



No Recourse to Public Funds Network

Helping European Union residents to protect their rights after Brexit

1. Introduction

The Government is currently proposing that after the UK has left the EU on 29 March 2019, there will be a transition period that ends on 31 December 2020. EU nationals and their family members living in the UK by the end of the transition period will need to take action before 30 June 2021 and apply for either settled or pre-settled status under the EU Settlement Scheme if they wish to stay here. EU nationals and family members who arrive after 29 March 2019, and people who have already obtained a permanent residence document, will also need to apply.

The Government has indicated that a person who fails to apply by the end of June 2021 may have no lawful basis to remain in the UK, but it is unclear what the consequences of this will be. 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 procedures the Government is proposing 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 information provided here is based on the proposals that are set out in the [Statement of Intent](#) (SI), published on 21 June 2018. This implements the section of the draft [Withdrawal Agreement](#) that covers citizens' rights, as agreed with the EU in March. **However, the Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves. This information is therefore subject to change and will be updated to reflect any significant developments.** We have also highlighted outstanding questions and concerns about the process with the Government, including potential resource pressures and financial risks for local authorities.

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.

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
- EU Settlement Scheme (Appendix)

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

There are several actions a local authority may consider undertaking in order to ensure EU residents are aware of the process and what they may need to do to protect their rights:

- Provide information to residents and employees on the council website, through communications and when services are accessed. Until final arrangements are agreed, this may be best limited to signposting people to the Government's [information](#) for the public and suggesting that they [sign up](#) for email alerts.
 - 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 of opportunities to do provide advice:
 - The European Commission can provide a solicitor for information sessions run by community groups, which can be arranged via [the Law Centres Network](#).
 - The Government has announced a new [fund](#) for project funding will open at the end of November 2018 for third sector organisations working with people who might be affected and require additional support.
 - Identify vulnerable EU nationals and their family members who are engaged with 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.
 - Make sure that non-council services have information about the process and know where they can signpost people to for more information or advice, for example, homeless shelters, day centres, health centres, GP surgeries and hospitals, in order to reach people who do not, or are unable to, routinely engage with council services.
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3. EU nationals receiving social services' support

Social services may be providing accommodation and financial [support](#) to EU families or adults with care and support needs who are unable to claim welfare benefits. When support is provided, it is necessary for the local authority to proactively assist people 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.

As well as those who are being provided with accommodation and financial support, social services may also be assisting 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.

Benefit entitlement for EU nationals and their family members is currently linked to a person's activities in the UK, for example, employment or having a right of permanent residence, and it appears that this will continue to be the case during the transition period, so there may still be many EU nationals who may be described as having 'no recourse to public funds' (NRPF) and require social services' support. (See section [A.4](#))

People who already have a permanent residence document will be subject to a straightforward and free application process. 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, it is likely to be in their interests to apply for settled status as soon as they are able to, as this is subject to different requirements to evidencing permanent residence and may give them a clearer entitlement to benefits and other services. (See section [A.2](#))

There are several steps practitioners can take now to help supported EU nationals to secure their rights, which may be already being done in order to help a person or family find a sustainable pathway out of dependency on social services' support:

- Identify all EU nationals (including children whose parents are not EU nationals) and family members of EU nationals who are being assisted by social services.
- Signpost people to benefits or immigration advice, in order to find out whether they may be able to evidence a permanent right of residence now
- Check that individuals who will need to apply for settled status (including children) have a valid passport or national ID card, and if they do not, help them to obtain identity documents from their national embassy. If a document cannot be obtained, help the person to evidence this e.g. by keeping correspondence with the embassy.
- Help people to document their residence in the UK for the period prior to being assisted by social services.
- Councils using [NRPF Connect](#) can add details of the adults and families they are financially supporting to the database to record this period of residence in the UK.
- 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](#))
- If support is withdrawn, for example, because the EU national has obtained employment and access to benefits, signpost them to information about the EU Settlement Scheme.

4. EU children in care and young people leaving care

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 them to secure a right to remain in the UK in accordance with European or UK immigration laws. The [new](#) personal adviser provision means that the local authority may be required to help young people leaving care to sort out any outstanding immigration matters up to the age of 25.

Often the situation of an EU child, or a child who has an EU family member, is not considered by social services until a young person needs to access benefits and housing services when they are leaving care. Benefit entitlement for EU nationals and their family members is currently linked to a person's activities in the UK, for example, employment, and it appears that this will continue to be the case during the transition period. (See section **A.4**)

It is therefore important to establish now if a child has a right to reside or a right of permanent residence under EU law, or if they are British or entitled to register as a British citizen. This is likely to involve supporting the child to obtain specialist immigration advice. [Coram Children's Legal Centre](#) provides some [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. Efforts should be made to establish and document a child's rights before they turn 18, after which time their case can often become more complicated and they may have fewer routes open to them.

There are steps that practitioners can take now to assist EU children in care and young people leaving care to evidence and protect their rights:

- The DfE has advised local authorities to identify all EU national children and non-EU national children with an EU family member in the UK who are in care.
 - Support identified children and young people to access legal advice. Benefits advice may be a useful starting point for some but in most cases specialist immigration advice will be needed. The local authority may need to fund legal advice when this is not freely available and applications where there is no fee exemption.
 - Check that the child has a suitable identity document, and if they do not, help them to obtain one from their national embassy. If a document cannot be obtained, help the child to evidence this e.g. by keeping correspondence with the embassy. Coram recommend that specialist legal advice may be required if the child's nationality is unclear or difficult to document without parental involvement.
 - Help the child to document their residence in the UK prior to being provided with assistance from social services.
 - Councils using [NRPF Connect](#) can add details of EU children and young people they are financially supporting to the database to record this period of residence in the UK.
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Appendix – EU Settlement Scheme

This section sets out some basic information about the Government’s proposed EU Settlement Scheme. Full details are set out in the [Statement of Intent](#) (SI), the [Government Response](#) to the Home Affairs Select Committee’s Third Report of Session 2017–19 (GR), the [Immigration Rules](#) (IR) and other documents. (See section **A.7**) The current [pilot](#) of the EU Settlement Scheme is open to children in the care of five local authorities with the aim of identifying any barriers or potential problems children may face when applying.

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 to protect their right to live in the UK.

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]

The position of citizens of the other European Economic Area countries that enjoy free movement rights (Norway, Iceland and Lichtenstein), and Switzerland, is currently being negotiated, but it is likely that they will be subject to the same scheme. [SI 1.10]

Family members of EU citizens will also need to apply, whether they are EU nationals themselves or from a non-EU country. [SI Chapter 6]

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. [SI 2.3]

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. [SI 3.7]

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. [SI 5.3]

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. [SI 3.4]

An application for settled or pre-settled status will be refused if, at the date of decision, the person is subject to:

- A deportation order or decision to make a deportation order
- An exclusion order or exclusion decision
- A removal decision made under the EEA Regulations on the basis that the person is not exercising or is misusing their EU treaty (free movement) rights [IR EU15]

A.3 Application process

An online application process is expected to be open by the end of March 2019.

Local authorities will be required to apply on behalf of a looked after child it has parental responsibility for. A parent will be able to apply on behalf of a child and there may be other situations when someone can apply on another person's behalf. The Government is considering whether a paper form may be provided in some instances. [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
 - Acceptable preferred and alternative evidence is listed at Annex A of the SI and must be from an 'official or impartial' source according to this [guidance](#)

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 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 (preferred evidence)
- Letter from a local authority confirming its involvement with the person (alternative evidence) [SI Annex A]

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 [SI 4.6]

A.4 Application outcomes

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 refused under the new scheme.

	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 Will have recourse to public funds (benefits and social housing) and other services in line with rules for people with ILR [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 [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 existing free movement rules On/after 1 January 2021: <ul style="list-style-type: none"> • Certain close pre-existing family members that are resident overseas on 31 December 2020, and future children, may apply under the EU Settlement Scheme [SI 6.1] • Future spouses/partners will be subject to the more stringent requirements of the Family Migration (FM) Immigration Rules [GR 5(h)] 	

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]

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

The Government has stated that EU nationals and their family members who are resident in the UK by 31 December 2020 will have a period of six months to apply for settled or pre-settled status, and has indicated that discretion may be used if applications are received after 30 June 2021, although no information has been given about when late applications will be accepted. [SI 1.19]

The Government has not yet set out its plans for the future EU immigration rules after free movement ends in December 2020, but has stated that any EU national or family member covered by the Withdrawal Agreement, who does not secure or apply for settled or pre-settled status before 30 June 2021, will 'technically have no lawful basis to remain in the UK'. [GR 5 (a)]

The consequences of this are unclear. As people without any immigration permission currently face many sanctions, including being unable to rent from a private landlord, work or open a bank account, it is likely that undocumented EU nationals will face difficulties accessing services after free movement ends.

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

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- 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]
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A.7 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 some people may wish to obtain immigration advice, for example, if they are non-EU national family members, have a criminal history, or need assistance with an administrative review or appeal. The OISC has published [information](#) about what types of advice will fall under the scope of regulation.

[Legal aid](#) is only available to EU nationals and their family members in very limited circumstances, and there is no indication that any additional provision for free legal advice will be made to help people who are not covered by this.

Legal aid is due to be [reinstated](#) for separated migrant children, so EU national children, or children with an EU national family member, who are being looked after by a local authority or by someone outside of their family household, may be able to access free advice by the time the scheme is implemented. In the interim, a child can apply for [Exceptional Case Funding](#).

Full details of the Government's new [fund](#), which will open at the end of November 2018 for third sector organisations working with EU nationals, have not yet been published.

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Sources and further information

Referenced sources of information	
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>Status of EU citizens in the UK - email alerts <https://gov.smartwebportal.co.uk/homeoffice/public/webform.asp?id=67&id2=627DF7></p> <p>EU Settlement Scheme pilot <https://www.gov.uk/government/collections/eu-settlement-scheme-pilot-applicant-information></p> <p>Immigration Rules Appendix EU< https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu></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> <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> <p>Technical note: citizens' rights, administrative procedures in the UK (TN) (8 November 2017) <https://www.gov.uk/government/publications/citizens-rights-administrative-procedures-in-the-uk/technical-note-citizens-rights-administrative-procedures-in-the-uk></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-brexit/></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>