



No Recourse to Public Funds Network

Helping European Union residents to protect their rights after Brexit

1. Introduction

This factsheet is intended to provide local authorities with information about what action can be taken to secure the rights of European Union (EU) residents and their family members, who will be required to make an application under the EU Settlement Scheme, after the UK leaves the EU on 29 March 2019.

Local authorities can play a role in reducing any negative impacts on communities that may arise when people fail to secure their status. It will be necessary to raise awareness of the EU Settlement Scheme amongst EU nationals in communities as well as identifying and assisting vulnerable residents to prepare for this process, including those receiving support from social services.

The Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves, and there will be different arrangements in the event of a 'no deal' scenario. The information in this factsheet is therefore subject to change, although will be updated to reflect any significant developments. Local government concerns, questions and recommendations have been set out to the Home Office and remain outstanding. For the purpose of this factsheet, all references to 'EU nationals' include citizens of Iceland, Norway, Lichtenstein and Switzerland.

This factsheet contains information on:

- Groups at risk of not securing their status
- EU nationals receiving social services' support
- EU children in care and young people leaving care
- Action a local authority can take now
- Appendix: EU Settlement Scheme

Under the Draft Withdrawal Agreement, the rights that currently apply to EU nationals and their family members are due to continue until 31 December 2020 – their entitlements to services will not change during this time.

2. Groups at risk of not securing their status

The Migration Observatory at Oxford University has [identified](#) several groups of people who could be at risk of failing to secure their rights after the UK has left the EU, including:

- Rough sleepers and people without secure accommodation

- People with a disability, illness or mental health issue that may prevent them from being able to easily engage with the application process
- People who lack capacity to make decisions
- People providing unpaid care who do not have HMRC records or other evidence of their residency
- Victims of trafficking or modern slavery living in controlled environments without access to information and/or records of their residency
- People who have separated from an EU partner or are in abusive relationships and cannot access proof of their or their partner's residency
- People who do not routinely engage with services
- People who do not hold bank accounts and/or who get paid cash in hand for work
- People who are not IT-literate or own a smartphone/tablet
- People who may experience language barriers
- Children living within families and children in care
- Long-term UK residents who are lacking documentation

As well as communicating information about the EU Settlement Scheme to residents and employees, local authorities need to ensure that steps are taken to ensure information and assistance is provided to these at risk groups.

3. EU nationals receiving social services' support

In some instances, social services will have a duty to provide accommodation and financial [support](#) to EU families or adults with care and support needs who are unable to claim welfare benefits. Local authorities should be mindful of the following points when an EU national, or family member of an EU national, requests support:

- The provision of social services' support is subject to an assessment of whether the EU national can return to their country of origin to avoid a situation of destitution in the UK, because of the exclusion in Section 54 and Schedule 3 of the Nationality, Immigration and Asylum [Act 2002](#). When an EU national is likely to have a right to remain in the UK permanently (settled status), or on a route to settlement (pre-settled status), it would be very difficult for a local authority to recommend return as an alternative to providing support. Due to a lack of a deal with the EU, the timescales for qualification under the scheme remain uncertain. Therefore, local authorities should be cautious in applying the exclusion to social services' support, and should seek further advice from their legal teams if there is any uncertainty when determining an application for support. (See sections [A.2](#) & [A.7](#))
- When support is provided, it will be necessary for the local authority to proactively assist the family or adult to take appropriate steps to secure their status in order to comply with child safeguarding and adult well-being duties, and to avoid long-term support costs which may otherwise be incurred. (See section [5](#))
- Entitlement for income-based benefits is currently linked to an EU national being economically active or having permanent residence. It appears that this will continue to be the case during any transition period after 29 March 2019. Additionally, the entitlements of people who are granted leave under the EU Settlement Scheme are currently unclear, so EU nationals who have children, or who have care needs, may

require social services' support if they are unable to access benefits and homelessness assistance. (See section **A.4**)

- Where an EU national or family member has lived in the UK for five years but has been unable to establish that they have a permanent right of residence under EU law, it is likely to be in their interests to apply for settled status as soon as they are able to, as this may give them a clearer entitlement to benefits and other services. (See section **A.2**)

As well as those who are being provided with accommodation and financial support, social services may also be assisting other groups that are at risk of not securing their status: EU nationals who are living in the community and are receiving a care package, unpaid carers, and children or parents who are receiving services, e.g. Early Help. Local authorities would need to consider how these groups can be identified and assisted.

4. EU children in care and young people leaving care

Often the situation of an EU child, or a child who has an EU family member, is not considered by social services until the young person is found to be ineligible for benefits and housing services when they are leaving care.

[Coram Children's Legal Centre](#) provides [information](#) about problems that may be experienced evidencing a child's EU nationality or right to reside, for example, it may be difficult evidencing a child's rights if these are based on their relationship with an estranged family member. After a child turns 18, their case can often become more complicated and they may have fewer options open to them.

As corporate parent, the local authority has a duty to act in a child and care leaver's best interests and secure the best possible outcomes for them. This includes helping migrant children and young people leaving care to take appropriate action to secure a sustainable form of immigration status, for example, leave to remain on a settlement route, British citizenship or permanent residence under EU law. Young people leaving care may request assistance with sorting out any outstanding immigration matters from a personal adviser up until the age of 25. Local authorities will be required to make applications on behalf of looked after children for whom they have parental responsibility.

Local authorities must be aware of what steps they need to take to ensure that the rights of EU national children and young people are protected after the UK leaves the EU, including supporting the child or young person to obtain specialist immigration advice. (See section **5**)

5. Action a local authority can take now

For EU nationals receiving social services' support and children in care:

- Identify all EU nationals, including children, and non-EU family members, who are being assisted by social services or are in the care of the local authority.
- Support people to access legal advice. Benefits advice may be a useful starting point but in most cases specialist immigration advice will be needed. For children in care, or young people leaving care, the local authority may need to fund legal advice when

this is not freely available, and applications where there is no fee exemption. (See section [A.8](#))

- Check that individuals and children who will need to apply for settled status have a valid passport or national ID card, and if they do not, help them to obtain one from their national embassy. If a document cannot be obtained, help the person to evidence this e.g. by keeping correspondence with the embassy. Specialist legal advice may be required if a child's nationality is unclear or difficult to document without parental involvement. (See section [A.3](#))
- Help individuals and children to document their residence in the UK for the period prior to being assisted by social services. (See section [A.3](#))
- Signpost parents who have a EU derivative right to reside, for example [Zambrano carers](#), to an immigration adviser to find out whether they may be able to pursue an application under the Immigration Rules. (See section [A.6](#))
- Councils using [NRP Connect](#) should make sure any information about EU national adults and families that are being financially supported is up to date.
- Signpost EU nationals to information about the EU Settlement Scheme when support is withdrawn, for example, because the EU national has obtained employment and access to benefits, or where leaving care duties end.

To assist all EU residents:

- Provide information to residents and employees on the council website, through communications and when services are accessed. See the Government's [toolkit](#) for local authorities, [information](#) for the public and [email alerts](#).
- Identify vulnerable EU nationals and their family members who are engaged with other council services in order to make them aware of the process and consider how they may be helped to overcome any barriers in making an application.
- Where there is lack of clarity regarding an EU national's current entitlement to benefits, signpost them to a benefits and/or immigration adviser.
- Explore options for providing residents with advice on their rights, for example, advice clinics in partnership with legal representatives, and ensure that community groups are aware that:
 - The European Commission can provide a solicitor for information sessions run by community groups via [the Law Centres Network](#).
 - The Government has announced a new [fund](#) which is now open for [applications](#) from voluntary and community sector organisations working with vulnerable EU nationals who might require additional support in making their applications.

Appendix – EU Settlement Scheme

Basic information about the EU Settlement Scheme is summarised here. Full details are set out in the:

- [Immigration Rules](#) (IR)
- [Statement of Intent](#) (SI), which implements the section of the draft [Withdrawal Agreement](#) that covers citizens' rights, as agreed with the EU in March & November 2018
- [Government Response](#) (GR) to the Home Affairs Select Committee's Third Report of Session 2017–19
- [White paper](#) (WP), setting out the UK's future skills-based immigration system

Under the Draft Withdrawal Agreement, EU nationals will continue to enjoy the free movement rights that currently apply under European law until 31 December 2020, but will need to apply for settled or pre-settled status by 30 June 2021 in order to remain living in the UK lawfully.

The information below is based on the proposals that implement the Draft Withdrawal Agreement and which are likely to apply if a deal is secured with the EU. In the event of a 'no deal' scenario, the Government has [confirmed](#) that the EU Settlement Scheme will still apply but there will be some differences. (See section [A.7](#))

A.1 Who will need to apply?

All EU nationals and their family members who are living in the UK by 31 December 2020 will be required to apply for settled status or pre-settled status if they intend to stay here.

Irish citizens have different residence rights and will not be required to apply for settled status but may choose to do so. [SI 2.6]

Citizens of the other European Economic Area countries that enjoy free movement rights (Norway, Iceland and Lichtenstein), and Switzerland, will be subject to the [same scheme](#). For the purpose of this factsheet, references to 'EU nationals' include citizens of Iceland, Norway, Lichtenstein and Switzerland.

Family members of EU citizens will also need to apply, whether they are EU nationals themselves or citizens of a non-EU country.

European Union countries

Austria	Estonia	Italy	Portugal
Belgium	Finland	Latvia	Romania
Bulgaria	France	Lithuania	Slovenia
Croatia	Germany	Luxembourg	Spain
Cyprus	Greece	Malta	Slovakia
Czech Republic	Hungary	Netherlands	Sweden
Denmark	Ireland	Poland	

A.2 Eligibility for settled status

EU nationals and their family members who are living in the UK by 31 December 2020 will be eligible for settled status if they have completed five years' continuous residence here, subject to criminality and security checks. The EU national will not need to show that they

have exercised free movement rights as a worker, self-employed or self-sufficient person, or student. This means that long term residents, people who are unable to work due to a disability, illness or caring responsibilities, and several other groups will be able to stay in the UK indefinitely, unless they fail to meet the suitability requirements.

There will be some instances when a person can obtain settled status without having completed five years' residence, for example, a child under 21 of an EU national who has obtained settled status.

A person who has already obtained a permanent residence card must also apply for settled status but will not need to provide evidence of their residence or pay a fee.

A person who has been continuously resident for less than five years when they apply will be eligible for pre-settled status. They may apply for settled status once they have completed five years' residence.

An applicant must also meet suitability requirements. A person who is subject to: a deportation order, decision to make a deportation order, exclusion order or exclusion decision at the date of decision will be refused settled or pre-settled status.

The Home Office will have the discretion to refuse applications in cases where it is proportionate to do so when a person is:

- subject to a removal decision made under the EEA Regulations on the basis that they are not exercising or is misusing their EU treaty (free movement) rights, or
- found to have submitted false or misleading information in certain specific circumstances. [IR EU15 & EU16; Statement of Changes [HC 1849](#)]

A.3 Application process

The online application process is being implemented in a phased roll-out. Two pilots have taken place and the process will be open to the following members of the public from 21 January 2019:

- An EU citizen who has a valid passport
- A non-EU citizen who has an EEA residence card or EEA permanent residence card issued following an application made on or after 6 April 2015

For other people who will need to apply, for example an EU national who has an ID card rather than national passport, the Home Office has confirmed that the scheme will be open by 30 March 2019.

A local authority will be required to apply on behalf of a child that it has parental responsibility for. A parent will be able to apply on behalf of a child and the Government is considering whether there are other situations where a person can apply on behalf of someone else and in what circumstances a paper form may be provided. [SI 4.4]

The following documents will be required:

- A valid passport or ID card (EU nationals)
- A valid passport or Biometric Residence Permit/Card (non-EU family members)

- Evidence of relationship to the EU national (non-EU and some EU family members)
- Evidence of the EU national's identity and residence (non-EU family members)
- Evidence of residence:
 - HMRC and DWP records will be checked to confirm residency in the UK but other evidence of residence will need to be provided if these do not exist or do not cover the full period
 - Other evidence of residence must be from an 'official or impartial' source, with examples listed in this [guidance](#). Letters from friends and relatives will not be accepted.

Alternative evidence of identity may be provided when a person is unable to obtain or produce the required document due to circumstances beyond their control or due to compelling practical or compassionate reasons. [SI 4.8]

Evidence that people receiving social services' support can provide to confirm their residence includes:

- Letter from a registered care home
- Letter from a local authority confirming its involvement with the person, specifying the length of this involvement

The Home Office will be adopting an approach of evidential flexibility, where caseworker discretion can be used and applicants will be contacted if they need to submit additional evidence or address any omissions. [SI 5.15]

Application fee:

- £65 for a person age 16+
- £32.50 for a child under 16
- No fee for a child looked after by a local authority, a person who has already obtained a permanent residence card, or a person who has been issued with pre-settled status and is applying for settled status

A.4 Application outcomes & entitlements

People who make successful applications under the EU Settlement Scheme will have different entitlements to the free movement rights that they currently enjoy. They will not have the same rights to be joined by family members, particularly with regards to future spouses and partners, and could potentially lose their right to live in the UK on a long-term basis if they leave for five years. EU nationals and their family members will continue to benefit from free movement rights until 31 December 2020 even if they have been granted status or been refused under the new scheme.

People who are refused will:

- Be able to request an administrative review of the decision
- Have a right of appeal to the courts if they apply after 29 March 2019
- Be able to make a further application by 30 June 2021 if they are refused before 31 December 2020 [SI 5.17-21]

	Settled status (Five years' residence)	Pre-settled status (Less than five years' residence)
Status granted	Indefinite leave to remain (ILR)	Limited leave to remain for five years
What may cause settled status to be lost or not obtained following five years' pre-settled status	May be lost following a continuous absence from UK of more than five years	May not obtain settled status if they: <ul style="list-style-type: none"> • Are absent from the UK for more than 6 months out of any 12-month period • Do not maintain or retain their family relationship with the EU national (non-EU family member)
Entitlements	Work permitted It has been suggested that eligibility for public funds (benefits and social housing) and other services will be in line with rules for people with ILR, but this has yet to be confirmed [GR 5(i)]	Work permitted Eligibility for public funds (benefits and social housing) appears to be based on current rules, i.e. having a right to reside on a particular basis under free movement laws, but this has yet to be confirmed [SI 7.5]
Documentation issued	EU national: <ul style="list-style-type: none"> • Digital evidence – no physical document issued Non-EU national family member: <ul style="list-style-type: none"> • Digital evidence and biometric residence document 	
Right to be joined in the UK by family members	Until 31 December 2020: <ul style="list-style-type: none"> • May be joined by family members under free movement rules On/after 1 January 2021: <ul style="list-style-type: none"> • Certain close family members where the relationship existed on 31 December 2020, and future children, may apply under the EU Settlement Scheme at any time • Other dependent relatives and future spouses/partners will be subject to the more stringent requirements of the Family Migration (FM) Immigration Rules [GR 5(h)] 	

A.5 What happens if an EU national doesn't apply in time?

EU nationals and their family members who are resident in the UK by 31 December 2020 must apply for settled or pre-settled status by 30 June 2021. If they fail to apply by this date, they will not have leave to remain and will not be able to access work, benefits and services. [WP 12.3]

Discretion may be used in certain circumstances if applications are received after 30 June 2021, although no further details have been published. [SI 1.19 & WP 12.4]

EU nationals who fail to apply in time may therefore end up in a position where they lose their employment and benefits, and are unable to rent from a private landlord or access free secondary healthcare.

A.6 Non-EU nationals with a European derivative right to reside in the UK

In certain circumstances, non-EU nationals may acquire the right to live and work in the UK in order to prevent a person they are caring for from having to leave the EEA. The table below summarises what has been stated about their position so far.

Derivative right	Basis of right	Situation after 31 December 2020
Teixeira and Ibrahim primary carer	Primary carer of a child of an EU former worker where the child is in education	<ul style="list-style-type: none"> Residence rights protected by the Withdrawal Agreement Provision will be made in the Immigration Rules to apply for leave to remain in line with current rights on a temporary basis only; will need to satisfy other Immigration Rules if wish to stay beyond this period [SI 6.10 & GR 5(j)]
Chen primary carer	Primary carer of a self-sufficient EU citizen child	<ul style="list-style-type: none"> Residence rights protected by the Withdrawal Agreement Provision will be made in the Immigration Rules to apply for leave to remain in line with current rights on a temporary basis only; will need to satisfy other Immigration Rules if wish to stay beyond this period [SI 6.10 & GR 5(j)]
Zambrano primary carer	Primary carer of a British citizen	<ul style="list-style-type: none"> Residence rights are not protected by the Withdrawal Agreement Provision will be made in the Immigration Rules to apply for leave to remain – most likely on a temporary basis only [SI 6.12] May become unlawfully present if they fail to apply or secure leave to remain under current or new Immigration Rules [TN 18]

A.7 What will be different in a ‘no deal’ scenario?

The Government has confirmed in a [policy paper](#) that the EU Settlement Scheme will apply if the UK does not reach a deal with the EU by 29 March 2019, although some key differences are outlined in the table below. Additional [guidance](#) states that: ‘EU citizens and their family members will be able to continue to access in country benefits and services on broadly the same terms as now’.

	Proposals implementing the Draft Withdrawal Agreement	Proposals in a ‘no deal’ scenario
Eligibility for settled status	EU nationals and their family members living in the UK by 31 December 2020 will be eligible	EU nationals and their family members living in the UK by 29 March 2019 will be eligible
Timeframe in which to apply	Must apply by 31 June 2021	Must apply by 30 December 2020 - the six-month ‘grace period’ won’t apply
Remedies to challenge a refusal	Administrative review and right of appeal	Administrative review and judicial review

Entitlement of EU citizens with settled status to be joined by close family members	Close family members, where the relationship existed by 31 December 2020, and future children, may apply under the EU Settlement Scheme at any time	May be joined by close family members where the relationship existed by 29 March 2019, and future children, but only until 29 March 2022
Transition/ implementation period	Free movement will continue until 31 December 2020	Unclear- there will be no transition period agreed with the EU, but the UK's new immigration system is not due to be implemented until January 2021 (see section A.9)

A.8 Legal aid and legal advice

The Government has stated that the application process will be 'straightforward and streamlined'. [SI 5.1] However, it is still likely that many people will need to obtain immigration advice, particularly if they are a separated child, non-EU national family member, may not meet suitability requirements, or are challenging a refusal.

The OISC has published [information](#) about what types of advice will fall under the scope of regulation and is clear that providing advice directly to an individual about whether they meet the scheme's requirements **will** constitute regulated immigration advice. Local authority practitioners will therefore be limited to giving out general information to residents, signposting to information about the scheme and to legal advice providers, and helping people engaged with council services, such as those receiving social services' support, to gather documentary evidence for their applications.

In England and Wales, [legal aid](#) is only available to EU nationals and their family members in very limited circumstances. Children who are being looked after by a local authority or by someone outside of their family household should be able to access legal aid by applying for [Exceptional Case Funding](#), until this is [reinstated](#) for separated migrant children.

Legal advisers can currently be accessed through the [Law Centres Network](#) and VCS services may use the Government's new [fund](#) to support free immigration advice provision.

A.9 Future immigration system

After the UK leaves the EU, domestic legislation that derives from EU law will be preserved under the European Union (Withdrawal) [Act 2018](#). Free movement rights of EU nationals to enter and reside in the UK, as they are set out in the Immigration (European Economic Area) [Regulations 2016](#), will remain in force until the Regulations are repealed. The Immigration and Social Security Co-ordination (EU Withdrawal) [Bill 2017-19](#), currently being debated in Parliament, will enable the Regulations to be repealed.

The Government's plans for the new immigration system after free movement ends have been set out in a [white paper](#): 'the UK's future skills-based immigration system'. EU nationals will be subject to UK immigration legislation that applies at that time, including the Immigration Rules.

Under the Draft Withdrawal Agreement, free movement is due to end on 31 December 2020, and new Immigration Rules will apply to EU nationals from 1 January 2021. In the event of a

'no deal' scenario, the Government has not specified when the free movement rights (as set out in the Immigration (European Economic Area) Regulations 2016) will end, as these will continue to apply until Parliament repeals them. [WP 14.2]

As well as ending free movement, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill also contains measures to protect the status of Irish citizens and to amend the existing arrangements regarding EU nationals' access to benefits.

Sources and further information

Legislation	<p>EU Withdrawal Act 2018 <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted></p> <p>Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 <https://services.parliament.uk/Bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal.html></p> <p>Immigration Rules Appendix EU<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu></p> <p>Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (14 November 2018) <https://www.gov.uk/government/publications/progress-on-the-uks-exit-from-and-future-relationship-with-the-european-union></p>
Government information	<p>Settled and pre-settled status for EU citizens and their families <https://www.gov.uk/settled-status-eu-citizens-families></p> <p>EFTA states agreement <https://www.gov.uk/government/news/uk-agreements-with-the-eea-efta-states-and-switzerland></p> <p>No deal (benefits) <https://www.gov.uk/guidance/eu-citizens-in-the-uk-benefits-and-pensions-in-a-no-deal-scenario></p> <p>White paper: the UK's future skills-based immigration system (19 December 2018) <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system></p> <p>No deal (citizen's rights) policy paper (6 December 2018) <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexite></p> <p>EU Settlement Scheme statement of intent (SI) (21 June 2018) <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent></p> <p>Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report of Session 2017–19 (GR) (25 May 2018) <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm></p>
Migration Observatory report	<p>Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? (12 April 2018) <http://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexite></p>
NRPF Network	<p>Social services' support for EEA nationals <http://www.nrpfnetwork.org.uk/information/Pages/eea-nationals.aspx></p> <p>Factsheet: 'Zambrano carers': local authority duties and access to public funds <http://www.nrpfnetwork.org.uk/Documents/Zambrano-Factsheet.pdf></p> <p>Legal aid and finding advice <http://www.nrpfnetwork.org.uk/information/Pages/Legal-advice.aspx></p>
Coram Children's Legal Centre	<p>EU children and young people – protecting their rights in the UK <https://www.childrenslegalcentre.com/resources/eu-national-children/></p>