



Briefing on Issues with the Automated Residency Checks in the EU Settlement Scheme

Introduction

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association, with over 3,000 individual members. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.

This briefing is intended for Chi Onwurah MP, for the purpose of the debate in the House of Commons on the use of algorithms in Home Office visa processing on Wednesday, 19 June.

How the checks work

Step 1: Home Office to HMRC

The applicant gives the Home Office:

- Forename
- Surname
- Date of Birth
- Any previously held or other names
- National insurance number (optional, but required for the residency check)

The Home Office sends this to HMRC.

Step 2: HMRC to 'residency footprint'

HMRC builds a 'footprint' of residence based on employment, PAYE and self-assessment details held by HMRC

If a self-assessment return can be found for a tax year, the applicant is marked as resident for that year. PAYE records evidence residence for a month, for every month a PAYE record is found.

Step 3: HMRC to DWP

If HMRC checks do not show five years' residence, the footprint is sent to DWP.

If an applicant has a state or new state pension, they are simply offered settled status.

Jobseekers Allowance and Maternity Allowance evidence residency for every month between start and end date.

However, several other benefits such as Universal Credit, Housing Benefit, Employment Support, Carer's Allowance, Personal Independence Payment, Disability Living Allowance and Income Support are far less generously treated:

- 1m – 11m = start date month only
- 12m – 23m = 12 months from start date
- 24m – 35m = 24 months from start date
- 36m – 47m = 36 months from start date
- 48m – 59m = 48 months from start date

Step 4: DWP to Home Office

The DWP footprint is added to the HMRC footprint and sent to the Home Office

Problems and potential discrimination in the design and function of the automated residency checks

1. Potential discrimination against women owing to absence of working tax credit, child tax credit and child benefit

HMRC, not DWP, holds records of these three benefits. There is no principled reason why benefit records held by DWP but not HMRC should form a picture of an applicant's residence in the UK.

CORAM Children's Legal Centre, Rights of Women, as well as ourselves have pointed out the potential for discrimination against women, who are statistically more likely to receive these benefits. In particular, we anticipate victims of domestic abuse and trafficking being more affected than most, because they are less able to prove their residence with physical documents, which may be with their abusers or traffickers.

2. Discrepancy between treatment of most benefits from DWP and HMRC records

The less generous treatment of most benefits held by DWP than the records held by HMRC risks discrimination against those with disabilities. There is a reason why those on, for example, disability living allowance, employment support allowance and personal independence payment, are not required to sign on every two weeks. Yet it appears to be for this reason that these benefits are treated less generously than jobseekers allowance.

There is no clear reason for the discrepancy between these benefits and PAYE records, which demonstrate residence for every month there are records for. In our view, this risks unjustifiably discriminating against those with disabilities. In circumstances where the Home Office should aim to grant settled status to as many vulnerable people as possible, the residency value of these benefits should be changed as quickly as possible.

3. Reasons should be given for the result of the automated residency checks in individual applications

The Home Office should give reasons, to allow applicants the best chance of obtaining settled status. The reasons should cover the material available to the checks, and how the checks operated on the material.

If we have two vulnerable individuals, each with materially identical HMRC and DWP records, a data matching or other error would result in the two effectively indistinguishable applicants being subject to opposite decisions without basis in law or logic. The Home Office, in ILPA's view, should provide individuals who are not granted settled status based on the checks with such reasons in order to allow them to find out whether there was an error, and have the greatest chance to receive settled status.

The Home Office has justified not giving reasons on the basis of limiting the opportunity for fraud and identity theft. However, the Home Office are yet to justify why fraud and identity theft might happen if reasons such as the above are given. It is critical that unaccountable algorithms should not creep into the decision-making services of public bodies.

Conclusion

The Home Office has confirmed publicly to us that they plan to introduce the automated residency checks to non-EU applications in the new immigration system. It is crucial that they get the checks right first time if they are to introduce them more widely.

ILPA are asking for the following, to ensure that no discrimination takes place against women and those with disabilities, and so that as many applicants as possible who fit the criteria for settled status can receive it:

1. Add working tax credit, child tax credit and child benefit to the list of benefits taken into consideration for the purposes of settled status;
2. Treat most DWP benefits as generously as HMRC benefits and other DWP benefits are treated.
3. Give reasons for the result of the automated residency checks, to avoid unaccountable algorithms seeping into public services.