

Introduction

Local authorities are responsible for ensuring the general well-being of their communities and residents, and need to respond to any changes that may adversely impact on this. Many residents will be directly affected by the UK leaving the EU and, as a consequence, local authorities will need to play a role in reducing any negative impacts on communities that may arise if EU nationals lose their right to live in the UK and entitlement to services.

Local authorities currently spend at least £43.5 million per year funding accommodation and financial support for destitute migrants with no recourse to public funds to safeguard the welfare of children within families, adults with care needs and young people leaving care. It will be essential that any arrangements for EU nationals do not lead to this safety net becoming an even greater burden on local government. [1]

The changes that will apply to EU nationals after the UK leaves the EU raise the following concerns for local government:

- Where EU nationals are recognised as having a long-term future in the UK through the EU Settlement Scheme but do not have an automatic entitlement to income-based benefits, it will fall to local government to fund accommodation and financial support for those that are vulnerable or who have children.
- EU nationals who do not successfully obtain leave to remain by the time free movement ends will be subject to sanctions on work, benefits and other services, and are likely to experience destitution, which may adversely impact on communities and increase demand for social services' support.
- Communicating the changes to EU residents and assisting the most vulnerable to secure their status will be essential activities for local authorities given the risks that will arise if people fail to obtain leave to remain, but this will give rise to additional resource pressures.
- When free movement ends and EU nationals are subject to the UK Immigration Rules, the number of people who have the NRPF condition imposed or who are on a 10-year settlement route will increase. Both give rise to child poverty, and create barriers to integration and community cohesion.

This document sets out more detail of the above with recommendations and questions for government, some of which have remained outstanding since July 2018. The term 'EU nationals' include citizens of Norway, Iceland, Lichtenstein and Switzerland.

1. Social services' support for EU nationals

Local authorities have a duty to safeguard the welfare of children and vulnerable adults under section 17 of the Children Act 1989, the Care Act 2014, s117 of the Mental Health Act 1983, s1 of the Localism Act 2011 and the leaving care provisions of the Children Act 1989, or under equivalent legislation in Wales, Scotland and Northern Ireland. These duties may be engaged when an EU national is unable to access benefits or housing because they do not meet the right to reside element of the habitual residence test.

Where there are grey areas regarding entitlements to benefits, then social services will often be required to provide support to alleviate the destitution of children and vulnerable adults whilst their rights are established. Adult Social Services often provide high cost support to EU nationals with very complex needs who do not have a right to reside or find this impossible to evidence.

Our data shows that 167 out of 2552 households supported by 50 local authorities at the end of March 2018 were EU nationals, dependants of EU nationals or had an EU derivative right to reside to reside. Providing accommodation and financial support is costing the councils concerned just over £3 million/ year with the average time spent on support for this group being 961 days, which is significantly higher than the overall average of 887 days. [1]

When EU nationals have a right to remain in the UK permanently that does not automatically confer an entitlement to income-based benefits, or when an EU national fails to successfully secure their status by the given deadline, then social services will ultimately be responsible for supporting families, adults with care needs or other vulnerabilities, and young people leaving care. Additionally, EU nationals may continue to form a large proportion of the rough sleeper population.

1.1 Schedule 3 exclusion to social services' support

The provision of social services' support is subject to an assessment of whether an EU national can return to their country of origin to avoid a situation of destitution in the UK, due to an exclusion that is set out in Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002. This means that return to country of origin can be recommended as an alternative to providing support where this would not breach the EU national's human rights or EU treaty rights.

However, the exclusion is inconsistent with the Government's commitment to preserve the residence rights of EU nationals and their family members through the EU Settlement Scheme, and due to the lack of a deal with the EU, there is currently uncertainty regarding the qualifying timeframe for the scheme. We are therefore advising local authorities that it would be very difficult to recommend return as an alternative to providing support 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), even though this may mean that local authorities will be required to provide accommodation and financial support to EU nationals in instances when return may previously have been funded or recommended.

2. People who fail to secure their status

The Statement of Intent (SI) confirms that eligibility for settled status (or pre-settled status) will be based on 'continuous residence' in the UK and that there will be no requirement for a person to demonstrate a right to reside. Ensuring that eligibility is based on residence alone rather than additional tests will enable many vulnerable EU nationals to qualify for settled status, such as people who are homeless, children in care and people with a disability who cannot work.

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. [2]

Discretion may be used in certain circumstances if applications are received after 30 June 2021, although no further details about when this may apply have been published. [3]

The EU Settlement Scheme will apply in a 'no deal' scenario, although people will only be eligible if they are living in the UK by 29 March 2019, and must apply by 31 December 2020. It is not yet clear when free movement will end in the UK in a 'no deal' scenario, and therefore how people arriving after 20 March 2019 will be distinguished from those living in the UK by that date.

The Exiting the European Union Select Committee has warned that:

'.. the scale of the task means that if even a small proportion of those eligible to apply do not do so, or are refused, there is a risk of a large number of EU citizens in the UK by July 2021 not having certainty as to their legal status. The UK Government needs to set out what it would do with thousands of EU migrants unable to demonstrate their legal status.' [4]

The Government has not made any reference to what action will be taken when people are in this position.

Local authorities would not want to see vulnerable residents and people receiving social services' support to be left in a situation where they become without leave and lose entitlement to employment, benefits and other services after free movement ends. However, there are several groups that are at risk of not securing their status under the EU Settlement Scheme.

2.1 Groups that may not be eligible under the EU Settlement Scheme

Groups that are at risk of not qualifying for settled status include:

- Non-EU family members, who are only eligible for pre-settled status due to their length of residence in the UK, where their relationship with an EU national is not sustained for the following five years and they do not meet the rules for retaining their residence. For example, separated partners and young people in care who are not dependent on an EU parent when they turn 21. (It is not clear whether the changes to the Immigration Rules that apply from 21 January 2019 enable the latter group to successfully apply). [5]

- People issued with a removal decision on the basis that they are not exercising or are misusing their EU treaty rights may be refused if the Home Office decides this is proportionate. There is a suggestion that a person could be referred to Immigration Enforcement on application with a view to issuing such a decision. This could disproportionately affect EU rough sleepers and it is unclear what the situation for such a person would be if they are refused on this basis and their removal is not enforced by the Home Office. [6]
- In a no-deal scenario, EU nationals who arrive after 29 March 2019 who are not able to meet the requirements under new Immigration Rules that are in force after free movement ends. It is unclear how such people will be easily differentiated from those that arrive before 29 March 2019.

2.2 Vulnerable groups who may be at risk of not applying

A significant number of groups who are at risk of not applying, who may face difficulties applying, or who may face difficulties proving eligibility have been identified by the Migration Observatory at Oxford University. [7]

Some of these people will be engaged with council services but many will not be. Local authorities are in an excellent position to communicate information about the scheme to EU residents and to provide further support those engaged with services, particularly where they are receiving accommodation and financial support from social services. However, this will create resource demands and give rise to costs for local government. EU Settlement Scheme grant funding will not be implemented until April 2019 and it is unclear to what extent this will mitigate the resource burden on local authorities and whether all regions will have adequate support available to residents.

2.3 Groups that are at risk of not meeting evidential requirements

People receiving social services' support

Where social services are funding accommodation and financial support, the person's utility bills and rent will usually be paid directly to the supplier/landlord. The type of accommodation provided could include a care home, supported accommodation, temporary accommodation, privately rented property or bed and breakfast. People may be required to move multiple times during the period they are supported. Evidence from a social worker may be the only documentation available to confirm this period of residence, which for many, will be longer than the average 2.5 years. However, this was not listed in the SI as a preferred form of evidence and is not specified in subsequent evidence lists.

Some households will be recorded on the NRPf Connect database, which the Home Office can access directly to confirm local authority support. The database is currently used by 53 councils but we are aware that EU nationals are currently under recorded.

Children in care

EU children in care are likely to struggle to provide evidence of their residence and may face additional problems obtaining evidence of their identity where this is not possible without a parent's cooperation.

Women who have separated from an EU national partner

Women who have separated from an EU national partner often have difficulties evidencing their right to reside when documents from the EU partner are required. It is not clear in what circumstances the Home Office would accept that evidence of the EU national's identity, residence or settled status cannot be provided, and when it will refer to its own records instead.

Rough sleepers/ EU workers living in encampments

Rough sleepers and EU workers living in encampments are also highly unlikely to be able to evidence their residence in the UK, with gaps in documentation for the latter group highlighted in research by Thames Reach. [8]

2.4 Groups that will need someone to apply on their behalf

Local authorities will be required to apply on behalf of a looked after child when they have parental responsibility and a parent will be able to apply on behalf of a child. However, it is not clear how a child accommodated by social services will apply when the local authority does not have parental responsibility and it is not possible for a person who has this to do so.

There may be other situations when someone can apply on another person's behalf, and the Government is considering whether a paper form may be provided in some instances. [9]

Adult Social Services will often support people who lack capacity to make decisions or who have a mental health condition that makes it difficult for them to engage with an application process or legal advice. The EU Settlement Scheme needs to be accessible to people in this position, otherwise they could remain dependent on social services' support for an indefinite period.

2.5 Fees

We welcome the reduced fee for a child and fee exemption for children in local authority care. However, there is no exemption for people receiving social services' support, which is provided to alleviate destitution. Given the importance of obtaining settled status in terms of securing a person's entitlement to benefits, based on our data, a cost of at least £17,485 could fall to local government. Additionally, the charges may prevent some residents from being able to apply, for example, low income families who need to make multiple applications. [10]

The Exiting the European Union Select Committee has recommended that applications should be free of charge and the Mayor of London has also called for the fee to be scrapped. [11]

Islington Council (that hosts the Network) is proposing to cover the fees for its EU employees at an estimated cost of £80,000. [12]

3. Benefit entitlement

Currently, eligibility for income-based benefits and homelessness assistance is tied to an EU national exercising a right to reside in an economic capacity, or having a permanent right of residence. Where a person is not exempt from the habitual residence test, and the right to reside test is not met, an EEA national or family member of an EU national may require assistance from social services.

Local authorities already struggle to establish entitlements to benefits and housing for EU nationals and their family members, with disputes often arising between social services and housing authorities or the DWP. The fact that 15% of telephone enquiries to our advice line last year were regarding the entitlements of EU nationals reflects this.

The operation of two parallel systems (the EU Settlement Scheme and free movement rights) during the transition period adds a further complexity to this, and the lack of clarity about whether having a right to reside will continue to be a relevant factor for people granted LTR or ILR under the EU Settlement Scheme, is particularly concerning. It is therefore imperative that answers to the outstanding questions about this are provided.

3.1 Settled status

The Government has stated to the Home Affairs Select Committee that:

‘Successful applicants will be granted indefinite leave to remain (ILR) with the same rights and access to benefits, education and healthcare as those who have acquired it under current UK Immigration Rules, except insofar as the agreement makes special arrangements. For example, ILR granted under the scheme will lapse after five years’ absence from the UK not the usual two.’ [13]

It appears that people granted ILR will therefore be eligible for benefits and social housing and this is normally sufficient to pass the residence test for benefits. However, this has not been confirmed within any documents relating to the EU Settlement Scheme, so there is still uncertainty about benefit eligibility and whether people with ILR under the scheme will be subject to an additional test.

3.2 Pre-settled status

The SI and Immigration Rules are not clear about a person’s entitlements when they are granted pre-settled status. The Immigration Rules do not specify the conditions of leave and whether the person will have recourse to public funds or not. The SI states repeatedly that access to benefits will be subject to the same rules as now and in a footnote to paragraph 7.5 adds:

‘They will continue to have to provide evidence that they meet the relevant eligibility requirements, e.g. in any benefit claim or application for social housing, supported housing or homelessness assistance.’

It therefore appears that when a person has pre-settled status, their right to reside under free movement law will still be a relevant factor when establishing benefit eligibility, but this is unclear.

3.3 'Mixed' households

When the partner of an EU national with ILR, has pre-settled status or another form of immigration permission, then their eligibility for benefits is unclear.

Currently, family members of EU nationals who have a right of permanent residence will be eligible for benefits and social housing on the basis of their relationship with the EU national. It is unclear whether this principle will continue to apply if an EU national has ILR under the EU Settlement Scheme but does not have a right of permanent residence.

3.4 'No deal' scenario

In the event of no deal being secured with the EU, the Government has stated:

'EU citizens and their family members living in the UK by 29 March 2019 will be able to continue receiving UK benefits on broadly the same terms as now.' [14]

Again, this implies that the right to reside test may still apply, but is far from clear.

4. Applications under the Immigration Rules

The Government has confirmed that non-EU nationals with a derivative right to reside will only be eligible for a form of temporary status under new Immigration Rules, and those that are Zambrano carers will not be protected by the Withdrawal Agreement.

Our data shows that 67% of households exited local authority support on account of being awarded leave to remain with recourse to public funds although the average time spent on support was just under 2.5 years. This demonstrates that people can face significant delays in obtaining leave to remain, which can partly be attributed to a lack of legal aid and high application fees. [1]

Any new application processes for primary carers with a derivative right to reside must be accessible, and without barriers, in order to enable people to retain lawful status and to avoid additional pressures on social services caused by delays in securing leave to remain when support is provided.

5. Evidence of status

EU nationals granted ILR or limited leave to remain will only be issued with digital evidence of their status. As immigration status is inextricably linked to entitlements for so many services, it is essential that this can be identified quickly, so it is a concern that people who may have full access to services could face delays in this being established or be wrongly denied assistance. Practitioners in housing, health and social care already have to understand a multitude of different immigration status types, and it is unclear how a digital form of status can be quickly and accurately checked.

The Exiting the European Union Select Committee has recommended that a residence document is issued to EU nationals in light of the numbers of people who will be affected and recent experiences of the 'Windrush generation'. [15]

6. Legal advice

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 EU Settlement Scheme's requirements will constitute regulated immigration advice.

Local authority practitioners will therefore be limited to giving out general information to residents, signposting them to information about the scheme, and helping people engaged with council services, such as those receiving social services' support, to gather documentary evidence.

Although the Government has stated that the application process will be 'straightforward and streamlined', it is still likely that some people may need to obtain immigration advice, for example, when eligibility is unclear for non-EU family members or people who may not meet suitability requirements, or if assistance is needed with an administrative review or appeal.

Legal aid is currently only available to EU nationals in limited circumstances, and will at some point in the near future be reinstated for separated migrant children. It is currently unclear to what extent the EU Settlement Scheme grant fund will adequately provide for free legal advice for all vulnerable residents or people with complex cases in all regions of the UK.

7. Immigration Rules after free movement ends

After free movement ends, EU nationals and their family members will be 'subject to immigration control' under the Immigration Act 1971, and will be required to make applications for leave to enter and remain under the Immigration Rules.

Proposals set out in the white paper are concerning for local government for the following reasons:

- It will be challenging to promote integration and cohesive communities if the temporary short-term worker category is widely used to fill employment gaps for core low-paid services; temporary workers may face barriers accessing housing due to: private rented housing costs, irregular income if on a zero hours' contract, and the right to rent scheme (in England).
- Wider use of the 10-year settlement route and the NRPF condition, which will apply to EU nationals applying under the family migration rules, will leave more people experiencing insecurity in maintaining their lawful residence in the UK and challenges supporting themselves and their families through employment alone. [16]
- More people will be subject to high immigration application fees, which can often be a barrier securing leave to remain under the Immigration Rules. The Government has confirmed that the same approach to setting fees will be followed as now, although will be continually reviewed. [16]
- It appears that sanctions will continue to apply on people who are in the UK without leave, requiring landlords, banks and other agencies to check immigration status.

Although the Government has stated that it has ‘reviewed existing safeguards to ensure that those who are here lawfully are not inadvertently disadvantaged by policies put in place to tackle illegal migration’, such policies are likely to continue to give rise to destitution when enforcement action is not pursued.

The APPG on ending homelessness has recommended that the NRPF condition is not imposed on people with dependent children and other vulnerable groups, due to it increasing child poverty and hindering the integration of people with a long-term future in the UK, yet nothing in the white paper suggests this policy will change. [17]

Recommendations

Issue	Recommendation
Funding for local authorities	The resource implications of publicising information about the proposals to residents, helping vulnerable residents to secure their status, and providing social services’ support in instances where people are unable to claim benefits, must be fully costed and funded.
	Entitlement to welfare benefits is clarified (see questions below) and, where costs are incurred by providing direct support to EU nationals and their family members to comply with social services’ duties, these are fully funded.
Legal aid and legal advice	Legal aid is reinstated for immigration matters or, at the very least, is made available for EU nationals and non-EU family members with a low income, including people receiving social services’ support, to ensure that those with complex cases, or who are vulnerable, are properly supported through the application process.
Application process	<p>Efforts are made to ensure that people who are eligible succeed to obtain settled status (or pre-settled status):</p> <ul style="list-style-type: none"> • Provision is made to enable a child in care who is unable to document their identity to be able to apply, and for children in care when the local authority does not have parental responsibility. • Provision is made for vulnerable adults who lack capacity or have difficulties engaging with application processes to apply. • Clarity about what evidence of residence can be relied upon for people receiving social services support and assurances that sufficient weight will be given to this. • Home Office casework staff are made aware that they can obtain information about local authority involvement in some cases via the NRPF Connect database. • When a family member is applying and the EU national is an estranged partner or parent, the onus should not be on a family member to provide evidence that an EU national has already been granted settled status
Fees	<p>If application fees are maintained:</p> <ul style="list-style-type: none"> • There is a fee exemption for people receiving social services’ support under section 17 of the Children Act 1989, the Care Act 2014, s117 of the Mental Health Act 1983, s1 of the Localism Act 2011 and the leaving care provisions of the Children Act 1989 (and equivalent legislation in the devolved administrations). • Low income households are able to apply for a fee waiver - a process which should be straightforward with a low evidential

	burden.
Evidence of status	A physical form of status documentation is issued to EU nationals.
People with an EU derivative right to reside	Zambrano carers and any other groups who will be required to apply under new Immigration Rules are not subject to high fees or any other barriers to making an application.
No deal scenario	Clarity about the position of EU nationals who arrive after 29 March 2019 is provided on: <ul style="list-style-type: none"> • How they will be differentiated from those who arrived before 29 March 2019 • Their position if they are unable to apply under new Immigration Rules when these are implemented
Post-free movement immigration system	Before new Immigration Rules are implemented, a full assessment is carried out of how the proposals (new rules and those that are maintained) impact on integration and community cohesion, with a particular focus on the NRPF condition, 10-year settlement route and temporary worker provision.

Outstanding questions

Issue	Question
Eligibility for settled status	Do the new Immigration Rules (that apply from 21 January 2019) enable children in care who turn 21 and are not dependent on their EU parent to qualify for settled status after five years leave to remain (pre-settled status) when they have not sustained that family relationship?
	What will the situation be for non-EU family members who do not qualify for settled status after five years leave to remain (pre-settled status) when they have not sustained that family relationship? For example, spouses or partners who separate from an EU national and do not retain their right of residence.
	What is the intention regarding the status of Zambrano carers who will be required to apply under new Immigration Rules, and what application process and fees will they be subjected to?
	What is the intention regarding the status of people with other derivative rights (Chen/Teixeira/Ibrahim) who are protected by the Withdrawal Agreement and will be required to apply under new Immigration Rules?
Access to benefits	What will an EU national/ family member's eligibility be for benefits, homelessness assistance and an allocation of social housing in the following circumstances? <ul style="list-style-type: none"> • When a person has been granted ILR under the EU Settlement Scheme • When a person has been granted LTR (pre-settled status) under the EU Settlement Scheme • When a household is 'mixed' e.g. a person has ILR and partner has LTR • Whether the answers to all of the above will be different after the transition period ends • During the transition period when a person has not yet applied under the EU Settlement Scheme • All of the situations above in a 'no deal' scenario • In a 'no deal' scenario, a person who arrives in the UK after 29

March 2019 and who is not eligible to apply under the EU Settlement Scheme during the period before new Immigration Rules are implemented?
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References

- [1] Data quoted in this report is taken from the NRPF Connect annual report 2017-18. Note that data covers 50 councils and includes 167 people who are recorded as EEA nationals, family members of EEA nationals or people with a European derivative right of residence. This makes up 7% of the overall caseload, but we are aware that this group is under recorded. <http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf>
- [2] White paper: the UK's future skills-based immigration system (19 December), paragraph 12.3 <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>
- [3] White paper, paragraph 12.4
- [4] Exiting the European Union Committee report: The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens (25 July 2018) paragraphs 91-92 <https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/143902.htm>
- [5] Statement of changes HC1849 <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1849-20-december-2018>
- [6] Statement of changes HC1849; Home Office caseworker guidance, EU Settlement Scheme: suitability requirements (1 November 2018), page 13 <https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>
- [7] Migration Observatory, Oxford University: 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/>
- [8] Thames Reach, Research into the lives of Romanian migrant workers living in encampments in London (May 2017), pp 28-30. <https://thamesreach.org.uk/wp-content/uploads/2017/11/Research-into-the-Lives-of-Romanian-Migrant-Workers-Full-Report.pdf>
- [9] EU Settlement Scheme statement of intent (SI) (21 June 2018) paragraph 4.4. <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>
- [10] Calculated using data from [1]: (163 adults x £65) + (212 dependants x £37.5) = £17,485. Note that all dependants are being treated as under 16 for the purpose of this calculation, but some may be older.
- [11] Exiting the European Union Committee report, paragraph 68; <https://www.london.gov.uk/press-releases/mayoral/mayor-to-pay-for-eu-staff-to-stay-after-brexite/>
- [12] <https://www.islingtongazette.co.uk/news/islington-council-promises-pledges-to-pay-settled-status-fees-for-all-its-directly-employed-eu-workers-1-5846315>
- [13] Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report of Session 2017–19 (25 May 2018) <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm>
- [14] <https://www.gov.uk/guidance/eu-citizens-in-the-uk-benefits-and-pensions-in-a-no-deal-scenario>
- [15] Exiting the European Union Committee report, paragraphs 45-49
- [16] White paper, paragraphs 51 & 8.11
- [17] All-Party Parliamentary Group for Ending Homelessness, 'Rapidly responding to homelessness – a look at migrant homelessness, youth homelessness and rapid rehousing models' (July 2018: Report 2), p.14. https://www.crisis.org.uk/media/239050/appg-for-ending-homelessness-report_final.pdf

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