

EU SETTLED STATUS AUTOMATED DATA CHECKS:

Proposed outcomes, concerns and questions (February 2019)

ISSUE

This briefing addresses the automated data checks within the EU Settlement Scheme (“the scheme”), the application route through which EU nationals must apply for settled status post-Brexit.

All EU nationals (an anticipated three million plus people) will have to apply through the scheme in order to remain in the UK after 30 June 2021, in the case of a deal, or 31 December 2020 in the case of no deal. Acquiring settled status will in most cases require evidence of five years’ continuous UK residence.

The scheme relies heavily on an automated data check. Input of a National Insurance number triggers automatic transfer of certain data from HMRC and DWP to the Home Office. This data is subjected to algorithmic machine analysis according to a Home Office “business logic” - details of which have not been made public. Result outputs of pass, partial pass and fail are issued to a Home Office caseworker. Once the output is received, the raw data disappears.

Applicants who pass the data check are deemed to have fulfilled the residence requirement for the purposes of settled status. Applicants who do not pass are invited by caseworkers to upload documents for manual checking. Applicants who cannot evidence five years continuous residence generally receive pre-settled status.

ILPA and ORG believe that the Home Office has specific legal duties to give reasons for data check outcomes, to ensure its caseworkers have meaningful oversight of the checks and to provide public information on the scheme.

Below, we identify actions the Home Office should take to comply with these duties. We also ask questions to seek more information about the data checks and increase transparency.

HOME OFFICE DUTIES

1. Duty to give reasons for the outcome of the data check

The Home Office is under a common law duty to give reasons for its decision to grant or refuse settled status. The data checks are a mandatory step in the scheme and integral to the decision-making. **The reason-giving duty therefore includes a duty to explain why the data checks gave the result they did.**

Reasons should detail what data was analysed and how the business logic was applied.

This information will enable applicants to appreciate whether decisions are open to challenge for irrationality or made on the basis of inaccurate information.

continued overleaf...

- a. If the Home Office accepts that it has a reason-giving duty, at least in some cases, how will it approach the need to retain records in order to supply such reasons?
- b. What data about applicants is retained by the Home Office as a result of the data checks? For what reason and for how long is data retained?
- c. Which persons does the Home Office envisage will have a “genuine business need” to see this data?

2. Duty to inform the public about the logic of the data checks

The EU General Data Protection Regulation (GDPR) 2018 requires the Home Office to process data in a transparent manner. It would be consistent with such duties of transparency and openness to **provide meaningful public information on its business logic which enables applicants to understand how it will apply in their case. ILPA and ORG therefore believe that the Home Office should provide such public information.**

- a. Will the Home Office provide full details of, or sufficient information about, its business logic to understand its application to all types of individual and allow for independent review?
- b. What steps are being taken by the Home Office to limit and rectify business logic operational errors?

3. Duty to exercise supervisory control over the data checks

Making decisions in reliance on output from automated data checks without scrutinising these is likely to constitute unlawful

delegation of powers. To prevent this, a manual check for system errors should be conducted when applicants challenge settled status refusal.

ADDITIONAL PROPOSALS AND QUESTIONS

Proper oversight, safeguards and transparency are essential when dealing with complex decisions and people in vulnerable situations. It is important for EU nationals to know if they are eligible for settled status, and if they are not eligible, the future date on which they are likely to become eligible. **The Home Office should inform non-passing applicants at the outcome of the data check which years the checks accepted were covered, and which not.** This would also improve system efficiency by reducing unnecessary challenges.

- a. On the basis that residence is not contingent on income or contribution, why is different weighting applied to data from DWP as opposed to HMRC?
- b. Will the Home Office add functionality in the scheme to enable applicants to easily request and obtain the information that HMRC and/or DWP have supplied about them?
- c. What steps is the Home Office taking to address the particular data issues faced by (i) vulnerable groups (e.g. children in care, persons (usually women) in abusive or coercive relationships, victims of labour exploitation and trafficking) and (ii) people who cannot provide documentary evidence (notably children, pensioners, non-working dependants, homeless persons, casual workers and victims of domestic abuse)?