



No Recourse to Public Funds Network

Helping European Economic Area (EEA) & Swiss 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 Economic Area (EEA) and Swiss residents who will be required to make an application under the EU Settlement Scheme in order to stay in the UK after the UK leaves the European Union (EU).

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 EEA and Swiss 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. For the purpose of this factsheet, all references to 'EEA nationals' include citizens of Switzerland.

This factsheet contains information on:

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

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

The EU Settlement Scheme will apply whether or not a deal is reached with the EU.

However, qualifying timeframes and transition arrangements cannot be confirmed until it is clear that the UK will be leaving with or without a deal.

The UK's exit date is now scheduled for 31 October 2019. This date could be brought forward if a deal is agreed with the EU.

- 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, who experience language barriers, are not IT-literate or do not own a smartphone/tablet
- People who do not hold bank accounts and/or who get paid cash in hand for work
- Children living within families and children in care
- Long-term UK residents who lack 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 vulnerable and 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 EEA families or adults with care and support needs who are unable to claim benefits and are at risk of homelessness.

For EEA nationals who have not obtained settled status under the EU Settlement Scheme, eligibility for means-tested benefits will be dependent on the EEA national exercising a right to reside under EU law, for example, as a worker or family member of a worker. This will continue to be the case during any transition period after exit date and also applies to a person who has obtained pre-settled status. Therefore, some people will remain ineligible for benefits, even if they obtain pre-settled status, for example EEA nationals who have recently arrived in the UK and Zambrano carers. (See section [A.4](#))

Local authorities should be mindful of the following points when an EEA national, or family member of an EEA national, requests support:

- The provision of social services' support is subject to an assessment of whether the EEA national can return to their country of origin to avoid a situation of destitution in the UK, due to an exclusion set out in Section 54 and Schedule 3 of the Nationality, Immigration and Asylum [Act 2002](#). EEA nationals who are likely to be granted settled or pre-settled status will have the right to remain in the UK permanently. In such instances it would be very difficult for a local authority to refuse to provide support on the basis that a person can be expected to return to their country of origin. Additionally, due to the current uncertainty regarding the UK's exit date, the timescales for qualification under the scheme remain uncertain. Therefore, local authorities should be cautious in applying the exclusion to social services' support, and may need to seek further advice from their legal team about how to proceed when determining an application for support. (See section [A.2](#))

- 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 wellbeing duties, and to avoid long-term support costs which may otherwise be incurred. This may include signposting to legal advice and practical assistance with obtaining documents. (See section 5)
- Where an EEA national or family member has lived in the UK for five years, 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. A person may need signposting to immigration advice if their case is complex, for example, if they are a child, a non-EEA family member, or are struggling to evidence their residence following periods of homelessness. (See section A.2)

Social services may also be assisting other people who are at risk of not securing their status, so would also need to consider how these groups can be identified and assisted. For example: EEA 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.

4. Children in care and young people leaving care

As corporate parent, the local authority has a duty to act in a child or 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 or British citizenship. Young people leaving care may request assistance from a personal adviser to help them resolve any outstanding immigration matters up until the age of 25.

Local authorities must ensure that the rights of EEA 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. The second stage of the EU Settlement Scheme pilot identified that many EEA children in care do not hold national identity documents.

The Government requires local authorities in England to:

- Identify which children will need to apply, and offer support to those who need help obtaining identity documentation or other paperwork (See section 5)
- Apply on behalf of a looked after child where the local authority holds parental responsibility
- Raise awareness, and providing support or signposting as required, to parents and carers of EEA children accommodated under Section 20 of the Children Act 1989,
- Share information with personal advisors supporting care leavers who need to make their own applications

For more information, see:

- [Government information](#): No-deal preparations for children's services
- [PRCBC](#): EEA and Swiss national children and their rights to British citizenship

5. Action a local authority can take now

Local authorities are unable to provide immigration advice to individuals unless members of staff are registered with the OISC. However, there are a number of practical steps that officers can take to help EEA nationals to secure their status.

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

- Identify all EEA nationals, including children, and non-EEA family members, who are being assisted by social services or are in the care of the local authority.
- Provide information and support people to access legal advice. (See section [A.7](#))
- 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](#))
- Councils using [NRPF Connect](#) should make sure any information about EEA nationals who are being financially supported is up to date.

To assist all EEA citizens who are resident in the area:

- Provide information to residents and employees on the council website, through communications and when services are accessed – see the Government [information](#) for the public and [email alerts](#) sign up form
- Identify vulnerable EEA 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, including signposting to legal advice and Home Office assistance. (See sections [A.3](#) & [A.7](#))
- Where there is lack of clarity regarding an EEA national's current entitlement to benefits, or they are refused benefits, signpost them to a benefits adviser.
- Explore options for providing residents with advice on their rights, for example, advice clinics in partnership with legal representatives. (See section [A.7](#))

See also the Government's information for councils:

- Community leaders (local authority) [toolkit](#)
- Community engagement [guidance](#)

Appendix – EU Settlement Scheme

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

- [Immigration Rules](#)
- Home Office [information for applicants](#)
- Home Office [Caseworker Guidance](#)
- [White paper](#): the UK's future skills-based immigration system

This information sets out the law that currently applies and is written on the basis that a deal is secured with the EU implementing the Draft Withdrawal Agreement. If the UK does not reach a deal with the EU, the Government has [confirmed](#) that the EU Settlement Scheme will still apply but with some differences. (See section **A.6**)

Under the Draft Withdrawal Agreement, EEA 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.

A.1 Who will need to apply?

All EEA 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. For the purpose of this factsheet, all references to 'EEA nationals' include Swiss nationals.

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	
Other EEA countries		Other agreements	
Iceland	Lichtenstein	Norway	Switzerland

A person who holds an EEA permanent residence document will need to apply under the EU Settlement Scheme.

* Irish citizens have different residence rights and will not be required to apply for settled status but may choose to do so. Their family members will need to apply if they do not hold Irish or British citizenship.

A person who has already obtained an EEA permanent residence card must also apply for settled status. An EEA national who already holds indefinite leave to remain is not required to apply but may do so if they wish. In either case, an alternative option may be to seek legal advice about applying for British citizenship.

Family members

The following family members of EEA citizens will also need to apply, whether they are an EEA national themselves or citizen of a non-EEA country:

- Spouse, civil partner or certain unmarried (durable) partners
- Child, grandchild, great-grandchild under 21 (or older if dependent on the EEA national or their spouse/ civil partner)
- Dependent parent, grandparent or great-grandparent
- Other dependent relatives in certain limited circumstances
- A person who has a retained right of residence
- A person with a derivative right to reside*

*A person will have a derivative right to reside when they are:

- A child of an EEA former worker where the child is in education or the primary carer of such a child (Teixeira and Ibrahim)
- The primary carer of a self-sufficient EEA citizen child (Chen)
- The non-EEA primary carer of a British citizen who would otherwise be required to leave the EEA (Zambrano)

Zambrano carers can apply unless they have already obtained a different form of leave to remain under the Immigration Rules, for example under the family migration (FM) rules.

A.2 Eligibility for settled status

EEA nationals and their family members who are living in the UK by 31 December 2020 will be eligible for settled status when they have completed five years' continuous residence, subject to suitability checks.

Continuous residence

A person needs to show that they have been continuously resident in the UK for five years in order to be granted **settled status**. This does not need to have been the five-year period preceding the date of application. The person cannot have been absent from the UK for more than 6 months in total in any 12-month period that they are relying upon. All periods of absence will be counted, although some exceptions to this rule apply. There will also be some instances when a person can obtain settled status without having completed five years' continuous residence, for example, a child under 21 of an EEA national who has obtained settled status.

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 any time after they have completed five years' continuous residence but must ensure that this is done before their leave to remain expires.

As there is no requirement to have exercised free movement rights, for example, as a worker or self-employed person, there are several groups of people who should be able to obtain settled status who may not have been able to demonstrate a permanent right of residence under EU law, for example, people who are unable to work due to a disability, illness or caring responsibilities.

Suitability requirements

The Home Office can refuse an application for settled or pre-settled status when the suitability requirements apply. Details are set out in Home Office [Caseworker guidance](#).

A person will be refused if, at the date of decision, they are: subject to a deportation order, decision to make a deportation order, exclusion order or exclusion decision.

A person may be refused at the discretion of the Home Office if 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 free movement rights, or
- found to have submitted false or misleading information in certain specific circumstances.

A.3 Application process

The online application process is now fully open and so EEA citizens and their family members may now apply. The majority of people will be required to apply online.

Some groups will be required to apply using a paper form, for example, a person with a derivative right as a Zambrano carer. The Home Office may issue a paper form to an individual on a case by case basis.

A parent will be able to apply on behalf of a child and a local authority will be required to apply on behalf of a child when it has parental responsibility.

There is no fee for the application.

Evidence

The following documents will be required:

- A valid passport or ID card (EEA nationals)
- A valid passport or Biometric Residence Permit/Card (non-EEA family members)
- Evidence of relationship to the EU national (non-EEA and some EEA family members)
- Evidence of the EEA national's identity and residence (non-EEA 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 or relatives will not be accepted.
 - A person who has already obtained a permanent residence card or indefinite leave to remain will not need to provide evidence of their residence.

The Home Office may permit alternative evidence of identity to 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. Specific information as to when this may apply to people who lack capacity and children in care is set out in the Home Office [Caseworker guidance](#).

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

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

If this does not cover the full five years then the person may need assisting with obtaining documents for any period of residence prior to the local authority's involvement.

Home Office caseworkers have the discretion to contact applicants if they need to submit additional evidence or address any omissions before making a decision. Further details are set out in the Home Office [Caseworker guidance](#).

Home Office assistance

The following Home Office services have been set up to help applicants who need assistance with the online application process or who do not have a suitable Android device to scan and upload their ID document:

- [EU Settlement Resolution Centre](#) - telephone helpline
- [Email enquiries](#)
- [ID document scanners](#) - located in several councils across the UK for people who do not have a suitable Android device. A small fee may be charged.
- [Assisted Digital Support](#) - available over the phone, at a local centre or in a person's home in some parts of the UK if the person does not have the appropriate access, skills or confidence to complete the form.

People may also require legal advice in addition to these services, particularly if their case is complex, they are a non-EEA family member or they need to explore other options, for example, British citizenship. (See section **A.7**)

A.4 Application outcomes & entitlements

During the transition period, EEA 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 EU Settlement Scheme.

However, after free movement rights end, people with settled status will have different entitlements to those 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 lose their right to live in the UK if they leave for five years. Details are set out in the table below.

	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 (some exceptions apply) • Do not maintain or retain their family relationship with the EEA national (non-EEA family member in some cases)
Employment	Yes	Yes
Benefits, homelessness assistance and a local authority allocation of housing	Can rely on their ILR to meet a right to reside requirement or housing eligibility rules.	Eligibility will be dependent on exercising a qualifying right to reside under EU law, for example, as a worker or family member of a worker. Some groups, including Zambrano carers and people who are unable to work will not be eligible. NB: If a housing/ homelessness applications was made in England before 7 May 2019, this can be continued. Different housing eligibility rules apply in Wales, Scotland and Northern Ireland.
Documentation issued	EEA national: <ul style="list-style-type: none"> • Digital evidence – no physical document issued Non-EEA 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 	

People who are refused will be able to:

- Request an administrative review of the decision – see the Home Office [guidance](#)
- Make another application by 30 June 2021 (if refused before 31 December 2020)

These options are also available to a person who is granted pre-settled status when they think they should have been eligible for settled status. At present it is unclear whether the Government will introduce a right of appeal to challenge a refusal, which it had previously stated would be an option if the UK leaves with a deal.

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

The Government is clear in its [white paper](#), 'the UK's future skills-based immigration system', which outlines the plans for a future immigration system after EU free movement ends, that when an EEA national fails to apply by the necessary deadline, they will not have leave to remain and will not be able to access work, benefits and services. [WP 12.3]

EEA 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. The Government has stated that discretion may be used in certain circumstances if applications are received after 30 June 2021, although no further details have been published. In the event of a no deal situation, the deadline to apply will be 31 December 2021. [WP 12.4]

EEA nationals who fail to apply in time may therefore end up in a position where they lose access to employment and benefits, and will be subject to other sanctions, such as being unable to rent from a private landlord or receive free secondary healthcare.

A.6 What will be different in a 'no deal' scenario?

The EU Settlement Scheme will apply if the UK leaves the EU without a deal having been agreed, although there will be some differences regarding timeframes, transition period and rights to be joined by family members that are summarised in the table below. More details is set out in a Government [policy paper](#). The UK is currently due to leave on 31 October 2019.

	Draft Withdrawal Agreement	'No deal' scenario
Eligibility for settled status	EEA nationals and their family members living in the UK by 31 December 2020 can apply	EU nationals and their family members living in the UK by exit date can apply
Timeframe in which to apply	Must apply by 30 June 2021	Must apply by 31 December 2020 – a six-month 'grace period' won't apply
Remedies to challenge a refusal	Administrative review and right of appeal (TBC)	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 scheme at any time	May be joined by close family members where the relationship existed by exit date, and future children, but only until 29 March 2022
Transition/ implementation period	Free movement will continue until 31 December 2020 The UK's new immigration system is due to be implemented by 1 January 2021 (see section A.8)	There will be no transition period. Free movement could end on exit day or later. Temporary arrangements will be put in place for EU nationals arriving after free movement ends and before the new immigration system is implemented in January 2021

A.7 Legal aid and legal advice

The OISC has [confirmed](#) that providing advice directly to an individual about whether they meet the scheme's requirements **will** constitute regulated immigration advice.

Local authority officers 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 to gather documentary evidence for their applications.

The application process is intended to be straightforward but will be more challenging for some groups, for example, a child in care, a non-EEA national family member, and a person who is struggling to evidence their residence or who may not meet suitability requirements. Legal advice may also be needed to challenge a refusal or a grant of pre-settled status.

In England and Wales, [legal aid](#) is not available for assistance with EU Settlement Scheme applications. Looked after and separated children should be able to access [Exceptional Case Funding](#) until legal aid is reinstated for separated children.

The Government is due to [announce](#) which VCS organisations have been awarded funding to provide vulnerable people with assistance, which may include legal advice. VCS organisations may apply for OSIC registration under special arrangements. The [Welsh](#) and [Scottish](#) Governments are also funding advice and support schemes.

A.8 Future immigration system

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

The date when free movement will end depends on whether a deal is agreed:

- 31 December 2020 - if a deal is agreed
- Exit date (currently 31 October 2019) or later – if the UK leaves without a deal

In either case, new Immigration Rules are expected to apply to EEA nationals from 1 January 2021. 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'. The ability of EEA nationals to work, study and join family members in the UK will be limited as in order to enter and live in the UK, they will need to meet the stringent requirements of the UK Immigration Rules that currently apply to non-EEA nationals, EEA nationals will be subject to the Immigration Rules that apply at that time.

In a no deal situation, [temporary arrangements](#) will be put in place for EEA nationals arriving in the UK after exit date or after the Immigration (European Economic Area) Regulations 2016 have been repealed. EEA nationals may enter the UK for up to three months. If they wish to stay beyond three months, they will need to apply for 'European temporary leave to remain' that will be issued for three years.

Other useful information

- [NRPF Network](#) – Guidance on social services’ support for EEA nationals
- [Coram Children’s Legal Centre](#) – EEA children and young people
- [PRCBC](#) – British citizenship for EEA children
- [Homeless Link](#) – Guidance for homelessness services
- [EU Londoner’s Hub](#) – Mayor of London’s information for EU residents
- [Freemovement](#) blog – Updates and guidance written by immigration lawyers

Sources

Legislation	EU Withdrawal Act 2018 < http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted > Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 < https://services.parliament.uk/Bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal.html > Immigration Rules Appendix EU < https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu >
Government information	Information for applicants < https://www.gov.uk/government/collections/eu-settlement-scheme-applicant-information > Information for councils < https://www.gov.uk/government/publications/eu-settlement-scheme-community-leaders-toolkit > < https://www.gov.uk/guidance/community-engagement-and-eu-exit-guidance-for-local-authorities > < https://www.gov.uk/guidance/eu-exit-no-deal-preparations-for-local-authority-childrens-services-in-england > Home Office Caseworker guidance < https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance > 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 > No deal information Policy paper < https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexite > Temporary leave < https://www.gov.uk/guidance/european-temporary-leave-to-remain-in-the-uk >
Migration Observatory report	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/ >

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Written by Catherine Houlcroft, NRPF Network Principal Project Officer