



Public  
Law  
Project

# **Extending digital-only immigration status by Statutory Instrument**

MARCH 2022

## Summary

1. This is a Public Law Project briefing on the Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms), etc., Regulations 2022 which were made on 7 March, laid before parliament on 9 March and come into force on 6 April 2022.
2. Under these regulations, all UK migrants will only be able to prove their immigration status for right to work and right to rent purposes digitally – as has been the case for EU citizens under the EU Settlement Scheme since 2021. This is an inappropriate use of secondary legislation, as it is a major policy change affecting the lives of non-EU national migrants in the UK, it has not been well-publicised, and evidence shows that the system is already having difficulty meeting the needs of EU citizens in the UK. We therefore call for the regulations to be prayed against and debated in Parliament.

## Problems with digital-only status under the EUSS

3. As part of the EU Settlement Scheme ('EUSS') which allows EU, EEA and Swiss citizens<sup>1</sup> and their family members to remain in the UK after Brexit, the UK government instituted a system whereby applicants apply online and are subsequently granted a digital immigration status. The digital system allows grantees to 'view and prove' their immigration status online. To prove their lawful status to employers or landlords or other parties, the holder of the digital status must generate a 'share code' so that third parties can independently verify the holder's lawful entitlement to live in the UK.
4. As of 1 July 2021, all EU citizens with status under the EUSS can only prove their immigration status in the UK and their right to work, rent property, access benefits, and use the NHS by showing this digital status.
5. There is evidence that this system is disproportionately impacting certain groups and causing problems for those trying to view and prove their status, for example:
  - a. It is estimated that around 13% of the elderly have never used the internet. Similarly around a third of people with disabilities do not use the internet, including 37% of severely visually impaired people.<sup>2</sup>
  - b. The government has assured stakeholders that in order to mitigate this digital exclusion a Home Office call centre known as the Settlement Resolution Centre ('SRC') is available 7 days a week to assist those having difficulty with the view and prove system. However recent data shows that in the 12 months to October 2021, 56% of calls to the SRC were abandoned. In July 2021, the first month that people had to rely on their digital-only status, only 31% of calls were handled.<sup>3</sup>
  - c. The 3million have instituted a reporting tool on their website for individuals to report problems they have had proving their digital status. Since the tool became available in December 2020, a wide variety of problems with the system have been reported including such difficulties as the system showing someone else's status, wrongly showing their status as pending when pre-settled status had been granted to them or showing an error message as well. This is in addition to the fact that digitally excluded citizens struggle to access the system at all.

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<sup>1</sup> Referred to collectively as EU citizens in the remainder of this briefing.

<sup>2</sup> *R (The 3Million Ltd) v Secretary of State for the Home Department* 2021 EWHC 1159 (Admin) at [6].

<sup>3</sup> The 3Million, *Letter to Home Office about the performance of the EU Settlement Resolution Centre telephone helpline* (December 2021): [https://www.the3million.org.uk/library/December 2021](https://www.the3million.org.uk/library/December%2021)

## The 2022 Regulations: extending digital-only status to all UK migrants

6. On March 9 the government laid The Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms), etc., Regulations 2022. The purpose of this SI is to extend the requirement to prove immigration status digitally for right to work and right to rent purposes to all UK migrants. From 6 April 2022 when the instrument enters into force, no migrant in the UK regardless of nationality will be able to use the biometric residence permit or card they currently hold as valid proof of their lawful immigration status in the UK for these purposes.<sup>4</sup> The Government has stated its intention<sup>5</sup> that biometric residence cards and permits will become entirely invalid from 2024 when they will also no longer be accepted at the border.
7. This is a major change in policy for the lives of non-EU national migrants in the UK who currently use biometric residence permits for proof of their right to work and rent and to whom this change has not been well-publicised. It is particularly worrying that this digital status is now being rolled out to all migrants when the system is already having difficulty meeting the needs of EU citizens in the UK. It is PLP's position that such a major policy change should not be being instituted via delegated legislation.
8. The long-established principle behind the UK's system of delegated legislation is that primary legislation is for 'matters of policy and principle', whereas delegated legislation is for 'the regulation of administrative procedures and technical areas of operational detail'.<sup>6</sup>
9. The reason for this principled distinction is that policies that will have significant impacts on the public at large or on minority groups are deserving of full parliamentary scrutiny and debate, which they will not receive when placed in delegated legislation, which is 'subject to much briefer, if any, examination by Parliament'.<sup>7</sup>
10. As stated in the explanatory notes, no impact assessments for the SI have been undertaken. Changes to how people prove their status to live and work in the UK are especially acute; it is therefore concerning that neither an Equalities Impact Assessment nor a Data Protection Impact Assessment were undertaken.

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<sup>4</sup> Home Office, *Illegal working penalties: codes of practice for employers* (March 2022): <https://www.gov.uk/government/publications/illegal-working-penalties-codes-of-practice-for-employers/code-of-practice-on-preventing-illegal-working-in-force-from-6-april-2022-accessible-version> See also Home Office, *Right to rent immigration checks: landlords' code of practice* (March 2022): <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-right-to-rent-civil-penalty-scheme-for-landlords-and-their-agents-in-force-from-6-april-2022-accessible-version>

<sup>5</sup> UK Visas Immigration and Home Office Policy Paper, *New plan for immigration: legal migration and border control* (May 2021): <https://www.gov.uk/government/publications/new-plan-for-immigration-legal-migration-and-border-control> para 63.

<sup>6</sup> Ruth Fox and Joel Blackwell, *The Devil is in the Detail: Parliament and Delegated Legislation* (Hansard Society 2014) 28.

<sup>7</sup> *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39, [2016] AC 1531, [27].

## Conclusion

11. The proposed instrument is a negative resolution procedure statutory instrument and the process to annul or oppose a negative SI is different in the Commons and the Lords. In the Commons, a member of parliament must table a motion to annul the SI. This is usually in the form of an Early Day Motion (EDM) and for antiquated reasons is couched in terms of a prayer, i.e. 'That an humble Address be presented to Her Majesty, praying that XYZ SI..... be annulled.'<sup>8</sup> Hence the term 'praying against' an SI. The Government will usually choose to allocate time for a debate on the SI if the EDM has a lot of signatures and the Official Opposition Secretary of State or Minister has signed the EDM but it is up to the government's discretion. The debate typically takes place in a Delegated Legislation Committee (DLC). In the Lords, the usual way to ensure a debate takes place is for a peer to table a motion of either 'regret' or to 'take note' of some aspect of the SI.
12. Unless a motion is tabled or the SI is prayed against, the proposed changes will receive no debate at all in parliament. This is an unacceptable position from the perspective of parliamentary scrutiny and calls into question the democratic legitimacy of an instrument which seeks to make a major change in the lives of non-EU migrants in the UK without any debate in parliament.

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<sup>8</sup> UK Parliament, *Prayer Motion* (UK Parliament 2022): <https://www.parliament.uk/site-information/glossary/pray-against/>

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