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ORIGINAL ARTICLE

The new grounds for deportation of European Union citizens in the United Kingdom

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Abstract

Politicians often mention immigration enforcement, and deportation in particular, as a means to assert state sovereignty. This article looks at deportation through exiting the European Union, an event that was interpreted as regaining sovereignty from the supra-national organisation. New immigration regulations in the United Kingdom were meant to end the EU Freedom of Movement and equalise the statuses of EU- and non-EU migrants in the United Kingdom. The research question this article addresses is the following: how do the new immigration regulations and policies affect the possibility of deportations of EU citizens in the United Kingdom? With the lens of Interpretive Policy Analysis, the article analyses primary sources and expert interviews. It concludes that the deportability of EU citizens has increased post-Brexit. It also anticipates that the deportability of EU citizens will be differentiated, as rough sleepers, former convicts and irregular migrants may be first to be targeted with deportation.

INTRODUCTION

Brexit, or United Kingdom exit from the European Union, has been planned as a powerful performance of the national sovereign power. It has been framed by its supporters as the regaining of UK sovereignty from a supra-national political organisation. Brexit was seen as an opportunity for establishing UK's own laws and being able to execute them, which gained 51.9% of votes in the 2016 Referendum. At the end of March 2017, the UK Government started the exit process, developing a host of new policies and legislation to enable the 'disentangling' of UK's ties with the EU.

Following the end of the Brexit transition period, at beginning of 2021, EU citizens living in the United Kingdom were moved under the plethora of highly complex national immigration laws previously not applicable to them.

UK's politicians and press supporting Brexit were eager to link the EU problem of limiting the country's sovereignty with the freedom of movement (FOM), which gives residence and work rights to EU citizens in other Member States. They falsely explained that Britain was unable to deport EU citizens (Radziwinowiczówna & Galasińska, 2021). 'Controlling [the UK] borders by ending free movement once and for all' (UK Government, 2018) has also become the Home Office's (Ministry of Internal Affairs) watchword in the time following the Referendum. Attributing importance to deportation in the Brexit debates was not surprising, as the act of making non-citizens deportable and expelling them is one of the means to assert sovereignty in the contemporary nation-state (De Genova, 2010; Walters, 2002).

Contrary to the claims of politicians, the share of EU citizens among the people deported from the United Kingdom was on the increase before Brexit, when the FOM was still in force. In 2019, half of those deported from the United Kingdom were EU nationals. The growth in the number of deportations owed to the increasingly hostile environment targeting EU citizens in the United Kingdom, especially convicts and rough sleepers (Demars, 2017). Before Brexit, the most vulnerable, such as people with low or no income and no access to housing, were selected for deportation (Radziwinowiczówna & Morgan, 2022). EU citizens continued to be deported even during the COVID-19 national lockdowns in the United Kingdom. Deportations that happened during COVID-19 pandemic were also selective, with an overrepresentation of citizens from poorer EU member states. Between April and June 2020 when Britain was hard-hit by the first COVID-19 wave, the only chartered deportation flights headed for Europe, removing 188 EU citizens to Romania, Poland and Lithuania, as well as 97 Albanians (No Deportations, 2021).

By linking the two sovereignty-establishing factors: Brexit and deportation, in this article we set out to study whether EU citizens[1] who have lost their privileges related to EU citizenship in a post-Brexit United Kingdom, have indeed become more deportable. We also explain which categories of EU citizens are most likely to be targeted with deportation.

The future protection of EU citizens' rights in the United Kingdom has been previously studied (Smismans, 2018), and potential risks related to the EU Settlement Scheme (EUSS) have been identified (Elfving & Marcinkowska, 2021; Morgan, 2021). Smismans (2019) has warned that it may lead to the repetition of the Windrush scandal that led to a sudden deprivation of entitlements of people of Caribbean origin living in the United Kingdom and sometimes to their deportation. However, the new post-Brexit legal grounds for tentative deportations have not been systematically analysed. Here we present the results of the analysis of immigration laws and policies valid as of February 2023 as well as analysis of interviews with experts supporting vulnerable EU migrants either as immigration advisors or lawyers, local Council Officers or workers and volunteers of charities or non-profit organisations.

We define 'deportation' as any expulsion from a territory of a state that is against the will of an individual and is incepted by the authorities of this state. Our broad definition of deportation encompasses both what the Home Office (HO), the government department responsible for expulsions, calls 'deportations' and 'administrative removals'. HO's definition of 'deportation' is reserved solely to what is perceived as 'conducive to the public good', for instance for convicts (Walsh, 2019, p. 2). HO reserves 'administrative removals' for non-citizens identified as having no legal right to live in the country. By 'deportability', we understand this to mean the possibility of deportation of an individual or a group of people.

The argument evolves over four sections. In the first section, we present the theoretical framework that is informed by the inequalities in deportability or, what we propose to call, differentiated deportability. In the second section we explain the methods of data collection and analysis. In the section 'Legal grounds for EU deportations', we analyse the conditions under which EU citizens could be deported under the FOM and the present, post-Brexit regulations on deportations and lawful immigration to the United Kingdom. We conclude with a catalogue of characteristics and activities that will increase the possibility of being targeted with deportation. We argue that ethnicity, nationality, class, criminal convictions and rough sleeping will define the future deportability of EU citizens in the United Kingdom. The citizens of Central and Eastern European Union, the Roma, the poorest Europeans, young people and people with criminal convictions are likely to become more prone to be deported.

DIFFERENTIATED DEPORTABILITY

By differentiated deportability we understand the unequal socio-legal likelihood of becoming an irregular immigrant among the non-citizens in a country. The literature on deportability provides a repertoire of socio-demographic characteristics that may differentiate deportability in a national context. Men, in general, are more likely to be deported than women. Race is an important factor determining deportability (Ngai, 2004). Historically, Asians – especially Chinese and Japanese – have been targeted with deportation in the Americas (Lee, 2007) and the United Kingdom (Hancox, 2021). Today, under the individual deportation system (Park, 2019), being non-White contributes to deportability in the Western world, as Latino people are more likely to be racially profiled for immigration checks in the United States (Johnson, 2003) and within United Kingdom immigration detention system detainees are most likely to be Black (de Noronha, 2019). The effect of class seems quite universal, with working class migrants more deportable (Anderson, 2013; Golash-Boza, 2015). Disability is another factor contributing to deportability (Mehta, 2010), albeit a neglected one in the research. Non-citizens with learning and mental disabilities are targeted with deportation as a result of criminal convictions (Taylor, 2022) or homelessness (Morgan, 2021). Juxtaposition of certain characteristics can increase deportability. For instance, Golash-Boza and Hondagneu-Sotelo (2013) describe the US deportation system as a gendered racial removal programme because it primarily targets young Latino working class men.

Within the EU FOM, we can also speak of differentiated deportability of EU citizens, with ethnicity and nationality being important determinants. Growing body of work speaks about the deportability of the EU Roma in numerous national contexts (Vrăbiescu, 2019; Yıldız & De Genova, 2018). Central and Eastern European (CEE) nationals have become targeted with deportation in the 'old' member states (Brandariz, 2021; Vrăbiescu, 2021). In the pre-Brexit UK, CEE nationals were more deportable than other EU citizens, with Romanians, Polish and Lithuanians making 69% of EU 'enforced returns' in 2019 (Home Office, 2020). This meant an overrepresentation of these three nations among the deportees, given they made only 39% of EU citizens living in the United Kingdom in the same year (Office for National Statistics, 2021).

Deportability is differentiated not only by socio-economic and demographic characteristics but also certain activities become triggers for deportation. Most importantly, criminal convictions make non-citizens deportable. Franko (2020) describes the criminalisation of certain behaviours of migrants: the governments use crimmigration (Stumpf, 2006) to broaden the repertoire of criminal activities leading to deportation. Under the UK Borders Act, 2007, individuals sentenced for more than 12 months are automatically deported.

Some activities, while legitimate for citizens, are criminalised for migrants, therefore dividing the criminal justice system in two, separated by membership criteria (Franko, 2020). Work has become another area of activity which renders irregular migrants deportable (Abrego et al., 2017). Migrants' work can even be punishable with prison time; right to work checks and workplace raids turn workplaces into sites of deportability. In England and Wales, unauthorised work is punishable with up to 51 weeks in prison.

Rough sleeping is another activity that has been criminalised for non-citizens in the United Kingdom. In 2016, UK street homelessness was identified as an abuse of EU FOM, punishable with administrative removals (Demars, 2017). At least 700 EU citizens sleeping rough were deported (Evans, 2020) before the policy was ruled unlawful in December 2017. Various socio-economic characteristics mentioned above contributed to their deportability: ethnicity (many of them were Roma), nationality (they were CEE nationals), gender (they were predominantly men), disability and class (Radziwinowiczówna & Morgan, 2022).

Expanding the grounds for deportation is underpinned by a state project where certain groups of non-citizens are becoming more deportable than others. The selection of who may lose their immigrant status (be irregularised) or be targeted with deportation is a part of a post-colonial state project, with a non-egalitarian vision of immigrants, their contribution and belonging to society. Differentiation of deportability, therefore, is a part of what Benson et al. (2022, p. 32) have recently called 'exclusionary politics of belonging drawn through racial nationalism'. The differentiated deportability marks the boundary between migrants deserving the privilege of a contingent inclusion in the nation as a community of value and 'uncivilised' others (Anderson, 2013, p. 47).

METHODOLOGY

This research was carried out within the framework of two research projects: 'New bordering of the UK: Post-Brexit deportability and governance of EU mobility' (UK2deport) and 'Brexit and Deportations: Towards a comprehensive and transnational understanding of a new system targeting EU citizens' (BRAD), at the University of Warsaw and the University of Wolverhampton, respectively. Agnieszka obtained approval for the research from the ethics committees at both universities. This article analyses primary and secondary data within the framework of the Interpretive Policy Analysis. This approach allowed for studying the law on the books and law in action relating to EU deportations (Yanow, 2000). The analysis of the law on the books included legal acts, policy papers and secondary research. Our analysis of the law in action has been informed by semi-structured interviews with 20 experts in the North of England, London and in Poland, country of origin of the biggest group of EU citizens in the United Kingdom and one of the two countries that receive the biggest numbers of EU deportees from the United Kingdom. The interviewed experts supported vulnerable EU migrants either as immigration advisors or lawyers, local council officers or workers and volunteers of charities or non-profit organisations. Five of them were trained and certified as Office of the Immigration Service Commissioner Level 1 Immigration Advisors (people who can offer advice and services relating to EUSS applications). Five worked for non-governmental organisations that were supported by the HO to reach out to vulnerable EU citizens at risk of being left out of EUSS (Home Office, 2019). Table 1 offers anonymised data of the interviewed experts. Agnieszka interviewed 12 of the experts in English and eight in Polish, their mother tongue. All the interviews were transcribed and analysed using NVivo. Whenever we refer to the information the experts provided, we indicate the source using their anonymised code (Table 1).

LEGAL GROUNDS FOR EU DEPORTATIONS

EU deportations before the EU exit

The UK officially left the European Union on 31 January 2020, but the right to move and reside freely for EU citizens ended together with the transition period on 31 December 2020. With the EU treaties in force, EU mobility to UK was regulated by Article 7 of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ('The Directive'). EU citizens can travel freely to other member states and remain there for up to 3 months. The lawful right of residence for more than 3 months in another member state is not absolute but applies to EU citizens who exercise 'Treaty' rights as (1) job seekers, (2) workers (also as self-employed), (3) students, (4) self-supporting or (5) family members of categories 1–4.

Lawfully resident EU citizens were subject to deportation from the United Kingdom if they committed a crime and were sentenced to a term of imprisonment. However, they enjoyed some legal level of protection but depending on their length of residence in the United Kingdom. First, under Article 27 of The Directive, deportation of EU citizens exercising 'Treaty' rights is limited to three grounds: public policy, public security, and public health. Second, under Article 28 (2) of The Directive, deportation of EU citizens and family members with permanent residence, can only be on serious grounds of public policy and public security. For instance, in *Roszkowski v SSHD* (Roszkowski v Secretary of State for the Home Department, 2017) involving a Polish national with permanent residence sentenced to a four-year imprisonment term for robbery, the court decided that there were no serious grounds of public policy or public security to justify his deportation. Lastly, deportation of EU citizens who have lived in the United Kingdom for 10 years or are a minor, can only be done on imperative grounds of public security or in the best interest of the child (Article 28 (3) (a) and (b)). In the United Kingdom, these grounds were contained in the Immigration (European Economic Area)

TABLE 1 Summary of the interviewed experts.

	Anonymised code	Role	Organisation	Place	When interviewed	Language of the interview
1	IA1	Office of the Immigration Service Commissioner (OISC) Level 1 Immigration Advisor	Community volunteer	Bradford, UK	October 2020	PL
2	IA2	OISC Level 1 Immigration Advisor	Non-profit organisation	Birmingham, UK	October 2019	PL
3	IA3	OISC Level 1 Immigration Advisor	Non-profit organisation	Birmingham, UK	November 2019	EN
4	IA4	OISC Level 1 Immigration Advisor	Charity organisation	Smethwick, UK	February 2020	EN
5	IA5	OISC Level 1 Immigration Advisor	Non-profit organisation	London, UK	March 2020	PL
6	IA6	OISC Level 3 Immigration Advisor	Charity organisation	Smethwick, UK	February 2020	EN
7	CW1	Council worker	Local council	Bradford, UK	October 2019	EN
8	CW2	Council worker	Local council	Bradford, UK	October 2019	EN
9	CW3	Council worker	Local council	Bradford, UK	October 2019	EN
10	RSP1	Rough sleepers project coordinator or worker	Charity	Poznan, Poland	February 2020	PL
11	RSP2	Rough sleepers project coordinator or worker	Charity	Poznan, Poland	February 2020	PL
12	RSP3	Rough sleepers project coordinator or worker	Charity	Poznan, Poland	February 2020	PL
13	RSP4	Rough sleepers project coordinator or worker	Charity	London, UK	February 2020	PL
14	RSP5	Rough sleepers project coordinator or worker	Charity	London, UK	February 2020	EN
15	RSP6	Rough sleepers project coordinator or worker	Non-profit organisation	London, UK	March 2020	EN
16	RSP7	Rough sleepers project coordinator or worker	Charity	London, UK	March 2020	EN
17	RSP8	Rough sleepers project coordinator or worker	Charity	London, UK	March 2020	EN
18	RSP9	Rough sleepers project coordinator or worker	Charity	London, UK	March 2020	EN
19	RCW1	Roma charity worker	Charity	London, UK	June 2020	EN
20	IL	Immigration lawyer	Private legal practice	London, UK	March 2020	PL

Regulations 2016 and offered protections to EU citizens, safeguards which are now doubtful following the United Kingdom exit from the EU.

EU deportations after the EU exit

As a result of Brexit, FOM-related protections against expulsion no longer apply to EU citizens, who are now subject to existing provisions contained under a range of UK legislation. Grounds for removal or deportation of an EU national

(concerning the conduct after the end of the transition period) now expand beyond the previous grounds to include a range of other reasons like: when deportation is conducive to the public good (Immigration Act, 1971, s. 3 (5)); where a person has been convicted and sentenced to a period of imprisonment of at least 12 months (UK Borders Act, 2007, s. 32); or deportation of a serious foreign criminal is in the public interest (Nationality, Immigration and Asylum Act, 2002, s. 117C). Although s. 3 (5) of the Immigration Act, 1971 excludes current holders of pre-settled and settled status (new residence permits for EU citizens), the 2007 and 2002 Acts apply to them. Potentially, the United Kingdom can deport those with permanent residence for criminal conduct after Brexit. Crucially, EU citizens serving a term of imprisonment can now be removed from prison and deported from the United Kingdom even if they have not completed their prison term (Nationality and Borders Act, 2022, s. 47).

After Brexit, criminal activity becomes an even more important trigger for deportability of EU citizens. In practice, CEE make up most of imprisoned EU citizens in the United Kingdom. Polish immigration lawyer we interviewed in London observed that:

> IL: Poles receive higher sentences than citizens from other EU countries, who in turn receive higher sentences for the same offences than British citizens. It is based on dozens of cases [that I analysed] … What will the situation of Poles look like [after Brexit], taking into account that the tendency is to reduce the number of Poles? It will definitely not look better.

As there is very little free legal support in the United Kingdom, deportable convicts need a private solicitor. Class appears as another factor that differentiates their deportability – only those able to afford legal services may be able to successfully challenge deportation.

New legislation attempts to irregularise rough sleepers (including those coming from the EU) who arrived in the United Kingdom after 31 December 2020 (Morgan, 2022). While the change to the Immigration Rules came into force in December 2020, one of our interviewees forecasted it already in early 2020, when we interviewed them:

> RSP5: There is a sense there will be a kind of renewed effort to target EU homeless people for removal after the end of the transition period because they will be once again much more legitimate targets. The government tried to get rid of a lot of these people in 2016, 2017. It was frustrated eventually because the policy is declared unlawful. After the end of the transition period, the free movement directives upon which those rights depend, will no longer exist. It will simply be much easier to target EU rough sleepers as a kind of social nuisance for removal. They will be subject to the Immigration Rules in the same way as third country nationals and it will be easier to get rid of them.

New Immigration Rules stipulated that where such new entrant has been rough sleeping in the United Kingdom, any application to remain in the United Kingdom could be refused, the change also allowed for any current visa held by that person, to be cancelled (Immigration Rules, n.d. Part 9: Grounds for Refusal, para 9.21.1). After media and legal campaign, the rough sleeping rule has been amended and currently it can apply to rough sleepers who 'repeatedly refused suitable offers of support' and 'engaged in persistent Anti-Social Behaviour' (Public Interest Law Centre, 2021). The HO's practice will show how these two criteria will be defined.

European Union Settlement Scheme

Immigration Rules Appendix EU contain provisions EU citizens must satisfy to remain in the United Kingdom after 31 December 2020. EUSS aims to establish the immigration status of EU citizens legally residing in the United Kingdom as of 31 December 2020 and grants eligible individuals rights of legal residence depending on their length of residence in the United Kingdom (GOV.UK, 2021). Until 30 June 2021, all EEA and Swiss citizens and their family

members living in the United Kingdom by 31 December 2020 had their rights guaranteed. Since the end of this grace period, only holders of certain status have the legal right to remain in the United Kingdom. EUSS also applies to family members joining someone already holding the new status. The type of status granted depends on the length of continuous residence in the United Kingdom and is either indefinite leave to enter or remain; or limited leave to enter or remain (Immigration Rules Appendix EU, n.d., EU1). These are also referred to as settled and pre-settled status, respectively (Elfving & Marcinkowska, 2021).

Those who got the new status can continue to live and work in the United Kingdom. The settled status gives permanent right of residence and permits a five-year period that can be spent overseas before an individual loses it. The pre-settled status holders can live outside of the United Kingdom without losing it for 2 years, however, should they plan to apply for settled status, they must maintain a five-year continuity, which will permit maximum 6-month absence from the United Kingdom in a year. There are questions regarding the lawfulness of the EU Settlement Scheme following a UK High Court decision which states that EU citizens with pre-settled status are not required to apply for the settled status and should therefore not become unlawfully resident where a subsequent application for permanent status is not made (Independent Monitoring Authority v. Secretary of State for the Home Department [2022] EWHC 3274 (Admin), 2022).

As the exact number of EU citizens currently living in the United Kingdom is not known, it is difficult to estimate how many people have not applied to EUSS. The Scheme was planned to end on 30 June 2021 for those resident in the United Kingdom by 31 December 2020, but it was extended, as it was known that significant numbers had not applied (Zeffman, 2021). As of 30 September 2022, there were 6,874,700[2] applications made to the EUSS (Home Office, 2022b). Notably, there were 822,630 applications made after the June 2021 deadline, including 334,990 late applications, 273,330 repeat applications and 207,940 from applicants joining family members. The total number of cases concluded by the end of September 2022 was 6,686,530. This consists of 50% (3,359,250) with settled status, 40% (2,677,190) with pre-settled status and 10% consisting of: refused applications (375,400), withdrawn or void applications (143,550) and invalid applications (131,150).

The future will show if the lack of the new status will lead to deportation. EUSS immigration advisor from West Midlands was convinced that not having the status may contribute to deportability of EU citizens:

> IA2: HO didn't say openly that they would deport people, however, they can do it. We don't think that there will be mass raids, a manhunt for Poles and status checks. Instead, we think that if someone gets into trouble and doesn't have [the status] or had pre-settled status that has just expired or they [HO] simply do not check, we assume that yes, they will [be deported].

In October 2019, Brandon Lewis, Minister of State for Security and Deputy for EU Exit and No Deal Preparation (as he then was), said that Immigration Rules will be applied to those who do not apply to the EUSS (BBC News, 2019). Three months later, Lewis withdrew from this declaration (BBC News, 2020). In 2023, there is still scope for an eligible applicant to make a late application to the Scheme if there are reasonable grounds for failing to meet the deadline. These 'reasonable grounds' reflect some of the characteristics we describe above as differentiating deportability, such as mental disabilities or young age. Late applications by children, persons lacking mental capacity or having serious mental conditions, victims of modern slavery or persons in abusive relationships or other compelling circumstances, are some examples that constitute reasonable grounds (Home Office, 2021). Home Office also anticipates that any person encountered by the Immigration Enforcement and eligible for EUSS will be given a written notice they have 4 weeks to apply to the EUSS (UK Visas and Immigration, 2021).

In the following sections, we analyse three groups whose immigration status will be particularly vulnerable within the Scheme: people who do not apply under the EUSS, those who will lose their status and people who had their applications rejected. We provide the reasons that may lead to the three outcomes and hypothesise what socio-economic groups may find themselves in such situation to understand the differentiated deportability of EU nationals in the United Kingdom.

People who do not apply to the EUSS

EU citizens abstained from applying to the EU Settlement Scheme for several reasons, such as lack of knowledge that they need to apply, lack of ability to do it or inability to find support. Other important impediments are the lack of identity documents[3] and past criminal convictions. As a rough sleeper's project coordinator observed, rough sleepers are often at the intersection of the above-mentioned characteristics:

> RSP5: The homeless people are more likely than people from other demographic groups, not to make this application for various reasons. Either because they are more likely to be suspicious of government bureaucracy or because it's difficult when you're on the streets to hold onto the documents you need in order to prove your identity or your length of the residency.

Young age may contribute to the vulnerability of being left out without the new status. Children born in the United Kingdom but not British, or children who relocated to the United Kingdom from an EU country, must also apply under the EUSS. As a project coordinator at a Roma charity told us:

> RCW1: I have to say that we had quite a significant proportion of community not submitting the application so far, because they didn't have the valid ID, which seem mostly from a children who don't have yet the ID, because they are not in appropriate age to get an ID for example and they don't have a passport either, because for example they were born here and their parent haven't considered doing any passport for them.

Children in single parent households who hold no valid EU passport face difficulties should the other parent have parental responsibility and refuse to give consent for the child's passport application. Even more at risk are children in care, who rely on legal guardians or carers to make the application on their behalf (Lagrue et al., 2020). As legal protections cover persons under the age of 18, the consequences resulting from a lack of application will not manifest until these children become adults. They are likely to become a new 'Windrush generation' with no right to work, rent a home or claim public funds and even endangered with deportation.

As a trigger for deportability, criminal convictions not only may start deportation proceedings but also are an important factor contributing to abstaining from applying under the EUSS. For the individuals with an arrest warrant (including the European Arrest Warrant), sought after either for enforcing a custodial sentence or for the purpose of an ongoing criminal trial, application could result in a quick detention, as they would reveal their personal data to the authorities.

> IL: Well, when it comes to submitting an application to the EUSS by people with a European Arrest Warrant, it will lead to, extradition and, of course, with a refusal … If a person is hiding and does not want to return to Poland, why would he hand himself in easily?

Applications to EUSS provide the HO with a database of information about criminal convictions, personal details, face scans and current pictures (IA5, RSP6), which can be prejudicial for any individual with convictions in the United Kingdom or overseas who may be lawfully targeted with deportation as 'conducive for the public good'.

Refused applications

Individuals with criminal record who decide to apply to the EUSS can have their application refused. The applications made by people with pending prosecutions in the United Kingdom may be paused by the UK Visas and Immigration

until the outcome of the prosecution is known. HO caseworkers are instructed that if they believe that an applicant can be deported after conviction, the decision on deportation must be made prior to the EUSS decision (Home Office, 2022a). People with a deportation order, a decision to make a deportation order, an exclusion order or exclusion decision are refused the new status (IL: 'Someone with a deportation order that is in force will never get [the new status], because the order must first be removed'). In case the deportation order was made 2 years before, Immigration Enforcement (IE) evaluates if there has been a material change of circumstances since the deportation order was made (Home Office, 2022a). Should there be no change, the application will be refused.

Applicants convicted of major crimes stand the risk of refusal and their application may lead to deportation.

> IL: I would never apply for settled status from prison. HO always considers deportation for imprisoned overseas offenders. Such an application will be redirected to Immigration Enforcement and will be considered for deportation … So, if HO is not interested in (deporting) somebody, you should wait and not apply for settled status. It also depends if you have a solicitor or not.

The EUSS manual for Home Office caseworkers (Home Office, 2022a) explains that the cases of the following applicants should be directed to IE: convicts imprisoned in the last 5 years, regardless of the length of the sentence; convicts at any time imprisoned for at least 12 months as a result of a single offence; individuals who have lived in the United Kingdom for less than 5 years have, 'in the last 3 years, received three or more convictions (including non-custodial sentences). At least one of these convictions must have taken place in the last 12 months and at least one of these convictions must be in the UK'; individuals in prison whose cases are awaiting deportation consideration; individuals who entered or helped somebody else to enter into a sham marriage; individuals who have fraudulently obtained or attempted to obtain or helped somebody else to obtain a right to reside in the United Kingdom; individuals whose UK citizenship was revoked. Additionally, conduct after the Brexit date is evaluated more strictly: applicants who committed a serious harm offence after Brexit which resulted in a non-custodial sentence should also be referred to IE. If IE decides that an individual should be deported, the application under the scheme will be refused (Home Office, 2022a).

For individuals with previous prosecutions that have not been considered for deportation, application in the EUSS may result in deportation. HO guidelines say, 'where the applicant has … other convictions not previously considered for deportation which … meet the criteria for referral to IE, the application must be referred to IE to consider deportation' (Home Office, 2022a, p. 28). Therefore, even during the transition and grace period, the EUSS created a group of newly deportable EU citizens.

The HO uses a range for suitability criteria for applications. They relate to applicants that have been issued with either a deportation order, exclusion order or an exclusion decision, or where false representations have been made or false documents have been submitted or misleading information was submitted or the applicant is subject to a removal decision and a range of other grounds (Immigration Rules Appendix EU, n.d., EU15–EU16). While the HO reported a low rate of refusals at the beginning of EUSS, they increased towards the official deadline of the scheme and later:

> RSP5: One of the ways they have achieved that low rate of refusals is they just sit on applications that are complicated. They don't decide them. So there are lots of people who haven't been decided applications, people who've waited more than 6 months.

The suitability grounds were expanded in 2020 to closely align with the provisions of Part 9 of the Immigration Rules (Grounds for Refusal). These suitability grounds did not exist at the start of the EUSS as all an applicant needed to prove was identity, residence and a lack of serious criminal offences. The introduction of new suitability grounds (Immigration Rules Appendix EU, n.d., EU15–EU16) demonstrates the rapid rate of changes within the United Kingdom immigration system. After the introduction of the suitability grounds, the proportion of refused applications

increased. Since the end of the grace period, the number of refusals has grown to 375,400. In fact, 71% of all the refused applications have been announced after the June 2021 deadline (Home Office, 2022b).

People who will lose their status

Pre-settled status will expire after 2 years away from the United Kingdom and settled status after 5 years and holders of an expired status will probably need to apply under a different visa category to be able to legally return to UK. Given that EU citizens' mobility often has the form of 'liquid migration' (Engbersen & Snel, 2011), as they enjoy the FOM in their family and professional life, some may not be aware of the relative immobilisation their new status entails (Radziwinowiczówna et al., 2020).

The future will show what will happen to the pre-settled status holders resident in the United Kingdom who will not re-apply for settled status. In December 2022, the United Kingdom High Court has ruled unlawful depriving an EU citizen with pre-settled status of residence rights just for not taking this administrative step (Independent Monitoring Authority v. Secretary of State for the Home Department [2022] EWHC 3274 (Admin), 2022). The judge argued that rights once given under the Withdrawal Agreement should not be taken away. The UK HO has decided not to appeal this judgement and it remains to be seen how the EUSS will be implemented for the pre-settled status holders. In the meantime, migrant rights organisations and immigration practitioners advice the pre-settled status holders to apply for settled status before their leave expires. This may be challenging for some EU citizens. As the NGO workers who support rough sleepers in London noted, their clients often changed telephone numbers and oftentimes did not have e-mail accounts (IA5, RSP9), both of which are necessary to access on-line profile under EUSS, also for the purpose of upgrading pre-settled to settled status. As the suitability grounds have recently changed, the pre-settled status holders who update to the settled status are evaluated differently since the Brexit transition ended, especially where the holder has a conviction or does not meet the suitability criteria.

In order to get the right of permanent residence, EU citizens will probably have to demonstrate their continuous residence. We anticipate that certain groups will likely be excluded from getting the permanent residence upon the expiry of their pre-settled status.

> RCW1: Many [women] are staying at home, looking after children, or having for example one year, or two before they gave birth to children and then after that they just stay at home. So, Roma women were quite affected, impacted by this, because they were asked to provide evidence and then because it was quite difficult to do so.

The interviewed immigration advisors have repetitively stated that their service users often failed to prove a five-year residence (IA4, IA5). This can be especially impactful on children and carers who joined family members but never planned to work, or those who worked in the shadow economy or were unemployed for longer periods.

Post-Brexit framework for international migration in the United Kingdom

The status of the EU citizens who migrate after the transition and those who moved to the United Kingdom by the end of the transition period differs. The latter could apply to the EUSS to guarantee continuation of their residence rights post-Brexit but the former do not qualify for EUSS.

With the end of FOM on 31 December 2020, new EU migrants looking to relocate to the United Kingdom for work or study, are subject to UK rules on working and studying in the United Kingdom. The distinction between EU citizens arriving after 31 December 2020 (save for citizens of the Republic of Ireland and eligible joining family members of (pre-)settled status holders) and non-EU citizens has disappeared, as the mobility of all foreigners and

the basis for their deportation are stipulated by new provisions in the Immigration Rules and subjected to conditions contained in other immigration legislations (Immigration Act, 1971, 2014, 2016; Nationality and Borders Act, 2022). EU nationals who intend to work or study in the United Kingdom must satisfy strict requirements and score points for a successful application.

Working in the United Kingdom requires the accumulation of points under the points-based system and is anchored on two routes: self-sponsorship and sponsorship. The latter involves being employed by a 'licensed sponsor'; working at an appropriate skill level, appropriate salary and having knowledge of English language (Immigration Rules Appendix Skilled Worker, n.d.); while the former involves categories that do not require sponsorship by organisations, with applicants assessed on a range of criteria: talent, access to investment funds and business development. On the other hand, the requirements for study involve being accepted on a course run by a registered educational institution; having available funds for a specified period to cover tuition fees and living expenses; and the knowledge of English language (Immigration Rules, n.d. Appendix Student).

The application of Immigration Rules to EU citizens has several implications. First, the financial cost covering application fees, biometric enrolment and health surcharge is high and varies between £200 and £624 per annum. Some costs are not refunded where an application is unsuccessful thereby making it available to applicants from well off backgrounds. Second, very little free legal support is available to applicants, which increases the risk of refusals. Third, strict limits are imposed on visa holders. For instance, new EU arrivals may have limitations in terms of the type of work they can do if they are sponsored, or number of hours they can work for if they are students. If they are studying, they will also have limitations in relation to their ability to bring family members to join them in the United Kingdom.

Under strict, expensive, changing and difficult to navigate immigration system, some new entrants may opt to remain in the United Kingdom as irregular migrants. It is possible that they will come as tourists and overstay the six-month period of visa-free stay or overstay their visa. Some newcomers make a late EUSS application and work in the United Kingdom while their application (doomed for refusal) is processed. They will be irregularised; as the United Kingdom government's policy paper explains, 'leaving the UK after leave has expired, or not leaving at all when required to, will impact a migrant's immigration status and will affect future interactions with UK immigration' (UK Government, 2020). This irregularised migration will likely involve now-criminalised work in shadow economy, just like was happening before EU accession of EU member states with biggest diaspora in the United Kingdom, such as Poland or Romania.

CONCLUSIONS

The UK Government and media celebrated the ending of the FOM and the ability to deport EU citizens based on national law as a sovereignty-recuperating achievement. The United Kingdom has moved millions of EU citizens under the immigration regulations, extending to them a policy exhibited by a range of legislations on immigration and nationality and aimed at limiting the eligibility of certain groups from entering and living in the United Kingdom. Consequently, the grounds for deportation of EU nationals have been broadened, as irregularised migrants are subject to 'voluntary returns' and 'administrative removal' procedures. Moreover, as soon as the EU FOM ended for the United Kingdom, existing regulations applied to new EU migrants. A new version of the guidelines for EUSS suitability amplified the grounds for refusals for EUSS applicants and there has been a sharp increase in their number since the grace period ended. Placing a new application – a solution many refused applicants used before– is not an option now, after the 30 June 2021 deadline.

EU Settlement Scheme has offered the HO a scope for manoeuvre that permits future management of migration by criminalising and deporting migrants if required by the immigration and deportation targets. The European Union Settlement Scheme, although involves a simple application process, can result in some EU citizens slipping through the cracks of the system. Although it remains to be seen how the December 2022 UK High Court decision will be

implemented, 40% of the people who applied under EUSS should re-apply to stay in the United Kingdom for more than 5 years. They will be reapplying under economic and political circumstances that will be significantly different than when the EUSS opened. Moreover, the EUSS has produced a lot of data about over 6 million applicants that can be utilised for controlling this population. It can potentially become a database of future deportees, as it gives the United Kingdom authorities access to personal details, biometric data, history of contribution to the fiscal system and criminal record of millions of non-UK citizens. Should their deportation serve political agenda of the government either as re-creating sovereignty or relieving a struggling economy, the HO could refer to it.

We also conclude that certain characteristics, such as income, age, access to housing or criminal record will make EU deportations selective, which has led us to speak about the differentiated deportability of EU citizens in the United Kingdom. We anticipate that the poorest EU citizens will be most likely to become the new deportable in the United Kingdom. The poorest EU citizens will most likely become irregularised migrants, who will continue to migrate to Britain despite not qualifying for work visa. As class determines the probability of getting criminal convictions and incarceration, it may also differentiate deportability, given that criminal convictions will play an important role in sentencing to deportations. It will also come into play for the convicts, given the lack of free legal support in the United Kingdom and high costs of immigration lawyers. Rough sleepers and children in care may also become the new EU deportable in the United Kingdom. The differentiated deportability of CEE citizens, notable before Brexit and noted in Western EU member states, is likely to continue under the new migration regime for EU citizens, as they are overrepresented among the EU street homeless, as well as make the biggest part of EU children in care and EU convicts in the United Kingdom. New regulations have re-classified CEE nationals as deportable. No longer holding protections of a EU citizens status, they become part of the global labour force, deportable if not able to secure a new immigration status.

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CONFLICT OF INTEREST STATEMENT

None of the authors have a conflict of interest to disclose.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

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ENDNOTES

[1] Other EEA and Swiss citizens as well as the family members of EU citizens are out of the scope of this article.

[2] The number of applications is higher than the number of applicants. People granted pre-settled status re-apply when they 'hit' five-year continuous residence and upgrade to settled status. Before the 30 June 2021 deadline, re-application could also happen following a refusal of status. Another reason to re-apply is when an applicant is asked for additional evidence to prove five-year residence, provides it after the deadline and therefore must start a new application. High number of

applicants involves third-country family members of EU citizens eligible to apply, as well as EU citizens who moved abroad or returned to their country of origin, but applied to EUSS in case they ever decide to move back to the UK.

[3] Getting a new passport is a challenge for financially and digitally excluded people because of having to apply on-line for a consular appointment and high passport fees and travel expenses (Morgan & Radziwinowiczówna, 2020).

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