

NRPF Helping European Economic Area (EEA) residents to secure status under the EU Settlement Scheme

network

No Recourse to Public Funds Network

Following the UK's departure from the European Union (EU), local authorities need to take steps to help European Economic Area (EEA) national residents secure their future rights to live in the UK by applying for leave to remain under the EU Settlement Scheme.

The EU Settlement Scheme has been fully operational since March 2019. Although the Government has [reported](#) that over three million people have already applied, particular groups have faced difficulties making applications and there are concerns that many vulnerable people and children are still unaware that they need to apply. It is essential for local authorities to continue to raise awareness amongst affected residents and staff who are working with EEA nationals.

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

This factsheet contains information on:

1. Assisting EEA residents
 2. Benefit eligibility
 3. Social services' support for adults & families
 4. Children in care and care leavers
- Appendix: EU Settlement Scheme

The UK has now left the European Union. EU free movement law continues to apply to EEA nationals living in or entering the UK before 31 December 2020.

EEA nationals and their family members living in the UK by 31 December 2020 will have until 30 June 2021 to apply under the EU Settlement Scheme to secure their right to remain in the UK after 30 June 2021.

EEA nationals who do not apply under the EU Settlement Scheme by 30 June 2021 may become unlawfully present after that date.

EEA nationals arriving in the UK on or after 1 January 2021 will be subject to UK immigration laws on the same basis as non-EEA nationals.

1 Assisting EEA residents

Local authority officers can provide residents with general information about the EU Settlement Scheme and signpost people to information or to legal advice providers. They can also help people who are engaged with council services to gather documentary evidence for their applications. Some suggestions about how to do this are set out below. See section **A.1** for good practice points relating to the EU Settlement Scheme.

To raise awareness and to assist all EEA residents:

- Provide information to residents and employees on the council website, through communications and when services are accessed.
- Identify vulnerable EEA nationals and their family members who are engaged with council services in order to make them aware of the process and consider how they may be helped to overcome any barriers in making an application, including signposting to legal advice and Home Office assistance. (See appendix)
- Signpost to welfare rights advice services for help accessing benefits or challenging benefits refusals. (See section 2)
- Explore options for providing residents with advice on their rights, for example, running advice clinics or applying for Home Office grant funding in partnership with legal representatives.

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

- Identify all EEA nationals, including children, and non-EEA family members, who are being accommodated by social services or receiving assistance in the community, such as care packages or Early Help. (See sections 3 & 4)
- Support people to access legal advice if they need assistance with their application.
- 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. In some cases, it may be possible to make an application using alternative evidence of identity. If a document cannot be obtained, help the person to evidence this, for example, 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 appendix A.4)
- Help individuals and children to document their residence in the UK for any period they are relying on prior to being assisted by social services. (See appendix A.4)
- Councils using the [NRP Connect](#) database should make sure any information about EEA nationals who are being financially supported is up to date.

Access to legal advice

Although making an application will be straightforward for many people, certain groups will have more complex situations and will require legal advice. (See appendix A.1 & A.2)

The Office of the Immigration Services Commissioner (OISC) has provided [guidance](#) on what is deemed to be immigration advice and has introduced [special arrangements](#) for organisations to apply for registration at level one to solely advise on the EU Settlement Scheme. It is open to local authorities to apply for OISC registration. However, level one advisers are only able to provide limited advice and assistance. Vulnerable residents and people with complex cases will usually 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 or 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.

Several [VCS organisations](#) are currently funded by the Home Office until the end of June 2020 to assist vulnerable people to apply. Local authorities and VCS organisations may apply for new [grant funding](#). The EU Commission is [funding solicitors](#) to attend events free of charge on request. The [Welsh](#) and [Scottish](#) Governments are also funding advice.

For more information, see:

- [Home Office](#) – Local authority toolkit
- [EU citizens rights](#) – Search for local advice services and events
- [EU Londoner's Hub](#) – Mayor of London's information for EU residents
- [Freemovement](#) blog – Updates and guidance written by immigration lawyers

2 Benefit eligibility

EEA nationals are not subject to the 'no recourse to public funds' (NRPF) condition and this is not applied to grants of settled or pre-settled status. EEA nationals can therefore claim benefits, homelessness assistance and a local authority allocation of social housing when they meet the respective eligibility requirements.

These rules are complex. As a general rule, to be eligible for means-tested benefits, a person must have obtained settled status or be exercising a qualifying right to reside under EU free movement law, for example, as a:

- Worker or self-employed person,
- Person with a permanent right of residence, or
- Family member of an EEA national exercising such a right to reside.

An EEA national who does not have settled status may not be eligible for benefits if they are unable to work.

EEA nationals who have not obtained settled status may not be eligible for benefits if they are unable to work. This situation may arise when a person has caring responsibilities, an illness or disability, or is experiencing homelessness. Families and adults with care needs who are ineligible for benefits will need to be referred to social services to establish whether the local authority has a duty to provide accommodation and financial support.

For more information about benefit and housing eligibility rules, see:

- [Citizens Advice](#) – Benefits
- [CPAG](#) – Resources to help challenge benefit refusals
- [Housing Rights Information](#) – Housing

3 Social services' support for adults and families

When an EEA national is ineligible for benefits and is experiencing destitution or is at risk of homelessness, social services may have a duty to provide accommodation and financial

[support](#). However, these duties only apply to families with children under 18 and adults with care needs. Eligibility is established through a needs assessment.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 places a bar on providing social services' support to an EEA national, unless support is necessary to prevent a breach of the person's human rights or EU treaty rights. A human rights assessment will also be carried out by the local authority to determine whether the EEA national can be expected to return to their country of origin to avoid being destitute in the UK, or whether the bar on providing support may be lifted, for example, when a person is unable to travel due to a medical condition.

An EEA national who appears to qualify for settled status cannot be refused support on the basis that they could return to their country of origin because they will have the same entitlements as any other person with indefinite leave to remain in the UK. A human rights assessment should not be completed in these cases. Instead, support may need to be provided for a short period whilst the person is assisted to obtain legal advice to make their settled status application and/or is transferring to mainstream benefits.

When an EEA national appears to qualify for pre-settled status, the situation is more complex and further advice about how to proceed will need to be sought from the local authority's legal department. We will be publishing new guidance on human rights assessments for EEA nationals in due course.

For more information about how social services' duties apply to EEA nationals, see:

- NRPF Network - [Practice guidance](#)
- NRPF Network & COMPAS - [Web tool: support for migrant families](#)

4 Children in care and care leavers

Local authorities are required to take steps 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.

An EEA national child or care leaver will need to be supported to obtain legal advice to apply under the EU Settlement Scheme. Advice should be obtained that explores all of their available options, including applying for British citizenship. As legal aid is not available for care leavers who are age 18 or older, there will be instances where the local authority may need to fund legal advice. (See section 1)

When an EEA national care leaver is entitled to leaving care support, the local authority may need to fund accommodation and financial support if they are ineligible for benefits. (See section 2)

For information specific to children and care leavers, see:

- [Coram Children's Legal Centre](#)
- [PRCBC](#) – British citizenship for EEA children
- [Greater Manchester Immigration Aid Unit](#) – Report on applications for children in care

Appendix – EU Settlement Scheme

The information below is a summary of the EU Settlement Scheme. For full details please refer to:

- [Immigration Rules](#)
- Home Office - [Information for applicants](#)
- Home Office [Caseworker guidance](#)

All references to 'EEA nationals' include Swiss nationals.

EEA nationals continue to exercise European free movement rights 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 Good practice points

The Home Office has published [information](#) for local authority staff about what they can do to assist children in care, care leavers, and adults receiving care or who lack capacity, to apply.

A person may need signposting to legal advice for help with their application, particularly if they:

- Are a child, non-EEA family member or Zambrano carer,
- Have a criminal conviction,
- Are struggling to evidence their residence or identity, or
- Are challenging a refusal.

Although the deadline to submit an application is 30 June 2021, applying or preparing to apply well in advance of this date is highly advisable for the following reasons:

- Obtaining proof of identity has proven difficult for some EEA nationals, particularly for people who are homeless and children in care, and may lead to a delay in being able to submit an application.
- During the grace period (between 1 January and 30 June 2021), there will be two groups of EEA nationals who do not have immigration documentation but will need to be distinguished by decision makers due to their different entitlements to services: people who qualify under the EU Settlement Scheme but have not yet applied; and people who enter the UK through e-gates as visitors after 1 January 2021 who have no entitlement to apply under the EU Settlement Scheme. (See [A.7](#))
- Complex applications are reportedly taking several months to be decided.

When a person has completed five years' residence, it is advisable for them to try and evidence this in order to obtain settled status, rather than accepting a grant of pre-settled status. Settled status is a more secure form of status and will enable the person to meet benefit and housing eligibility requirements. (See section [2](#))

When a person is granted pre-settled status they need to be made aware of the following:

- If they think that they should qualify for settled status, they can challenge this by submitting an administrative review and/or appeal (if they applied on or after 11pm on 31 January 2020). (See [A.5](#))

- They can apply for settled status as soon as they have completed five years' continuous residence in the UK. They do not need to wait until their pre-settled status is due to expire, although they must ensure that their application for settled status is made before their leave expires.

Obtaining settled status would be a far better outcome for Zambrano carers than applying under the Family Migration (FM) rules and being granted 30 months leave to remain on the 10-year settlement route, which is subject to high application fees, the no recourse to public funds condition (in many cases) and long-term insecurity of having to reapply several times. However, as not all Zambrano carers will qualify under the EU Settlement Scheme, they should always be signposted to get legal advice about their options. (See [A.2](#))

When a person indicates that they want to return to their country of origin they should be provided with an opportunity to seek legal advice about how their return will impact on their future ability to live in the UK after free movement ends on 31 December 2020. They may still wish to apply to settled or pre-settled status to keep their options open. (See [A.5](#) & [A.7](#))

A.2 Who needs 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 live here after 30 June 2021.

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 do so if they wish. 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, the person may also wish to seek legal advice about applying for British citizenship.

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

The EU Settlement Scheme is open to Zambrano carers who have a derivative right to reside under European law. However, a Zambrano carer will not qualify for settled or pre-settled status if they have already obtained a different form of leave to remain under the Immigration Rules. Appendix FM of the Immigration Rules contains a rule specific to the sole carer of a British child.

The Home Office [caseworker guidance](#) ('a person with a Zambrano right to reside') states that a person will not be considered to have a derivative right to reside as the primary carer of a British citizen if they have never made an application under the Appendix FM rules or another Article 8 claim when there is a realistic prospect of this succeeding. This also applies if such an application was previously refused but would now be likely to succeed following a change of circumstances.

Zambrano carers should always be signposted to get legal advice about their options.

As the situation for a Zambrano carer is not straightforward, particularly if they are currently undocumented, it will be necessary for them to get legal advice about their options.

A.3 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](#) ('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.4 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, for example, a person with a derivative right as a Zambrano carer or when alternative evidence of identity is being submitted. Paper forms can be requested from the EU Settlement Resolution Centre.

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 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](#) (‘EU, other EEA and Swiss citizens and their family members’).

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 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.

A.5 Application outcomes & entitlements

During the transition period, EEA nationals and their family members will continue to exercise free movement rights, regardless of whether they have been granted status under the EU Settlement Scheme. When the transition period ends on 31 December 2020, people with settled status will have different entitlements to the rights acquired under European free movement. 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. People who are granted pre-settled status will have fewer rights than those who obtain settled status. Details are set out in the table below

	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 under EU law, for example, as a worker or family member of a worker. Some groups will not be eligible. (See section 2) 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	<p>Until 31 December 2020:</p> <ul style="list-style-type: none"> • May be joined by family members exercising free movement rights <p>On/after 1 January 2021:</p> <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](#)
- Lodge an appeal against the refusal (for applications made on or after 11pm on 31 January 2020)
- Make another application by 30 June 2021

These options are also available to a person who is granted pre-settled status when they think they qualify for settled status.

A.6 What happens if an EEA national doesn't apply in time?

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 late applications may be accepted in certain cases but no details have been provided.

It seems likely that EEA nationals who fail to apply by 30 June 2021 will become unlawfully present and risk ending up in a position where they lose access to employment and benefits, as well as being subject to other sanctions, such as being unable to rent from a private landlord or receive free secondary healthcare. They could also be liable to enforcement action.

A.7 Immigration rules from 1 January 2021

The Government has confirmed that a new immigration system will be introduced after the transition period ends on 31 December 2020. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill has been laid before Parliament, which will end free movement. Plans for the new system have been outlined in a [policy statement](#), and are summarised below.

- EEA nationals will not be treated any differently to non-EEA nationals under the new immigration system.
- EEA nationals will be non-visa nationals, so will be able to visit the UK for a period of up to six months without obtaining a visa.
- EEA nationals who want to come to the UK to work or study will need to apply for a visa under a new points based system, which will be open to skilled workers, highly skilled workers and seasonal agricultural workers. Skilled workers may bring dependants.
- EEA nationals who require a visa will need to pay an application fee and the immigration health charge to gain access to some NHS services.
- EEA nationals arriving after 31 December 2020 will have the same entitlement to income-based benefits as non-EEA nationals and will usually only be able to access these if they go onto obtain indefinite leave to remain. There will be exceptions for some people who enter the UK with leave obtained outside of the points-based system.
- EEA nationals will be able to continue to use e-gates to enter the UK. Those who need to apply for entry clearance will be issued e-visas, which can be accessed online.
- As a transitional measure, employers, landlords, and public service providers will be able to accept passports and national identity cards of EEA citizens as evidence of permission until 30 June 2021.

So far, no information has been given about family migration routes. Some EEA family members entering after 31 December 2020 will qualify under the EU Settlement Scheme but it is expected that those who do not will need to satisfy the immigration rules that currently apply to non-EEA nationals.