

Protecting individuals from exploitation by
criminal traffickers and unscrupulous
employers: Identifying and mitigating risks
in the EU Settlement Scheme and the UK's
new points-based immigration system

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1. In February 2020 the government published a [policy paper on the UK's new points-based immigration system](#) that now applies to both newly arriving European Economic Area (EEA) migrants and non-EEA migrants and prioritises highly-skilled workers.¹ The Independent Anti-Slavery Commissioner welcomed government reiterating its commitment to 'protecting individuals from exploitation by criminal traffickers and unscrupulous employers.' Traffickers are swift to adapt and will seek to abuse new arrangements. The Commissioner has therefore been clear with ministers and government officials that the new immigration system must be stress-tested against this, and that protecting the vulnerable must be at the forefront of the debate.

2. Since the UK EU referendum in 2016 a number of reports have raised concerns about the potential for EU exit to impact on vulnerability to exploitation. In 2017 the Anti-Trafficking Monitoring Group published a briefing '[Brexit and the UK's fight against modern slavery](#)', which called for future changes to immigration policy to be subject to an impact assessment on the likely effect of these changes on efforts to tackle modern slavery. The Commissioner has reached out to organisations in the sector to understand how the EU Settlement Scheme (EUSS) is working in practice and what difficulties victims and survivors of modern slavery have experienced. [Early feedback](#) is set out in the Commissioner's response to a call for evidence on the EUSS by the Independent Chief Inspector of Borders and Immigration. Many of these concerns are echoed in a recent [Migration Observatory report](#) that examines categories of EU citizens at risk of failing to secure their rights under the EUSS, including vulnerable groups such as victims of modern slavery. Several recent reports have raised concerns about the impact of the UK's new points-based immigration system on modern slavery and human trafficking. This includes a [collaborative report](#)² on the impact of the new UK immigration system on human trafficking and research undertaken by the [Human Trafficking Foundation](#). The [Institute for Public Policy Research's recent briefing](#) on building a post-Brexit immigration system for economic recovery also outlines which sectors and jobs will likely be impacted and at risk in relation to poor working practices and exploitation.

3. This briefing outlines the following concerns associated with the EUSS and the UK's new points-based immigration system, which the Commissioner raised with ministers and government officials during 2020.

The EU Settlement Scheme

- Lack of documentation, inability to prove eligibility for settled status and interaction with discretionary leave policy
- Clarity around late applications to the EUSS and ongoing communication regarding the need to convert pre-settled status to settled status
- Criminal convictions and the Modern Slavery Act 2015 Section 45 statutory defence
- Lack of physical documentation to prove status

The UK's new points-based immigration system

- Risks around the visitor route
- Risks associated with the skilled worker route
- Mitigation: Quality and compliance of sponsors, effective labour market enforcement and communication of migrant workers' rights

¹ Further details were provided in a subsequent [policy statement](#) published in July 2020.

² A collaboration between Alliance HR, the Association of Labour Providers, Stronger Together, Fast Forward, Responsible Recruitment Toolkit and Clearview.

The EU Settlement Scheme

Lack of documentation, inability to prove eligibility for settled status and interaction with discretionary leave policy

4. Many victims and survivors of modern slavery will not have the full evidence and documentation required to apply for settled status as a result of their exploitation. The Commissioner is aware of cases in which solicitors have successfully advocated on behalf of individuals, however, not everyone will have access to the necessary expertise and support. Victims of modern slavery with pre-settled status would often also require discretionary leave to remain in order to have clear recourse to public funds. Some solicitors have been advising their clients not to apply for pre-settled status if they already hold discretionary leave as they may risk losing their entitlements under the latter. It is therefore vital to have a clear understanding of how pre-settled status and discretionary leave interact with one another in this respect.

5. On 18 December 2020 the Court of Appeal handed down a [judgment](#) in a case brought by the Child Poverty Action Group (CPAG), Fratila and Tanase v SSWP & AIRE Centre [2020] EWHC 998 (Admin); Fratila and Tanase v SSWP & AIRE Centre [2020] EWCA Civ 1741. The case involved two EU nationals (a severely disabled man and his carer) who were refused universal credit on the basis that their limited leave to remain in the UK under Appendix EU to the immigration rules ('pre-settled status') was not a qualifying right of residence for the purposes of means-tested benefits. As detailed by CPAG, the [Order](#) of the Court of Appeal judgement quashes both the legislation which provides that having 'pre-settled status' is not a sufficient right to reside for the purpose of accessing means-tested benefits and the decisions of SSWP refusing Ms Fratila's and Mr Tanase's claims for universal credit. The Court of Appeal granted a short stay to 26 February 2021 to allow the Secretary of State to make an application for permission to appeal to the Supreme Court (the Court of Appeal having refused permission). During this time the SSWP does not have to implement the judgment, but once the stay is lifted, anyone with pre-settled status will satisfy the 'right to reside' test for access to means-tested benefits. CPAG has published an [advice note](#) for people with pre-settled status and no other qualifying right of residence following the Court of Appeal's judgement.

Clarity around late applications to the EUSS and ongoing communication regarding the need to convert pre-settled status to settled status

6. The Commissioner is aware that [campaigns](#) have been designed to raise awareness of the EUSS across EU communities in the UK. Details of the Home Office [community bulletin](#), [community groups toolkit](#) and [communications material](#) have been shared with stakeholders and available on the home page of the [Independent Anti-Slavery Commissioner's website](#).

7. There are real concerns that certain vulnerable communities are still not aware of the need to apply. For those who have been granted pre-settled rather than settled status, they need to be made aware of the need to convert this to settled status following five years' continuous residency and when this starts from. In some cases an individual may not have an email address and may therefore have to use that of a third party such as a lawyer. There are also concerns that guidance on when an individual will reach the five year point is unclear. More broadly, digital poverty is a real concern.

Criminal convictions

8. Section 45 of the Modern Slavery Act 2015 provides a statutory defence for victims of modern slavery who have been compelled to carry out criminal offences as a result of their exploitation. Victims of modern slavery may have convictions for offences linked to their situations of exploitation, which may subsequently be overturned. The Commissioner is concerned that they may risk having an application for the EUSS refused due to the interaction between criminal convictions and suitability requirements under [Immigration Rules Appendix EU](#). There must be clear policies and measures in place to ensure victims of trafficking with criminal convictions are not unfairly disadvantaged in such circumstances.

Lack of physical documentation to prove status

9. A common concern among organisations supporting victims of trafficking is the lack of physical documentation. The Commissioner understands wider goals to move to a digital system and that right to work status can be checked via a central database. However, lack of physical documentation accentuates issues experienced by those without email addresses and who are not comfortable with technology. For some individuals this may also be their only form of identification.

The Commissioner has asked the Home Office to clarify the position in relation to key concerns regarding the EUSS including the interaction between pre-settled status and discretionary leave (as necessary in light of the recent Court of Appeal judgement), appeal rights for late applications, and criminal convictions and the Section 45 statutory defence.

The UK's new points-based immigration system

Risks associated with the visitor route

10. Although there is no general route for low skilled labour, it is apparent that there will be a continued demand for low skilled labour. There is a real risk that the visitor route could increasingly be used to facilitate entry of those intending to work informally and who may be at risk of exploitation. EEA nationals, upon whom certain sectors of the economy are currently highly reliant, will not require a visitor visa and can use the e-Passport gates, limiting opportunities for identification of vulnerability. Two recent reports have also raised concerns about the implications of insufficient exit checks.³ Ongoing monitoring of risks around this route is therefore essential.

Risks associated with the skilled worker route

11. Whilst the biggest risks appear to be around the continued demand for low skilled labour, there are also potential risks with the new skilled worker route. Reduction of the salary threshold and skills threshold from RQF 6 to RQF 3 means the nature of applicants (and sponsors) will likely change. High costs for both employers and individuals increase the risk of debt bondage and therefore compulsion. Particular concerns have been raised in relation to recruitment fees, artificially inflated salaries and clawback of money.

³ Alliance HR, the Association of Labour Providers, Stronger Together, Fast Forward, Responsible Recruitment Toolkit and Clearview (2020) '[The Impact of the New Immigration System on Human Trafficking](#)' and Human Trafficking Foundation (2020) '[Tacking Back Control of our Borders? The impact on modern slavery](#)'.

Mitigation

12. The Commissioner has identified, and raised with ministers and government officials, three broad areas relevant to reducing the identified risks. First, **quality and compliance of sponsors** under the new points-based system is vital. Steps must be taken to ensure not only that individuals are paid the correct amount, but that employers aren't able to reclaim money or pass on costs to individuals. Secondly, **effective labour market enforcement** is more important than ever. Certain sectors will be disproportionately impacted and trends in exploitation and changes to the labour market must be closely monitored. Resourcing for more inspection and enforcement requires careful consideration. Finally, **communication of migrant workers' rights** is crucial.

Conclusion

13. The EUSS and the UK's new points-based immigration system both have the potential to increase vulnerability to modern slavery. It is essential that the government continues to identify risks and puts mitigation in place in line with its commitment to protect individuals from exploitation. The Commissioner will continue to engage with the modern slavery sector, and to raise these issues along with concerns that emerge as processes are embedded.

