advanced to promote digital status is that it has worked in immigration schemes already and time will be provided for transition to digital systems. Since 2018, it has been increasingly possible for individuals to view the digital record of their immigration status held by the Home Office.²² In this way, it could be claimed that digital status is increasingly embedded within administration already. Even so, in the context of the EUSS the government has accepted that 'it would be wrong... to suddenly impose a digital first or digital only system without giving people, including employers, landlords and other service providers, time to adapt.'²³ Indeed, it has recognised this would represent a significant 'cultural change' for many.²⁴ The government response, at least in the context of the EUSS, has been to establish a six month 'grace period' after the end of the transition period, where EEA and Swiss citizens and their family members will be able to continue to rely on their residence rights under EU law (this ends on 30th June 2021).²⁵ During this time, EEA and Swiss nationals can continue to evidence their right to work or rent in the UK by using their passport or national identity card.

A fourth justification which has been advanced is that digital status is beneficial to vulnerable groups.²⁶ There have been multiple examples relied on by the government, in different contexts, to support this claim. One is that some vulnerable groups, such as the elderly, will not be required to prove their status often and maintaining paper documents thus presents 'an additional level of bureaucracy' for them.²⁷ Another example cited is visually impaired and dyslexic individuals, who may have difficulties reading a physical document.²⁸ Similarly, documents online could be more easily translated to other languages for those with limited English language skills. For those who are vulnerable and *not* assisted by the transition to digital status (e.g. those who are digitally excluded), the government has committed to ensuring that those 'who are not digitally enabled are not disadvantaged and are able to use the future system,' including through 'assisted digital' support services.²⁹

A final justification that could be offered for the adoption of digital status is the desire for administrative coherence. That is to say, because the direction of travel in government is to digitalise immigration systems—as seen most prominently with the EUSS—then it is coherent, within a digital-based system, for proof of status to come in digital form too. This justification of coherence has been put forward for the configuration of administrative schemes in a variety of other contexts, such as gender classifications on passports.³⁰ It is possible it also carries some force in the context of digital status too.

Problematic assumptions

The government's ostensibly attractive case for digital status must be scrutinised closely. When it is, serious doubts arise as to whether each of the justifications for the transition, and potentially the overall policy case, are convincing. It is also clear that the possibility of injustices may arise.

Perhaps the most questionable aspect of the case for digital status is that it will make using status easier and more convenient. Already, there are concerns about the unwillingness of employers and landlords to undertake the necessary checks. In January 2020, the Court of Appeal found that the right to rent scheme caused indirect discrimination. However, Hickenbottom LJ found that the discrimination was justified as a proportionate response to the public interest in deterring irregular immigration.³¹ This decision overturned the High Court's finding that the scheme was unlawful and will likely be appealed.³² The legal framework was far more complex than the evidential foundations for the case, where it was recognised that some landlords discriminate against potential tenants based on their nationality or ethnicity as a result of the scheme due to administrative convenience and a fear of the consequences of letting to an irregular immigrant.³³ The JCWI's extensive research found that landlords were less likely to rent to those without British passports, those with complicated immigration status, and people with 'foreign accents or names' as a result of the scheme. Quite simply, landlords felt they were 'forced to discriminate against certain groups, rather than face the possibility of a fine.'³⁴

What lessons, if any, can be extracted from this experience in relation to digital status from this case? The research underpinning the JCWI case also found that the majority (65%) of landlords would not rent to someone who needed time to provide documentation, an 'attitude which will affect anyone applying for a tenancy who lacks clear documents or does not have documents, such as a passport, to hand.'³⁵ When landlords were presented with a potential tenant who required the use of an 'online checking tool' (which requires landlords to request information about a tenant's immigration status from the Home Office and takes 48 hours to receive a response) 85% of them did not respond. Only 3.3% of the landlords contacted by this tenant responded and invited further interaction.³⁶ The online checking procedure, as described above, can take some time, particularly for those to whom it is unfamiliar. It is likely that much of the reluctance of landlords captured in the JCWI research will not only continue to be present but may even be exacerbated by a lack of physical proof of status or if they find it 'too complicated or troublesome to engage with electronic systems.'³⁷ Similar concerns have been raised about employers and the prospect they may choose to hire or retain someone with more familiar status documents. Ultimately, this means, as the Home Affairs Committee observed, that digital status:

[R]isks being confusing, increases the workload on employers and landlords, relies on their goodwill and engagement with this new and unfamiliar process, requires individuals and employers to have the necessary electronic hardware, and could result in individuals not employing or renting to someone due to the confusion and difficulties involved in proving status.³⁸

Far from being convenient for holders of digital status, digital-only status could lead to difficulty, and potentially even discrimination, when seeking to access homes, jobs, and services. The Exiting the EU Committee also observed the potential further risk of exploitation if someone ‘cannot persuade an employer or landlord of their status.’³⁹ In view of this evidence and the nature of the structures which give rise to such issues, it is also questionable whether the transition windows where paper documents can still be used for a period—such as that adopted in the context of EUSS—will constitute sufficient risk mitigation, or whether they will simply defer the problems of digital status.⁴⁰

It must also be remembered that the success of the system’s claims of convenience rest heavily on how well the technology itself holds up. There have already been reported technical errors, including where an individual trying to access the right-to-work scheme to generate a code for an employer faced the error message ‘we can’t show your record.’⁴¹ The result of a technical error could be to leave people ‘in limbo, unable to assert their rights’.⁴² Other digital errors could also corrode trust in the system. For instance, there have already been many data breaches in the EUSS scheme.⁴³

Early evidence suggests that new security and exploitation risks may emerge with digital status too. These risks are evident in reported instances of ‘advice sharks’ making applications on behalf of others, charging for this service (when the application is free), and then retaining access through email address and phone numbers to charge individuals further for access to their status.⁴⁴ The EU Justice Sub-Committee also raised concerns that digital-only proof could still be used by people traffickers and illegal gangmasters to exert control over their victims.⁴⁵ While status may become more secure for some, digital status may still be vulnerable to the same problems as paper-based status while potentially also opening up new routes for exploitation. For example, if a perpetrator was in control of the initial application (and therefore the phone number and email address associated with it, to which the security code is sent) they would have control over who can access this status. Initial evidence also suggests that the idea of digital status being more firmly in the secure control of the individual status holder may also be undermined by less sinister but equally important practical problems. For instance, early research has reported some applicants not having an email address to receive their status. This resulted in advisors ‘setting up email addresses for people and maintaining a record of log-in details in-house as a backup for individuals.’⁴⁶ Such a fix—which may seem an appropriate immediate solution—ultimately leaves a person disconnected from control of their status and places control with a third party, with all the risks that entail (e.g. an advisor leaving their current role). Even for those with access to email and other relevant technology, individuals can be disconnected from their status if their online status is not updated with new details. To put it simply: digital status, like paper-based documentation, can still be lost or stolen in a variety of ways.

Despite confident claims by the Home Office that the transition to digital status will support vulnerable groups, the evidence to underpin this claim is thin at present. The existing discussion on digital exclusion from public services and the justice system does often suggest that digitalisation of government interfaces will help some vulnerable individuals to better engage with various public services.⁴⁷ However, it consistently also shows there are serious risks of ‘digital exclusion’ for some and many are in need of digital assistance. While the number of those who will require digital support is unknown, the Office for National Statistics have estimated that 10% of adults in the UK are non-internet users.⁴⁸ For those who need assistance, the multiple-step process required to share status can be a gauntlet without appropriate support. For those who are completely digitally excluded, it could be a barrier. For the application process, the need for digital assistance and support for vulnerable applicants was acknowledged with the provision of assisted digital services and the £9 million funding for charities and local authorities.⁴⁹ The government’s own service standard report on proving the right to work observed there was ‘strong evidence that this would cause low digital users a lot of issues,’ to the extent it suggested there is a ‘clearly identified user need for the physical card at present, and without strong evidence that this need can be mitigated for vulnerable, low-digital skill users, it should be retained.’⁵⁰ The extent and effectiveness of assisted digital support remains to be seen. There is also a concern that specific groups of vulnerable and marginalised applicants may be disadvantaged by a digital-only status.

The justification of administrative coherence carries considerable force in the context of a primarily digital scheme, such as the EUSS. However, even in the context of an immigration scheme of that kind, there are two important problems with this justification. First, a coherent but ultimately ineffective or discriminatory scheme is still not desirable—administrative coherence has value but that value has to be placed in its wider context. A coherent but unfair system is plainly not desirable. Second, so far, even in highly-digitalised immigration schemes, there has not been fully digital design. For instance, in the EUSS, non-EU citizen’s family members will be issued with a biometric residence permit in addition to the digital status they will receive. The Home Office has stated that the additional physical proof will provide, for non-EU citizens, ‘a convenient way of evidencing their status to those who may need to see confirmation of it, such as an employer, landlord or service provider.’⁵¹ From this perspective, there is a clear lack of coherence that may be particularly confusing for actors such as landlords or employers, who may not easily understand why some individuals have physical proof of status and others do not.

Monitoring risks and responding to failure

The upshot of our analysis is that the case for digital status rests on some assumptions that are, at very least, questionable and lacking foundation in evidence. Monitoring risks closely will be essential.

It is important to be clear on what the potential consequences are if these assumptions about the effectiveness of digital status transpire to be incorrect. Put simply, people risk being separated from proof of their immigration status. This means being denied services, opportunities and, in effect, full participation in a community of which they are lawfully entitled to be a member. In this way, the multiple warnings about ‘another Windrush scandal’ potentially resulting from the EUSS are apt.⁵² While the initial evidence available on the operation of digital status remains limited, it does suggest that some of the assumptions questioned in this report may in fact be problematic.

It is therefore critical that the roll-out of digital status is monitored closely and carefully.⁵³ The Home Office has committed to ‘monitoring all the different real world uses of digital status and will use this to inform future design and communications.’⁵⁴ While this commitment should be welcomed, any monitoring should be comprehensive and open to the possibility of paper-based immigration status being the only solution to the shortcomings of digital status, at least in respect of certain people. On the basis of our analysis in this report, we suggest that three questions should be at the heart of any monitoring work:

- does digital status make managing and accessing immigration status easier or more difficult for the holders of status, the government, and third parties?;
- does digital status enhance security of status or undermine it?; and
- does digital status benefit or disadvantage vulnerable holders of status?

Given the Home Office’s poor data collection and transparency record in respect of digital systems in recent years,⁵⁵ it may ultimately fall on independent organisations, researchers, and watchdogs to gather evidence on these questions. This would be an unfortunate state of affairs, given the potential of digital administrative systems to improve data collection, transparency, and organisational learning. At very least, reviewing the operation of digital status should be a key part of the priorities of the new Independent Monitoring Authority for Citizens’ Rights Agreements.

Beyond measuring the impact of the transition to digital status, our analysis of the design and roll-out of digital status in the UK so far suggests that there is sufficient risk inherent in the transition that a period of issuing both paper-based and digital status would have been a suitable precaution. This additional physical proof could have been made available on request, possibly on payment of a small fee (subject to a waiver where the individual cannot pay). This precaution has not been taken by the Home Office and this has already left lawful migrants to the UK at heightened risk. The extent to which this risk materialises will only become visible in future years, perhaps even decades.

If there is failure to respond to any difficulties that do emerge, it may be the case that people turn to the law to try to compel paper-based alternatives. There has already been litigation in Northern Ireland, pertaining to the EUSS, with this aim.⁵⁶ The case concerned an individual with mental health issues which could impact their ability to navigate the digital process and remember the necessary information to access their status, particularly in stressful circumstances. The application was dismissed as unarguable at the permission stage, with Keegan J viewing the challenge as 'premature' as the system is 'subject to ongoing review.'⁵⁷ Whether the logic underpinning that degree of judicial deference is sustainable is an open question.

References

- ¹ The extent of the policy disagreement on this matter has already led to the House of Commons rejecting an amendment passed by the House of Lords to mandate physical proof of status in respect of EU citizens.
- ² *Re JR96's Application for Leave to Apply for Judicial Review* [2019] NIQB 97.
- ³ W. Williams, *Windrush Lessons Learned Review* (HC 93, March 2020). See also: A. Gentleman, *The Windrush Betrayal: Exposing the Hostile Environment* (Guardian Faber, 2019).
- ⁴ Successful applicants to the scheme are awarded either settled status (indefinite leave to remain) if they can evidence residence in the UK for five continuous years or pre-settled status (limited leave to remain) if they have proof of residence of less than five continuous years. Pre-settled status only lasts for five years and those with this status must re-apply for settled status once they meet the requirements. There are some differences in the rights attached to each status type and conditions by which status can be lost.
- ⁵ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C 384I/01, Article 18(1).
- ⁶ Third country nationals who qualify for status under the EUSS receive physical proof of this in the form of a biometric residence card.
- ⁷ Home Office, *EU Settlement Scheme: Statement of Intent* (21 June 2018) [7.2].
- ⁸ HM Government, *The UK's future skills-based immigration system* (CM 9722, December 2018), p.70.
- ⁹ For an overview and analysis of these wider arrangements, see: J. Tomlinson, 'Justice in Automated Administration' (2020) *Oxford Journal of Legal Studies* (in press).
- ¹⁰ HM Government, *The UK's future skills-based immigration system* (CM 9722, December 2018), p.74. See also: Independent Chief Inspector of Borders and Immigration, *An inspection of Home Office (Borders, Immigration and Citizenship System) collaborative working with other government departments and agencies (February-October 2018)* (2009) [5.26-5.27].
- ¹¹ If these contact details are no longer in use or available, it is possible to rely on the security questions set up at the time of application.
- ¹² HM Government, *The UK's future skills-based immigration system* (CM 9722, December 2018), p 72.
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*
- ¹⁵ *Ibid.* p 73.
- ¹⁶ *Ibid.* p 72.
- ¹⁷ *Secretary of State for the Home Department v R (Joint Council for the Welfare of Immigrants)* [2020] EWCA Civ 542 [17]
- ¹⁸ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C 384I/01, Article 18(1)(g)
- ¹⁹ Letter from Sajid Javid MP to Baroness Kennedy (20 March 2019), Immigration: EU Nationals: Written question - 237707 – 1 April 2019.
- ²⁰ *Ibid.*
- ²¹ House of Commons, Exiting the European Union Committee, *The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens* (2017–19, HC 1439) [9], Immigration: EU Nationals: Written question - 237707 – 1 April 2019.
- ²² House of Commons Home Affairs Committee, *EU Settlement Scheme: Government Response to the Committee's Fifteenth Report of Session 2017–19* (HC 2592), p. 10.
- ²³ *Ibid.* p 9.
- ²⁴ *Ibid.* p 10.
- ²⁵ Explanatory Notes to the Immigration and Social Security Coordination (EU Withdrawal) Bill 2020, para 10, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C 384I/01, Art 18(1)(b), Art 18(2).
- ²⁶ Letter from Sajid Javid MP to Baroness Kennedy (20 March 2019).
- ²⁷ *Ibid.*

- ²⁸ Ibid.
- ²⁹ HM Government, *The UK's future skills-based immigration system* (CM 9722, December 2018), p.74.
- ³⁰ *R (Christie Elan-Cane) v Secretary of State for the Home Department* [2020] EWCA Civ 363.
- ³¹ *Secretary of State for the Home Department v R (Joint Council for the Welfare of Immigrants)* [2020] EWCA Civ 542 [146].
- ³² *R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department* [2019] EWHC 452 (Admin).
- ³³ *Secretary of State for the Home Department v R (Joint Council for the Welfare of Immigrants)* [2020] EWCA Civ 542 [149].
- ³⁴ JCWI, "No Passport Equals No Home": An independent evaluation of the 'Right to Rent' scheme (2015), p.57.
- ³⁵ Ibid.
- ³⁶ Ibid. p.47.
- ³⁷ Letter from EU-Justice Sub-committee to Sajid Javid MP (27th February 2019).
- ³⁸ House of Commons Home Affairs Committee, *EU Settlement Scheme: Fifteenth Report of Session 2017–19* (HC 1945) [65].
- ³⁹ House of Commons, Exiting the European Union Committee, *The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens* (2017–19, HC 1439) [48].
- ⁴⁰ Ibid. [48].
- ⁴¹ The3Million, 'Provide EU citizens with a physical document as proof of (pre-)settled status' (The3Million, September 2019), p.1.
- ⁴² House of Commons Home Affairs Committee, *EU Settlement Scheme: Fifteenth Report of Session 2017–19* (HC 1945) [65].
- ⁴³ Independent Chief Inspector of Borders and Immigration, 'An inspection of the EU Settlement Scheme (April 2019 to August 2019)' (February 2020) [6.94].
- ⁴⁴ C. Barnard, S. Fraser-Butlin, and F. Costello, 'Unsettled status? Vulnerable EU citizens may lose their UK residence overnight' (LSE Brexit Blog, 27 November 2019).
- ⁴⁵ Letter from EU-Justice Sub-committee to Sajid Javid MP, 27th February 2019.
- ⁴⁶ C. Barnard, S. Fraser-Butlin, and F. Costello, 'Unsettled status? Vulnerable EU citizens may lose their UK residence overnight' (LSE Brexit Blog, 27 November 2019).
- ⁴⁷ For instance, see: JUSTICE, *Preventing Digital Exclusion from Justice* (2018); Age UK, *Later Life in a Digital World* (2015); Citizens Advice Bureau, *Digital capability: understanding the digital needs of face-to-face clients of Citizens Advice* (2016).
- ⁴⁸ Office of National Statistics, 'Exploring the UK's digital divide' (ONS, 4 March 2019).
- ⁴⁹ Home Office, 'New fund to support vulnerable EU citizens apply for settled status' (25 October 2018).
- ⁵⁰ Government Digital Service, 'Prove your right to work – beta' (Service Standard Reports, 2 March 2018).
- ⁵¹ Home Office, *EU Settlement Scheme: Statement of Intent* (21 June 2018) [7.3].
- ⁵² House of Commons, Exiting the European Union Committee, *The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens* (2017–19, HC 1439) [48].
- ⁵³ For a wider discussion of why a precautionary principle approach and data monitoring is required in this context, see: J. Tomlinson, 'Justice in Automated Administration' (2020) *Oxford Journal of Legal Studies* (in press).
- ⁵⁴ House of Commons Home Affairs Committee, *EU Settlement Scheme: Government Response to the Committee's Fifteenth Report of Session 2017–19* (HC 2592), p.10.
- ⁵⁵ For discussion of this in relation to the EUSS see Madeleine Sumption, 'Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data' (Oxford Migration Observatory, 2020), Independent Chief Inspector of Borders and Immigration, 'An inspection of the EU Settlement Scheme (April 2019 to August 2019)' (February 2020).
- ⁵⁶ *Re JR96's Application for Leave to Apply for Judicial Review* [2019] NIQB 97 [28].
- ⁵⁷ Ibid. [28]. It is worth noting that the case was seemingly argued on very narrow grounds and legal points that could have been raised were not, or at least were not discussed in the 12-page permission decision.



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