

2 June 2021

By email: public.enquiries@homeoffice.gov.uk

Kevin Foster MP
Parliamentary Under Secretary of State
Minister for Future Borders and Immigration
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Minister

Re: Replacement of physical documentation with online confirmation of status

The Government has confirmed, in its *New Plan for Immigration: Legal Migration and Border Control* strategy statement, CP 441, published on 24 May 2021, that it intends:

“...to deliver a digital system by removing the use of physical documents to demonstrate status.”

The statement explains that:

“We will be taking a phased approach as we move to a fully digital system. As part of this, we are looking at further ways to remove physical documents from the process and streamline the system, such as potentially removing the need for separate vignettes and Biometric Residence Permits, taking out the cost and time for the user and the Home Office and improving security. This would be supported by increased use of the online services to prove right to work and rent, simplifying the process for employers, landlords and individuals and reducing the number of documents relied on to prove status...”

The assurance is offered that:

“Existing legislation is in place to protect people’s personal data and prosecute those who commit crimes enabled by theft.”

We have serious concerns about what is proposed; and what is already underway through the EU Settlement Scheme whereby people granted settled status are not receiving physical documentation establishing their status but being required to rely upon an online system, referred to as ‘view and prove’. Our concerns are set out below under discrete subheadings as are our requests for information or explanation, which we would be grateful to receive from you or your officials.

Written notification

We first wish to emphasise that we do not understand why any advantages that may be available from the digital system that is proposed cannot be obtained while continuing to provide people with physical documentation that establishes their status. If the concern is the preponderance of types of such documentation, the answer would appear to be to either reduce the variations of documentation or move to a common form of documentation.

We are aware of the November 2020 EUSS Policy Equality Statement where it is stated that:

“Those granted status under the EUSS still receive formal written notification of their immigration status, by e-mail or letter, containing their conditions of leave, which they can retain as confirmation of their status for their own records.”

- Please would you confirm whether this will in due course apply to everyone who is made subject to the digital-only system?

Who will be affected?

It is our understanding from the strategy statement and elsewhere, that Ministers' ultimate intention is that anyone and everyone, who has leave to enter or remain, whether limited or indefinite, on whatever conditions or none, whether under the rules or not, will in future be without any physical documentation issued by the Home Office (or any other part of Government) that is capable of establishing their status.

- Please would you confirm whether our understanding is correct? If it is incorrect, would you please inform us whom it is intended is to continue to receive physical documentation?
- Please would you confirm whether it is intended that immigration bail, including that formerly known as temporary admission, is to continue to be confirmed by physical documentation issued to the person holding such status?

Timing

It is our understanding that the intention is that the withdrawal of physical documentation is to be fully completed before 2025.

- Please would you confirm whether that is the intended date for this to be completed?
- Would you also please confirm whether it is anticipated that anyone issued with physical documentation prior to the intended completion date will be able to rely on that documentation as evidence of their status after that date?

Social exclusion and exploitation

It appears from the strategy statement that Ministers consider that the replacement of physical documentation by a digital system will be easier for the department and for the people affected



(less costly of time and financial resources). However, while we do not doubt that some people may find the use of a digital system more convenient, some may not. We note that the EUSS Policy Equality Statement expressly accepts that, for example, some older people, Roma, women and disabled people may be put “*at a particular disadvantage*”.

Not only will this concern some people, who are in future to be deprived of any physical documentation of their status. There may be landlords, employers or other institutions or organisations who will require confirmation of status for whom it is also not more convenient. There may be various reasons for this ranging from general lack of familiarity or confidence with online systems to lack of will or capacity to spend time to engage with an online process. As regards landlords, employers and organisations, it may be, though we do not say this is necessarily the case, that small or individual landlords, employers and service providers are more likely to be unable or unwilling to engage with an online system – whether through pressure of time, lack of confidence in such a system or other reasons (including where the online service may be disrupted).

We further note that the EUSS Policy Equality Statement expressly accepts that a person who is made without physical documentation of status:

“...may find it harder to evidence their status...”

- Please would you provide us with any impact assessment or assessments that have been undertaken in respect of any of the above other than the EU Policy Equality Statement? Please specifically include such impact assessments as have been undertaken in respect of the department’s duties under the Equality Act 2010?
- Please would you further explain, unless there is nothing to add to any impact assessment provided, why Ministers have concluded that access to housing, employment, social assistance, healthcare and other ordinary aspects of practical and social life will not be infringed, disproportionately or at all, for people reliant on the intended digital system? Please, in your response, give distinct consideration to such people who may be less able to engage with such systems and/or less able to require that others (from whom they may be eligible for or entitled to housing, employment, social assistance, healthcare etc.) do so.
- Please would you set out your considerations and conclusions, if any, as to whether a digital-only system will make some people newly or more vulnerable to exploitation and control by abusive partners, employers or others?

Digital system interference or breakdown

- Please would you explain how the system will be made secure against the impact of interference or breakdown?
- Would you also please explain what back-up means of checking and demonstrating a person’s status will be available when the system is not operable?

As regards, 'interference or breakdown' we include any incident that either disrupts the provision of data via the system or prevents the provision of data altogether, whether problems that interfere with the data stored or with the means to transfer or interrogate it.

- We would be grateful for an explanation as to why Ministers have concluded there to be no necessity or utility in the provision of physical documentation that a person may rely upon where there is no alternative available to prove the person's status.

Error in entering or maintaining records on digital system

Leaving aside system interference or breakdown, if there is error in the data entered or maintained (whether in updating or failing to fully and accurately correct any corruption of data), people will be unable to establish their status and their eligibility or entitlement to anything and everything dependent on that status. Of course, error may relate to whether a person has leave, for how long that leave is to extend and/or whether it is subject to any conditions and if so what conditions.

- Please would you explain how the system is to be made secure against such errors – (a) at the point of initial entering of data, (b) at the point of its being updated, and (c) as a result of any corruption of data?
- Please would you explain how it is envisaged that the individual, who will be dependent on the accuracy of the data held, will be able to ensure it is accurate and remains so?
- How, for example, will they be able to know that there is a problem in need of correction before it may be too late to secure that? Indeed, how will the person be able to secure correction if they have no means to prove what the correct information as to their status is because they have not been provided with any physical documentation with which to do so?

Curtailed notice

We have particular concerns regarding cancellation, revocation and curtailment of leave (which we here refer to collectively as curtailment).

- Please would you explain how the department will ensure that it is not only at the point of e.g. being refused a vital service (e.g. healthcare) or necessary opportunity (e.g. employment), or having that service withdrawn, that anyone first discovers their leave to be curtailed?
- Please would you also explain how a person will be able to know or demonstrate that loss of leave is due to an error rather than curtailment (and do something about that)?

Burden of risk

At the foundation of much, if not all, of the above concerns is the placing of all the burden of risk onto the shoulders of the person who has and/or requires leave. As we understand what is being done, each person in this situation will be made wholly dependent on a system, over which they have no control (and have very little if any power to influence), for securing their status and their



access to vital, basic and other entitlements, services and opportunities which is dependent on that status.

- Please would you explain how, if at all, it is anticipated that a person will be able to mitigate this dependency or the risks arising from it (such as may arise by error, accident or curtailment)?
- Please would you explain how the department justifies placing all the burden of risk upon the individual in this way?

We have considered the EUSS Policy Equality Statement where it is said:

“Evidence of immigration status online cannot be lost, stolen, damaged or tampered with in the way a physical document can. A physical document can also be controlled by another person, such as a perpetrator of domestic violence or abuse or of modern slavery. While concerns may be raised that a third party may seek to do the same with online access to immigration status, processes are in place to help individuals regain access to their online information in the rare scenario where a third party refuses to permit access.”

This appears to us to misunderstand the position of the person left without physical documentation to establish her, his or their status. We do not understand how it is thought that any more security is being provided to such a person by depriving them of physical documentation to establish their status.

- Please would you explain how it is envisaged that a person will be able to regain access to their online information? What information and/or documentation will they need to supply to whom to secure this?
- Please would you explain how it is envisaged that the means to regain access to online information will be any more secure and accessible – for a person who has had her, his or their identity ‘stolen’, is controlled by an abuser or has otherwise lost such access – than is or would be the case for a person seeking a replacement of a lost or stolen physical status document?

Digital protection

We note the assertion in the strategy statement (cited above) that legislation provides protection of people’s data. However, whereas legislation does set out rights and duties by which data is to be protected, its existence is no guarantee of the rights and duties for which it provides.

- Please would you explain what steps have been and are to be taken to ensure such guarantees are made real and effective in practice?
- Please, in your response, explain why we and others should be satisfied that these guarantees will not in any way be compromised by the existence or exercise of the exemption from basic safeguards of the Data Protection Act 2018 provided by paragraph 4 of Schedule 2 to that Act?

- Please would you include with your response whether, and if so how, it is influenced by the recent judgment of the Court of Appeal in *R (Open Rights Group & the3million v Secretary of States for the Home Department & for Digital, Culture, Media and Sport* [2021] EWCA Civ 800?

Conclusion

We appreciate that this is a lengthy letter with several requests. However, we trust you will acknowledge that these are profound questions on which depend the lives and wellbeing of many people – not to mention the welfare and interests of their families, their employers and society more generally – and that it is, therefore, reasonable to expect the department to have answers to hand.

That is all the more so given two matters.

Firstly, the move to digital-only has already begun under the EU Settlement Scheme so we should expect the department to be at least far advanced in addressing these concerns.

Secondly, it is little more than a year since the publication of the Windrush Lessons Learned Review. As that review highlights, many and profound harms were done to people who were without documentation to establish their status. In the light of that, we should expect the department to have ready answers to our concerns at a time when it is already granting some people status without any physical documentation as proof of that.

We look forward to hearing from you.

Yours faithfully,



Steve Valdez-Symonds
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