

Supporting European Economic Area (EEA) nationals with care needs

Guidance for Adult Social Care and care providers

This factsheet provides information to help local authorities establish a person's support options when they are destitute or at risk of homelessness.

The UK residence rights and immigration requirements for European Economic Area (EEA) nationals and their family members have significantly changed following the UK's departure from the European Union (EU) and the end of free movement in the UK.

People who were in receipt of benefits and other services on 30 June 2021 will retain their entitlements if they are still waiting for a decision on their EU Settlement Scheme application that was made before the deadline. However, EEA nationals and their family members who did not apply to the EU Settlement Scheme before the end of the grace period (30 June 2021) will now be unlawfully present in the UK and at risk of losing access to benefits, employment, and other entitlements, although may be able to make a late application if they can show that they have a reasonable excuse for missing the deadline.

With some EEA nationals unable to access benefits, local authorities will need to consider whether statutory duties are engaged to provide accommodation and financial support when a person or family are destitute or at risk of homelessness. Any increase in demand for this 'safety-net' support will give rise to significant pressures on local government, and people who do not qualify for such assistance may be at risk of rough sleeping. This factsheet provides information to help local authorities and care providers correctly establish a person's support options when they are destitute or at risk of homelessness.

Contents:

- Overview: access to social care and accommodation
- Appendix A: Immigration requirements
- Appendix B: Benefit and homelessness eligibility
- Appendix C: Support for EEA nationals who are ineligible for benefits
- Appendix D: Table: establishing eligibility for support
- Appendix E: EU Settlement Scheme

Overview: access to social care and accommodation

Can an EEA national access social care?

Social care is available to an adult regardless of their immigration status. The provision of care and support will be subject to the outcome of a needs assessment, which must be undertaken in line with the Care and Support (Assessment) Regulations 2014 and the Care and support statutory guidance.

The rules and regulations governing financial assessments apply to all adults, regardless of nationality or immigration status, and must take into account their means. An adult may lack the means to contribute to the cost of their care if they are not eligible for benefits or if they fail to apply to the EU Settlement Scheme before 30 June 2021 and subsequently lose access to employment/ benefits.

When will an EEA national be ineligible for benefits?

A person will be ineligible for means-tested benefits, including Universal Credit and Pension Credit, if they:

- Have been granted pre-settled status but are not able to work or otherwise exercise a qualifying right to reside.
- Have a pending EUSS application and are unable to show they were exercising a right to reside on 31 December 2020 (new benefit claims).
- Became unlawfully present because they did not apply to the EU Settlement Scheme by the deadline of 30 June 2021, even if a late application is accepted by the Home Office.
- Entered the UK on/after 1 January 2021 with a visa that is subject to the 'No Recourse to Public Funds' (NRPF) condition.

A person who became unlawfully present because they did not apply to the EU Settlement Scheme by the deadline of 30 June 2021 should not immediately lose access to any benefits they were already receiving, although will be at risk of having their benefits stopped if they do not make a late application to the EU Settlement Scheme.

For more information about benefit entitlement, see Appendix B.

A person who does not have access to benefits or any other resources to fund their accommodation and/ or basic living needs will be at high risk of destitution or homelessness. When an adult who is in this position is receiving care in the community or requests a needs assessment, local authorities will need to consider whether accommodation and financial support can be provided under the Care Act 2014 or other legislation. For information about the legal duties and powers that may apply, including when there is a child under 18 in the household, see Appendix C.

When will an EEA national qualify for care and support under the Care Act 2014?

When a person has care and support needs and is ineligible for benefits, social services may be required to provide care and support under the Care Act 2014.

Eligibility for care and support is determined through the needs assessment and whether the adult has eligible needs (Care and Support (Eligibility Criteria) Regulations 2015). The local authority will have a duty to provide care and support when an adult has eligible care and support needs that arise from, or are related to, a physical or mental impairment or illness (section 18). When an adult has eligible needs, support can be provided in order to meet needs (section 8).

When care and support needs are identified that are not eligible needs, social services must consider whether accommodation and financial support can be provided on a discretionary basis (section 19(1)). Social services are not required to meet needs that arise solely due to the adult's destitution, or the actual or anticipated physical effects of destitution (section 21).

When a person presents to social services as being destitute or homeless, emergency accommodation and financial support can be provided whilst the needs assessment is carried out (section 19(3)). For more information about assessing and meeting need under the Care Act for people with no recourse to public funds, see the [NRPF Network practice guidance](#).

When a person has settled status, pre-settled status, or is otherwise lawfully present in the UK, eligibility for care and support, including accommodation and financial support, will be determined by the needs assessment only. In such cases a human rights assessment will not be required and should not be carried out. For more information about human rights assessments, see Appendix C

What can be done to mitigate destitution and homelessness risks?

People who are living in poverty, homeless people, elderly people, people who lack mental capacity, and people with mental or physical health problems or a disability, are groups that may have missed the deadline to apply to the EU Settlement Scheme. Providing accommodation and financial support when a person is ineligible for benefits, in addition to meeting an adult's care and support needs, is a cost that will put additional pressure on local authority budgets.

The following steps can be taken to help adults who are receiving or require care and support in order to protect their status and avoid destitution:

- Identify EEA nationals and family members of EEA nationals who may need to make a late application to the EU Settlement Scheme and assist them to access legal advice. For more information about the EU Settlement Scheme, see Appendix E.
- Adults with pre-settled status who are receiving care and support in the community or residential setting can be assisted to get legal advice about applying for settled status as soon as they have lived in the UK for five years. They do not need to wait until their leave to remain is due to expire to apply for settled status.
- When a person is refused benefits or a benefits claim is stopped, assist them to access welfare rights advice.
- When a person loses access to benefits, employment or other income, Adult Social Care or Children's Services will need to establish whether the local authority has a duty to provide accommodation and/or financial support whilst entitlement to benefits or an immigration matter is being resolved.
- When a destitute adult with care and support needs does not meet the Care Act eligibility criteria, Adult Social Care will need to determine whether support can be provided on a discretionary basis.
- When an adult who is at risk of rough sleeping does not qualify for support under the Care Act, the housing department/ authority will need to determine whether any assistance can be provided on public health grounds.

Appendix A: Immigration requirements

European free movement no longer applies in the UK. EEA nationals and their family members are now subject to the same immigration laws and entry requirements as non-EEA nationals. However, the residence rights and entitlements of EEA nationals and their family members who were living in the UK before the end of the transition period are protected by the Withdrawal Agreement. EEA nationals and their family members who were living in the UK by 11pm on 31 December 2020 had until 30 June 2020 to apply to the EU Settlement Scheme to obtain settled or pre-settled status. Those who can demonstrate that they have a reasonable excuse for missing the deadline may be able to make a late application. A person's immigration status will affect what entitlement they have to work or access services in the UK.

What type of immigration status could an EEA national have?

Key groups:

- Granted settled or pre-settled status under the EU Settlement Scheme.
- Pending EU Settlement Scheme application made before the end of the grace period (30 June 2021).
- Granted leave to enter on/ after 1 January 2021 to visit, work, or study etc.
- Unlawfully present – a person will be in this position if one of the following scenarios apply:
 - They failed to apply to the EU Settlement Scheme by 30 June 2021 (even if a late application is accepted by the Home Office).
 - They are refused status under the EU Settlement Scheme (and any subsequent appeal is unsuccessful).
 - They have overstayed a grant of leave to enter or remain.

Additionally, some non-EEA family members may be issued with a EUSS Family Permit in order to enter the UK to join an EEA national who has settled or pre-settled status.

What is a person's position if they made an EU Settlement Scheme application before the deadline of 30 June 2021 and are still waiting for a decision?

Government guidance published on [gov.uk](https://www.gov.uk) for landlords (right to rent), employers (right to work), and the NHS (overseas visitors charging), states that a person can rely on their Confirmation of Acceptance notice to evidence that they have a pending application in order to access services.

The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) [Regulations 2020](#) (the 'Grace Period Regulations') only preserve the lawful status and entitlements of a person whilst their EU Settlement Scheme application is pending if they were exercising a right to reside on 31 December 2020. However, the Home Office does not distinguish in the Confirmation of Acceptance whether a person was exercising a right to reside or not on 31 December 2020. Therefore, an application made before the deadline appears to protect a person's entitlements, regardless of whether the Grace Period Regulations apply to them. For a summary of the services that people in this position can access, see the [rights table published by the 3 million](#).

In order to establish eligibility for benefits and homelessness assistance, the question of whether a person was exercising a right to reside on 31 December 2020 will be relevant. Therefore, some people who made their EU Settlement Scheme applications before the deadline may have been unable to qualify for benefits and will not have access to these whilst their decision is pending. For more information about benefit entitlement, see Appendix B.

What is a person's position if they did not apply to the EU Settlement Scheme by the deadline of 30 June 2021?

A person who has not applied to the EU Settlement Scheme will be unlawfully present in the UK. They will be at risk of losing access to employment and benefits, as well as being subject to other sanctions, such as being unable to rent from a private landlord in England or access free secondary healthcare.

However, if a person can show that they have reasonable grounds for failing to meet the deadline, the Home Office will accept a late application. Examples of 'reasonable grounds' are given in the [Home Office caseworker guidance](#). It appears that late applications are likely to be accepted from children, people who lack mental capacity, and adults with care and support needs. If a late application is accepted, a person will continue to be without lawful status in the UK until they are granted settled or pre-settled status. For more information, see section A.1 in Appendix E.

When an EEA national without leave to remain is encountered by Immigration Enforcement, they will be provided with a written notice giving them an opportunity to make a late application within 28 days if they are identified as someone who could have applied to the EU Settlement Scheme. No enforcement action will be undertaken during the 28 day period. The person will need to demonstrate that they have reasonable grounds for failing to meet the deadline if they make an application and will need to seek legal advice as soon as they are issued with the notice. This policy is outlined in the [Home Office caseworker guidance](#).

A person who failed to apply before the deadline may not immediately lose access to employment or some services, including pre-existing benefit claims. Employers and landlords are not being required by the Home Office to make retrospective checks, although if a person is identified as not having applied to the EU Settlement Scheme, they will need to take action to make a late application or risk losing their entitlements.

Anyone who was not working, or receiving benefits or other services, at the end of the grace period on 30 June 2021 will not be able to access employment, benefits, and some other services, until they are granted settled or pre-settled status. For information about benefit entitlement, see Appendix B. For a summary of the services people in this position can access, see the [rights table published by the 3 million](#). Landlords, employers, and the NHS will need to refer to guidance on [gov.uk](#) relating to right to work checks, right to rent checks, and NHS overseas visitors charging.

What is a person's position if they entered the UK on/ after 1 January 2021?

EEA nationals who are not entitled to apply to the EU Settlement Scheme are required to obtain leave to enter under the Immigration Rules for a specific purpose, such as to visit, work or study.

A person entering as a visitor will not need to apply for a visa in advance of their arrival and can use their passport to enter through e-gates. Visitor leave is granted for six months and is subject to conditions prohibiting work and access to public funds (benefits and housing assistance). For more information, see the Home Office [guidance for visitors from the EEA](#).

A person who wants to study, work, or join family in the UK will need to obtain a visa in advance of their arrival. E-visas will be issued to EEA nationals rather than physical status documents. For more information, see the Home Office guidance about [the UK's points-based immigration system: information for EU citizens](#).

What rights do family members have who are not yet in the UK?

Certain family members of an EEA national with settled status or pre-settled status will be entitled to apply to the EU Settlement Scheme, instead of obtaining leave to enter under the family migration rules. This only applies to close family members where the relationship existed on 31 December 2020 and continues to exist, and future children. Close family members are limited to:

- Spouses, civil and unmarried partners
- Dependent children and grandchildren
- Dependent parents and grandparents (dependency needs to be proven)

For more information, see the Home Office [guidance for family members](#).

Non-EEA national family members can obtain an [EU Settlement Scheme family permit](#) in order to enter the UK for this purpose. They must apply to the EU Settlement Scheme within three months, although they may be able to make a late application if they have a reasonable excuse if they do not apply in time.

Appendix B: Benefits and homelessness eligibility

When will an EEA national be eligible for benefits or homelessness assistance?

The person's immigration status will determine their eligibility for means-tested benefits or homelessness assistance (under Part VII of the Housing Act 1996 in England), and whether the person will also need to demonstrate a qualifying right to reside. Eligibility decisions that are based on a person exercising a right to reside, or qualifying right to reside, will be made in line with the Immigration (European Economic Area) Regulations 2016, as they were in force on 31 December 2020 and subject to any amendments. This section outlines the basic principles that apply, according to the person's immigration position. Specialist advice may need to be obtained when a person needs to demonstrate a right to reside or when a person has been refused benefits.

For the purpose of this factsheet, 'benefits' refers to means-tested benefits, such as Universal Credit, Housing Benefit, Income-related Employment and Support Allowance, and Pension Credit.

Different eligibility rules apply to Personal Independence Payment, Disability Living Allowance, Attendance Allowance, and Carer's Allowance, so a person who is ineligible for

means-tested benefits may be able to claim these if they qualify. However, these benefits are not intended to cover a person's housing and/ or basic living costs, so a person may be at risk of destitution and homelessness if they are reliant on one of these benefits as their only source of income.

The full eligibility rules for Part VII homelessness assistance (England) are set out in [chapter 7 of the Homelessness code of guidance](#). Local authorities can also refer to a letter from MHCLG to Chief Executives, which confirms the eligibility rules that apply from 1 July 2021. Different housing eligibility rules apply in Wales, Scotland and Northern Ireland.

Settled status

A person with settled status (indefinite leave to remain) will be eligible.

Pre-settled status

A person with pre-settled status will need to demonstrate that they are exercising a qualifying right to reside in order to be eligible, such as the right to reside as a worker, self-employed person, or family member of a worker/ self-employed person.

A person who is unable to work due to a disability or health issue, or due to caring responsibilities, may not qualify for benefits or homelessness assistance and will be at high risk of homelessness and destitution.

In the case of *Fratila v the Secretary of State for Work and Pensions*, the Court of Appeal ruled that the Universal Credit eligibility regulations unlawfully prevent people from being able to rely on their pre-settled status as a qualifying right to reside. The Supreme Court hearing of the Government's appeal against this decision has been stayed pending the outcome of a Court of Justice of the European Union (CJEU) case that will consider the same issue. The Advocate General of the CJEU has given an opinion on the case and a final ruling is expected in July. The Law Centre Northern Ireland [explains what the opinion might mean for benefit claimants](#). Anyone with pre-settled status who has been refused Universal Credit should seek advice about challenging this decision or make an application if they have not previously applied. For more information, see the Child Poverty Action Group's [summary of the case](#), which includes a link to a useful guidance note for benefit advisers. See also the DWP [guidance note for housing benefit assessors](#).

A person can rely on their pre-settled status to meet the residence requirement for Personal Independence Payment, Disability Living Allowance, Attendance Allowance, or Carer's Allowance.

Pending EU Settlement Scheme application made before 30 June 2021

The [DWP has confirmed](#) that if a person is receiving benefits, their entitlements will continue until they get a decision on their application. Therefore, a pre-existing benefit claim should continue whilst the person's EU Settlement Scheme application is pending, so long as the person continues to qualify for the benefit in question.

For new benefit claims, a person will only qualify if they meet the following two tests:

- They were exercising a right to reside on 31 December 2020.

- They are exercising a qualifying right to reside at the time of their benefit application. (See the sub-section on 'pre-settled status' for more information about a 'qualifying right to reside'.)

A person will be able to meet the residence requirement for Personal Independence Payment, Disability Living Allowance, Attendance Allowance, or Carer's Allowance if they were exercising a right to reside on 31 December 2020.

In its letter to local authorities, MHCLG confirms that EEA nationals and their family members who applied to the EUSS before the deadline of 30 June 2021, but whose application is pending (including the outcome of an appeal), will still be eligible for assistance. For a person in this position to be eligible, they must also demonstrate that they were exercising a right to reside on 31 December 2020 and are exercising a qualifying right to reside when they apply.

A person who was not exercising a right to reside on 31 December 2020, or did have a right to reside but is unable to demonstrate a qualifying right to reside will be at high risk of homelessness and destitution whilst their EU Settlement Scheme application is pending.

Unlawfully present – failed to apply to the EU Settlement Scheme by 30 June 2021

EEA nationals who are currently receiving benefits may have already been contacted by the Home Office or Department for Work and Pensions to remind them to apply to the EU Settlement Scheme. In a letter to local authority Revenue and Benefits staff, the DWP has advised that benefit claimants who failed to apply by 30 June 2021 are likely to be contacted by the Home Office again in July and issued with a notice advising them to make a late application within 28 days. Those that do not apply will be referred to the DWP and provided with a further reminder to take action. Anyone who fails to make a late application will risk having their benefits stopped.

In its letter to local authorities, MHCLG confirms that EEA nationals who have not applied by the deadline and are currently being housed in temporary accommodation under Part VII of the Housing Act 1996, are no longer owed a duty under homelessness legislation.

A person will not be eligible if they make a new benefit claim or homelessness application. They will be 'subject to immigration control' (section 115 Immigration and Asylum Act 1999) and excluded from claiming public funds (benefits and housing assistance). If a late application is accepted by the Home Office, the person will continue to have no recourse to public funds until they are granted settled or pre-settled status.

Leave to enter as a visitor, student or worker (granted on/after 1 January 2021)

A person with leave to enter to visit, study or work in the UK will be subject to the 'no recourse to public funds' (NRPF) condition. They will be subject to immigration control and will be excluded from claiming any benefits classed as public funds, or assistance under Parts VI and VII of the Housing Act 1996.

However, an exemption may allow nationals of some EEA states to claim Housing Benefit or Pension Credit whilst they have leave that is subject to the NRPF condition. This exemption

does not apply to Universal Credit. For more information, see the Child Poverty Action Group's [article about advising EEA nationals](#).

Further information: benefit and homelessness eligibility rules

The following organisations provide more information about benefit and/ or housing eligibility rules:

- [Citizens Advice](#)
- [Child Poverty Action Group](#)
- [Housing Rights Information](#)
- [Shelter legal](#)

Appendix C: Support for EEA nationals who are ineligible for benefits

When a person is destitute or at risk of homelessness, and is ineligible for benefits and homelessness assistance (Part VII Housing Act 1996), the local authority may have a duty to provide accommodation and financial support.

In its letter to local authorities, after confirming that EEA nationals who have not applied by the deadline are no longer owed a duty under homelessness legislation, MHCLG advises that:

‘...local authorities should consider their duties under legislation such as Children Act 1989 or Care Act 2014 to support homeless households (those with children and vulnerable adults) who cease to be eligible for homelessness assistance.’

Social services can provide accommodation and financial support when the following duties or powers are engaged:

- Section 17 of the Children Act 1989 – families with a child under 18
- Leaving care provisions of the Children Act 1989 – former looked after children up to age 21 (or 25 if in education/ training)
- Sections 18 or 19(1) of the Care Act 2014 – adults with care and support needs
- Section 117 of the Mental Health Act 1983 – adults being discharged from compulsory detention under the Mental Health Act 1983

Different legislation, enabling similar intervention, applies in Wales, Scotland and Northern Ireland.

Adults who are sleeping rough or are otherwise homeless will not qualify for social services' support if they do not have care needs, and therefore have limited support options. During the Covid-19 pandemic, local authorities in England will need to consider whether powers to provide accommodation on public health grounds are engaged (s.138 Local Government Act 1972 & s.2B National Health Services Act 2006). For more information, see our factsheet: [Supporting people with no recourse to public funds during the coronavirus \(Covid-19\) pandemic](#). Local authorities may also have established some accommodation provision for people who are ineligible for benefits through utilising government funding streams or in partnership with voluntary and community sector providers.

When will a family or adult qualify for social services' support?

For families with a child under 18, eligibility for accommodation and financial support provided under section 17 of the Children Act 1989 is determined through a child in need assessment. A child will be in need if the family are destitute or at risk of homelessness and have no access to benefits or other resources to cover their housing and living costs. For more information, see our [web page about social services' support for families](#).

For adults, eligibility for accommodation and financial support provided under the Care Act 2014 is determined through a needs assessment. Assistance may only be provided to adults when they have care and support needs that arise from, or are related to, a physical or mental impairment or illness. Social services are not required to meet needs that arise solely due to the adult's situation of destitution. For more information, see our [web page about social services' support for adults](#).

Emergency support may be provided to a family or adult whilst the relevant assessment is carried out.

When an EEA national is lawfully present in the UK, eligibility for social service's support will depend on the outcome of the needs assessment only. In such instances, a human rights assessment is not required and should not be undertaken to determine whether social services' support can be provided.

An EEA national will be lawfully present if they have one of the following types of immigration status:

- Settled status (indefinite leave to remain)
- Pre-settled status (five years' limited leave to remain)
- Pending EU Settlement Scheme application that was made prior to 30 June 2021 if person was exercising a right to reside on 31 December 2020 (i.e. their lawful status is protected by the Grace Period Regulations)
- EU Settlement Scheme family permit
- Leave to enter/ remain as a visitor, student, worker, or under another category of the Immigration Rules

When is a human rights assessment required?

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 places a bar on the provision of support under the Care Act 2014 or section 17 of the Children Act 1989 when a person, who is 'in breach of immigration laws', can return to their country of origin to avoid a human rights breach that may arise due to their destitution in the UK.

When Schedule 3 applies, social services will carry out a human rights assessment to determine whether there are any legal or practical barriers preventing the person from returning to their country of origin. When there are no barriers preventing return, the local authority may refuse or withdraw support on the basis that destitution can be avoided by return to country of origin.

A human rights assessment is only required when an EEA national is 'in breach of immigration laws'. However, in practice there will be limited circumstances when the local

authority will be able to withhold or withdraw support on the basis that an EEA national can return to their country of origin, due to the Government's commitment in the Withdrawal Agreement to allow people with reasonable grounds for missing the deadline to be able to make a late application.

A person will be 'in breach of immigration laws' if one of the following scenarios applies:

- They were living in the UK by 31 December 2021 and failed to apply to the EU Settlement Scheme by the end of the grace period (30 June 2021).
- They entered with a EUSS family permit and failed to apply to the EU Settlement Scheme by 30 June 2021 or within three months if they entered on/ after 1 April 2021.
- They have a pending EU Settlement Scheme application that was made prior to 30 June 2021 but were not exercising a right to reside on 31 December 2020 (i.e. their lawful status is not protected by the Grace Period Regulations).
- They become an overstayer following the expiry of their leave to enter.

When a person is identified as being required to apply to the EU Settlement Scheme, in the first instance it will be necessary to provide them with an opportunity to access legal advice with a view to making a late application. If the person qualifies for support under section 17 of the Children Act or the Care Act, accommodation and financial support can be provided whilst legal advice is being accessed and until their application is finally determined. In such cases the human rights assessment would need to be paused whilst the person is taking steps to obtain status under the EU Settlement Scheme and whilst their application is pending.

A human rights assessment can be undertaken in the usual way when a person is not entitled to apply to the EU Settlement Scheme and is 'in breach of immigration laws'. This would apply to a person who has become an overstayer following the expiry of visitor leave or another type of leave to enter. For more information about human rights assessments, see our [guidance for councils](#).

What help is available to a person who wants to return?

The Home Office may be able to assist an EEA national with a [voluntary return](#) if they are without lawful status or leave in the UK.

When an EEA national expresses a wish to return to their country of origin, they should be provided with the opportunity to seek legal advice about how this will impact on their future residence rights and whether they will be affected by a re-entry ban.

A person with pre-settled status who wishes to return cannot get assistance from the Home Office. If a local authority offers to provide assistance with return, the person would need to be given an opportunity to obtain legal advice so that they understand how any absences from the UK will affect their ability to obtain settled status if they decide to come back to the UK at a later date.

Appendix D: Table establishing eligibility for support

Immigration status of EEA national or family member	Means-tested benefits	Homelessness assistance (England)	Social services' support (accommodation & financial support)	Human rights assessment needed? (If eligible for social services' support)
Settled status	Eligible.	Eligible.	Child in need/needs assessment	No
Pre-settled status	Will need to demonstrate a qualifying right to reside.	Will need to demonstrate a qualifying right to reside.	Child in need/needs assessment	No
Pending EU Settlement Scheme application made before the end of the grace period (30 June 2021)	Already in receipt of benefits – will continue until EU Settlement Scheme application is concluded. New claim - will need to demonstrate they were exercising a right to reside on 31 December 2020 and are exercising a qualifying right to reside when the application is made.	Will need to demonstrate they were exercising a right to reside on 31 December 2020 and are exercising a qualifying right to reside when the application is made.	Child in need/needs assessment	No
Unlawfully present - is entitled to apply to the EU Settlement Scheme but has not made an application	Already in receipt of benefits – should continue for a short period but benefits will stop if they do not take action to make a late application to the EU Settlement Scheme. New claim - will be ineligible.	If already receiving assistance will no longer be owed a duty under homelessness legislation. New application - will be ineligible.	Child in need/needs assessment	Yes - but cannot progress whilst person is seeking advice/ making a late application to the EU Settlement Scheme.

Unlawfully present - pending EU Settlement Scheme made after 30 June 2021	<p>Already in receipt of benefits – should continue if they have made a late application within the given notice periods following correspondence from the Home Office/ DWP.</p> <p>New claim - will be ineligible.</p>	<p>If already receiving assistance will no longer be owed a duty under homelessness legislation.</p> <p>New application - will be ineligible.</p>	Child in need/ needs assessment	Yes - but cannot progress whilst person is seeking advice/ making a late application to the EU Settlement Scheme.
Valid leave to enter granted on/ after 1 January 2021 as a visitor, student or worker	Ineligible when leave is subject to the 'No Recourse to Public Funds' (NRPF) condition.	Ineligible when leave is subject to the 'No Recourse to Public Funds' (NRPF) condition.	Child in need/ needs assessment	No
Unlawfully present - overstayer following period of visitor/ student/ worker leave	Ineligible.	Ineligible.	Child in need/ needs assessment	Yes – can proceed as usual.

Appendix E: EU Settlement Scheme

The information in this appendix is a summary of the EU Settlement Scheme to help local authorities identify and support residents who need to make an application.

For full details, please refer to the following government information:

- [EU Settlement Scheme: introduction for local authorities](#)
- [EU Settlement Scheme applicant information](#)
- [EU Settlement Scheme caseworker guidance](#) (the main guidance is 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members')
- [Appendix EU of the Immigration Rules](#)

A.1 Who needs to apply?

EEA nationals

Anyone who is a citizen of the countries listed in the table below needs to apply, including a person who holds an EEA permanent residence document.

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

All references to 'EEA nationals' in this document include Swiss nationals.

The following people do not need to apply but may do so if they wish:

- Irish citizens – although any family members who do not hold Irish or British citizenship will need to apply.
- A person who already holds indefinite leave to remain.

Family members

Family members of EEA citizens will also need to apply. The family member may be an EEA national themselves or citizen of a non-EEA country.

Family members include:

- 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, i.e.:
 - 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

Until 30 June 2021, a non-EEA national primary carer of a British citizen, usually a child, had a derivative right to reside under European law as a Zambrano carer. The EU Settlement Scheme has been open to Zambrano carers but a Home Office policy prevented Zambrano carers from being able to obtain pre-settled or settled status if they had already been granted a different form of leave to remain under the Immigration Rules, such as under Appendix FM as the sole carer of a British child.

A [recent High Court decision](#) has found this policy to be unlawful. The Home Office is currently in the process of appealing this decision so it is not clear what the final outcome will be, but people who are affected may need to take action now. Anyone who had a derivative right to reside as a Zambrano carer on 31 December 2020 may be able to apply to the EU Settlement Scheme even though the deadline has passed. For some Zambrano carers, there will be clear advantages of obtaining status under the EU Settlement Scheme, but for others there could be disadvantages. Therefore any individual who may be affected should seek legal advice about how to proceed. This includes anyone who has previously applied to the EU Settlement Scheme and has been refused or has previously been advised that they cannot apply because they already have leave to remain. For more information, see [Hackney Migrant Centre's guidance note](#).

Children in care and care leavers

Local authorities are required to ensure that EEA children in care (under a care order or voluntary care), are identified and assisted to make applications under the EU Settlement Scheme. Where the local authority holds parental responsibility for a child, it must apply on the child's behalf.

Legal advice may need to be obtained for a child, which should explore all of their available options, including applying for British citizenship.

For care leavers age 18 or older, the local authority may need to fund legal advice as legal aid will not be available. When a care leaver is entitled to leaving care support, the local authority may need to fund accommodation and financial support if the care leaver is ineligible for benefits. See Appendix B for information about benefit entitlement.

For more information about assisting children in care and care leavers to apply, see the following Home Office guidance:

- [EU Settlement Scheme: looked-after children and care leavers guidance](#)
- [EU Settlement Scheme – Home Office Looked After Children and Care Leavers Survey, 2020](#)

The following organisations provide information that is specific to children and care leavers:

- [Coram Children's Legal Centre website](#)
- [PRCBC information about British citizenship for EEA children](#)

Adults with care and support needs

Information has now been added to the Home Office caseworker guidance with regards to assisting adults who have care and support needs to apply. This includes adults who lack capacity, who are living in residential care or who are receiving care in the community. For more information, see the [Home Office caseworker guidance](#).

Late applications

The deadline to apply to the EU Settlement Scheme was 30 June 2021. The Home Office will only accept an application made after this date if the person can show that they have reasonable grounds for making a late application. This will be considered on a case by case basis. The [Home Office caseworker guidance](#) provides information about when a late application 'will normally' be accepted and what evidence the person must submit to demonstrate that they have a reasonable ground for applying after the deadline.

The guidance states that a late application will normally be accepted from a child (including a child in care, care leaver and child who is now an adult), where a parent, guardian or local authority has failed to apply on their behalf.

The guidance also states that a late application will normally be accepted when a person:

- Lacks the physical or mental capacity to apply.
- Has care and support needs and is residing in a residential care home or is receiving care and support services in their own home.
- Had a serious medical condition (or was undergoing significant medical treatment) in the months before/ around the time of the deadline.
- Is a victim of modern slavery or human trafficking.
- Is/was a victim of domestic abuse or is/ was in a controlling relationship or situation which prevented them from applying.
- Can demonstrate other compelling or compassionate reasons, such as failing to apply due to a lack of permanent accommodation in certain circumstances, or being unable to obtain evidence of identity and nationality or residence.

A.2 Eligibility for settled status

A person 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 and 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 European 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. Full details are set out in the [Home Office caseworker guidance \('EU Settlement Scheme: suitability requirements'\)](#).

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.

The Home Office may also exercise its discretion to refuse an application if it is proportionate to do so in certain circumstances, for example, when the person has submitted false or misleading information or is subject to a removal decision made under the EEA Regulations on the basis that they are not exercising or are misusing their EU free movement rights.

A.3 Application process

The majority of applicants will need to apply online. There is no fee for the application.

Some people are required to apply using a paper form, such as a person with a derivative right as a Zambrano carer or when alternative evidence of identity is being submitted. Paper forms can now be [downloaded from gov.uk](#).

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.

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 if these do not exist or do not cover the full period, the person will be invited to provide other evidence of residence.
- Other evidence of residence must be from an 'official or impartial' source, with examples listed in [Home Office guidance on evidence of residence](#). 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 assistance with obtaining documents for any period of residence prior to the local authority's involvement.

Home Office caseworkers have the discretion to contact applicants who may need to submit additional evidence or to address any omissions before making a decision.

Home Office assistance

The Home Office has set up various services to help applicants who need assistance to apply.

A person with a general enquiry can contact the [EU Settlement Resolution Centre telephone helpline](#) or [email enquiry service](#).

A person who does not have a suitable Android device to scan and upload their ID document can attend a council that has a document scanner service. This may incur a small fee. The Home Office publishes a [list of councils with ID document scanners](#).

A person who does not have the appropriate access, skills or confidence to complete the application may be able to get [Assisted Digital Support](#) from the Home Office.

A.4 Application outcomes & entitlements

Table: entitlements a person will have when they are granted settled status or pre-settled status.

	Settled status (5 years' residence)	Pre-settled status (Less than 5 years' residence)
Status granted	Indefinite leave to remain	Limited leave to remain for 5 years
Permitted absence from the UK	Will be retained if the person returns to the UK after an absence which is less than 5 years.	Will be retained if the person returns to the UK after an absence that is less than 2 years but this may affect their entitlement to settled status (see below).

Qualifying for settled status after being granted pre-settled status	N/A	<p>May apply as soon as have lived in the UK for 5 years, regardless of when pre-settled status was granted.</p> <p>May not obtain settled status if they:</p> <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) • Are a non-EEA national family member and do not maintain or retain their family relationship with the EEA national (in some cases)
Employment	Permitted – unrestricted	Permitted - unrestricted
Benefits, homelessness assistance and a local authority allocation of social housing	Can rely on their settled status to meet eligibility tests.	Cannot rely on their pre-settled status to meet eligibility tests. Eligibility will be dependent on exercising a qualifying right to reside, for example, as a worker or family member of a worker. Some groups will not be eligible. Different housing eligibility rules apply in Wales, Scotland and Northern Ireland.
Documentation issued	<p>EEA national:</p> <ul style="list-style-type: none"> • Digital evidence – no physical document issued <p>Non-EEA national family member:</p> <ul style="list-style-type: none"> • Digital evidence and biometric residence document 	
Right to be joined in the UK by family members	<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. Non-EEA national family members will need to obtain an EU Settlement Scheme Family Permit to enter the UK. • 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

When an EU Settlement Scheme application is refused, the person will be able to request an [administrative review of the decision](#) or lodge an appeal against the refusal.

These options are also available to a person who is granted pre-settled status if they think that they should have been granted settled status.

A.5 Access to legal advice and other assistance

Now that the deadline has passed, a person who needs to apply must demonstrate to the Home Office that they have reasonable grounds for making a late application. Therefore it will be highly advisable for a person to get legal advice before submitting their application.

The Office of the Immigration Services Commissioner (OISC) has provided [guidance for EU Settlement Scheme advisers](#) that must be referred to in order to establish whether a person can be assisted to apply by a level one adviser. Vulnerable residents, people with complex cases, and people who are making late applications when they do not clearly meet the reasonable grounds threshold will require the assistance of a level two adviser.

In England and Wales, [legal aid](#) is not available for EU Settlement Scheme applications made by adults, children within families, and care leavers age 18+. Looked after children, and children who are separated from their parents or do not live with a person who has parental responsibility for them, will be able to access legal aid, subject to a means test. The Home Office has published [a list of organisations in England that have been funded to assist people to apply](#).

The Welsh Government has published [a list of organisations in Wales that can advise on the EU Settlement Scheme](#).

The Scottish Government has published [online information to assist EEA nationals living in Scotland](#).

The Mayor of London has published a [series of resources for advisers produced by Here for Good](#), including information about complex cases and working with the homeless. Information about the EU Settlement Scheme on the [European Londoners Hub](#) can be accessed by anyone in the UK.

See also the EU Citizens rights [database of local organisations that assist EEA nationals](#).

© Islington Council, 7 July 2021 version 2
Written by: Catherine Houlcroft, NRPF Network Principal Project Officer
Contact: nrpf@islington.gov.uk