

**ILPA Briefing on Automated Residency Checks in the EU Settled Status Scheme at the Committee Stage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill**

**Introduction**

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.

**Amendments requiring publication of documents and information relating to the checks**

**Memorandum of Understanding between DWP and Home Office**

HMRC has provided the Memorandum of Understanding between them and the Home Office in the interests of transparency within Government and for the purpose of providing public information on the scheme. However, the DWP has not done so. ILPA believes that the Memorandum of Understanding between the DWP and the Home Office should be published, just like that between HMRC and Home Office. There is no good reason why one should be published but the other not. Our amendment to the Bill provides a duty to do so.

**The data fields provided to the Home Office by the DWP for the purpose of the checks**

We know which data fields on applicants are provided by HMRC to the Home Office for the purposes of the data checks: e.g. employer name, employer address, self-assessment employment income, tax year, and so on. The publication of this information in the Memorandum of Understanding between HMRC and the Home Office has allowed civil society to scrutinise whether the data provided by HMRC is insufficient, about right, or excessive. However, the data fields which DWP provide have not been published. ILPA believe

that publishing these fields would yield a clear public benefit and run in conjunction with the principle of transparency within Government. Our amendment to the Bill provides a duty to do this.

#### The automated logic applied by the Home Office during the checks

It would be consistent with duties of transparency and openness within Government to provide meaningful public information on the automated logic used by the Home Office when conducting the checks. Among other things, publication of the logic would enable applicants to understand how the logic will apply in their case, and civil society to scrutinise whether the logic is consistent with the immigration rules governing applications for settled status. Our amendment to the Bill provides a duty to publish this logic, and any changes which are made to the logic from time to time.

#### The data protection impact assessment relating to the checks

In the interests of transparency, ILPA believes that the Government ought to publish any data protection impact assessment which it has conducted into the data checks within the EU Settlement Scheme. As such, ILPA has drafted an amendment to the Bill in order to introduce a duty to do this.

#### Requirement to provide information to applicants regarding the outcome of the check in their application

ILPA believe that the Government ought to give proper reasons immediately to an applicant who is informed that the automated data check result is not successful. Among other matters, it would enable applicants to know whether the ultimate failure of their settled status application is legally challengeable. ILPA's amendment would ensure that such information is transparently given to applicants at the earliest possible time.

#### Legal limits on further processing and reuse of applicants' data from the EU Settlement Scheme application process

ILPA are concerned that data provided by applicants for the purpose of the settlement scheme will be automatically transferred to immigration enforcement, inconsistently with the purpose of the settlement scheme (which is purely registration).

Furthermore, the Memorandum of Understanding between HMRC and the Home Office suggests that applicants' data may be passed on to those with a 'genuine business need' to see the data. It is unclear to ILPA which private parties could possibly have a genuine business need to view applicants' data sent to the Home Office purely for the purpose of a settled status application.

ILPA's amendment would limit the reuse of personal data processed during the application process only where the applicant explicitly provides consent for such reuse, and where such further processing is necessary and not incompatible with the purposes of applying for settled and pre-settled status.

Extension of the remit of the Independent Chief Inspector of Borders and Immigration to include all government departments involved in the EU Settlement Scheme application process

Currently the Independent Chief Inspector of Borders and Immigration only has remit to inspect the Home Office with regard to the EU Settlement Scheme application process. It is understood by ILPA that processing of applicants' data, and possibly the Home Office automated logic itself, may be carried out on HMRC and DWP systems. If these are 'off-limits' to the Independent Chief Inspector of Borders and Immigration, this would undermine oversight of the settled status application system. ILPA's amendment therefore extends the remit of the Independent Chief Inspector of Borders and Immigration to include the DWP and HMRC insofar as they have involvement in the settlement scheme application process.

Requirement to manually check for system errors when an applicant does not pass the automated residency check

An applicant may fail the automated data check because of a system error, for example a data matching error within DWP systems. At the moment there is no manual check for whether an error occurred in the system where an applicant does not pass the checks. Such an applicant would potentially fail to gain settled status but be none the wiser that one of the operative reasons for the failure would be a system error. Such a system error would be routinely challengeable on public law grounds. However, if an applicant does not know that such an error exists, they will not know to challenge it. Therefore ILPA believes that the Home Office ought to manually check for a system error where an applicant does not pass the data checks. ILPA has therefore drafted an amendment to require such a check to be made.