

Supporting European Economic Area (EEA) nationals with care needs

Guidance for Adult Social Care and care providers

The UK residence rights and immigration requirements for European Economic Area (EEA) nationals have significantly changed following the UK's departure from the European Union (EU) and the end of free movement in the UK. These changes will affect a person's entitlement to benefits and other services, particularly after the end of the grace period and deadline to apply to the EU Settlement Scheme on 30 June 2021.

The end of the grace period presents destitution and homelessness risks for those who have not applied in time and will give rise to pressures on local authorities when duties are engaged to provide accommodation and financial support to people with care needs who are ineligible for benefits. 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.

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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 unable to claim benefits?

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

- Have been granted pre-settled status but are not exercising a qualifying right to reside.
- Are entitled to make an application to the EU Settlement Scheme but were not exercising a right to reside immediately before 11pm on 31 December 2020, even if they apply to the EU Settlement Scheme before 30 June 2021.
- Do not make an application 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.

It is not clear what action will be taken by the DWP when a person who is currently receiving benefits does not apply to the EU Settlement Scheme before the deadline of 30 June 2021. 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 are at risk of failing to apply to the EU Settlement Scheme in time or who may face difficulties making an application. Providing accommodation and financial support, 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 are engaged with social care services and assist them to access legal advice in order to apply to the EU Settlement Scheme before 30 June 2021, following Home Office guidance related to applications made by adults with care needs and adults who lack capacity.
- When a person who is required to apply to the EU Settlement Scheme is encountered after 30 June 2021, assist them to access legal advice in order to make a late application.
- 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.

For more information about the EU Settlement Scheme, see Appendix E.

Appendix A: Immigration requirements

European free movement no longer applies in the UK and 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 must apply to the EU Settlement Scheme to obtain settled or pre-settled status.

What type of immigration status could an EEA national have?

Key groups prior to 30 June 2021:

- Granted settled or pre-settled status under the EU Settlement Scheme.
- Not yet applied to or been granted status under the EU Settlement Scheme.
- Granted leave to enter on or after 1 January 2021 to visit, work, or study etc.

Key groups on/ after 1 July 2021:

- Granted settled or pre-settled status under the EU Settlement Scheme.
- Pending EU Settlement Scheme application made before 30 June 2021 - lawful status preserved by the Grace Period Regulations.
- Granted leave to enter on/ after 1 January 2021 to visit, work, or study etc.
- Unlawfully present - includes:
 - Anyone who fails to apply to the EU Settlement Scheme by 30 June 2021, even if a late application is accepted.
 - A person with a pending EU Settlement Scheme application made before 30 June 2021 who is not protected by the Grace Period Regulations.
 - A person who remains in the UK (overstays) beyond the expiry of their leave to enter or pre-settled status.

Who still needs to apply to the EU Settlement Scheme?

[Home Office statistics show](#) that 2.7 million grants of settled status and 2.2 million grants pre-settled status had been made by the end of April 2021.

It is not known how many people still need to apply. In a [report on EU citizens at risk of failing to secure their rights after Brexit](#), the Migration Observatory at Oxford University has identified various groups that may be unaware that they need to apply or face difficulties doing so. This includes people living in poverty, homeless people, children within families as well as children in care, care leavers, elderly people, people who lack mental capacity, and people with mental or physical health problems or a disability. For more information about the application requirements, see Appendix A.

What is a person's position during the grace period if they have not yet obtained settled or pre-settled status?

The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) [Regulations 2020](#) (the 'Grace Period Regulations'), preserve the status and entitlements of people who

were living in the UK lawfully by 31 December 2020 during the grace period, which ends on 30 June 2021.

The Grace Period Regulations only preserve the lawful status of a person who was exercising a European right to reside in line with the Immigration (EEA) Regulations 2016 immediately before 11pm on 31 December 2020. A person could be exercising a right to reside in any capacity, such as an initial right to reside, the right of permanent residence, or the right to reside as a jobseeker, worker, or self-employer person etc. If a person is unable to work or demonstrate that they have acquired a permanent right of residence, even if they have lived in the UK for a long time, they may not be protected by the Grace Period Regulations.

Anyone whose status is not preserved by the Grace Period Regulations will be unlawfully present but will still be entitled to apply to the EU Settlement Scheme. They will not be eligible for benefits or homelessness assistance and may have difficulties accessing other services, although the Government has instructed the NHS, employers, and landlords to only ask for confirmation of an EEA national's identity (an ID card or passport) during the grace period, rather than evidence that the person has obtained settled or pre-settled status.

What is a person's immigration status if they make an application before the end of the grace period and are still waiting for a decision after 30 June 2021?

When a person's lawful status is preserved by the Grace Period Regulations, this protection will continue until they are granted settled or pre-settled status (or until any subsequent appeal against a refusal is concluded).

Anyone who is not protected by the Grace Period Regulations will continue to be unlawfully present until they are granted settled or pre-settled status.

What happens if a person does not apply by 30 June 2021?

If a person fails to apply to the EU Settlement Scheme by the end of the grace period, they will become unlawfully present and 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. They could also be subject to Home Office enforcement action.

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](#) and 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 info see section A.1 in the Appendix.

The Home Office caseworker guidance states that when a person is encountered by Immigration Enforcement after 30 June 2021, 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 still 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.

Guidance on [gov.uk](https://www.gov.uk) relating to benefit claims, right to work checks, right to rent checks, and NHS overseas visitors charging will need to be referred to for further information about what will happen regarding a person's entitlements on 1 July 2021 if they are currently employed or receiving services and have not applied to the EU Settlement Scheme by the deadline.

What happens if a person's application is refused?

A person who has been refused and has not successfully challenged this decision, or made a subsequent successful application, will be at risk of becoming unlawfully present after 30 June 2021. Any person in this position will need to access legal advice from an immigration adviser to find out what their options are.

[Home Office statistics show](#) that 70,500 applications to the EU Settlement Scheme had been refused by the end of April 2021. It is unclear what action the Home Office intends to take when a person does not meet the requirements to be granted status under the EU Settlement Scheme.

What status will a person have if they arrived on or 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](#).

Some people who enter the UK after 1 January 2021 will be entitled to apply to the EU Settlement Scheme. This applies to certain family members of an EEA national with settled status or pre-settled status, or who is still in the process of applying to the EU Settlement Scheme. In such cases the family member will not be required to obtain leave to enter under the family migration rules. Instead, non-EEA national family members can obtain an [EEA family permit \(until 30 June 2021\) or EU Settlement Scheme family permit](#) in order to enter the UK.

Appendix B: Benefit and homelessness eligibility

This section provides an overview of when an EEA national will qualify for income-based benefits (including Universal Credit, Housing Benefit, income-related Employment and Support Allowance, and Pension Credit) and homelessness assistance under Part VII of the Housing Act 1996. This will be determined by the person's immigration status. The full eligibility rules for Part VII assistance are set out in [chapter 7 of the Homelessness code of guidance](#). Different housing eligibility rules apply in Wales, Scotland and Northern Ireland.

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 at the end of the transition period and subject to any amendments.

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. This means that 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 could be at high risk of homelessness and destitution.

However, the Court of Appeal has 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 European Court of Justice case that is due to consider the same issue. 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](#) and [guidance note for benefit advisers](#). As the outcome of the appeal will also affect eligibility for other income based-benefits, the DWP has published a [guidance note for housing benefit assessors](#).

A person who has pre-settled status is not required to be exercising a qualifying right to reside in order to apply for a Personal Independence Payment, Disability Living Allowance, Attendance Allowance, or Carer's Allowance. 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.

Not yet applied/ has a pending EU Settlement Scheme application

A person's eligibility for benefits or homelessness assistance will depend on whether their lawful status and entitlements are protected by the Grace Period Regulations.

In order to qualify, the person must meet the following two tests:

- They are protected by the Grace Period Regulations, i.e. they were exercising a right to reside or had a permanent right of residence immediately before 11pm on 31 December 2020.
- They are exercising a qualifying right to reside at the time of the benefit application.

If a person who is protected by the Grace Period Regulations makes an EU Settlement Scheme application before the end of the grace period and this is still pending after 30 June 2021, their lawful status and entitlement to benefits will continue until they are granted settled or pre-settled status.

A person who is not protected by the Grace Period Regulations will be 'subject to immigration control' and will have no recourse to public funds (section 115 Immigration and Asylum Act 1999). They will not be entitled to any benefits classed as public funds, or assistance under Parts VI and VII of the Housing Act 1996, until they obtain settled or pre-settled status. A person in this position will be at high risk of homelessness and destitution.

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.

Unlawfully present (from 1 July 2021)

A person who becomes unlawfully present after 30 June 2021 will be 'subject to immigration control' and will have no recourse to public funds, even if the Home Office accepts a late application. They will not be entitled to any benefits classed as public funds, or assistance under Parts VI and VII of the Housing Act 1996, until they obtain settled or pre-settled status. A person in this position will be at high risk of homelessness and destitution.

Further information

The following organisations provide more detailed 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

A local authority may have a duty to provide accommodation and financial support when a person is ineligible for benefits and is destitute or at risk of homelessness. Responsibility for providing this assistance will fall to social services but when an adult does not qualify for social services' support, the housing department/ authority will need to consider whether accommodation can be provided.

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

Adults who are sleeping rough or are otherwise homeless will not qualify for social services' support if they do not have care needs. During the Covid-19 pandemic, the housing department/ authority 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](#).

Different legislation applies in Wales, Scotland and Northern Ireland.

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. A child with a disability will be a child in need. For more information, see our [webpage 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 [webpage 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. This will apply when a person has one of the following types of immigration status:

- Settled status (indefinite leave to remain)
- Pre-settled status (five years' limited leave to remain)
- Lawful status protected by the Grace Period Regulations (until 30 June 2021 or later if their EU Settlement Scheme application is still pending after this date)
- EEA family permit or EU Settlement Scheme family permit
- Leave to enter/ remain as a visitor, student, worker, or under another category of the Immigration Rules

In such instances, a human rights assessment is not required and should not be undertaken.

When will a human rights assessment be required?

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies to an EEA national who is 'in breach of immigration laws'. Schedule 3 places a bar on the provision of support under the Care Act 2014 or section 17 of the Children Act 1989 when the person/ family 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 does not have lawful status in the UK. Local authorities will encounter very few people who are 'in breach of immigration laws' before the end of the grace period on 30 June 2021. During the grace period, a person whose lawful status is not protected by the Grace Period Regulations will be 'in breach of immigration laws'.

After 30 June 2021, a person will be 'in breach of immigration laws' if they:

- Fail to apply to the EU Settlement Scheme by the end of the grace period, even if the Home Office accepts a late application.
- Have a pending EU Settlement Scheme application that was made prior to 30 June 2021 but their lawful status is not protected by the Grace Period Regulations.
- Become an overstayer following the expiry of their leave to enter or pre-settled status.

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 when the person has an entitlement to apply to the EU Settlement Scheme. This will remain the case after 30 June 2021 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. When a person is identified as having lived in the UK before 31 December 2020, in the first instance it will be necessary to provide them with an opportunity to access legal advice with a view to making an application (or late application) to the EU Settlement Scheme. Accommodation and financial support can be provided whilst legal advice is being accessed or an application is pending if the person qualifies for support under section 17 of the Children Act or the Care Act.

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'. 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 and may also require legal advice so that they understand how return may affect their ability to obtain settled status if they come back to the UK at a later date.

5. Table: establishing eligibility for support

Immigration status of EEA national or family member	How to determine entitlement to benefits and homelessness assistance	How to determine eligibility for social services' support (accommodation & financial support)
Settled status	Eligible - has indefinite leave to remain.	Child in need/ needs assessment
Pre-settled status	Will need to demonstrate a qualifying right to reside in line with the eligibility criteria.	Child in need/ needs assessment
Is entitled to apply under the EU Settlement Scheme during the grace period but has not applied or been granted status	Will need to demonstrate they were exercising a right to reside on 31 December 2020 and are exercising a qualifying right to reside in line with the eligibility criteria at the time of the benefit application.	Child in need/ needs assessment
Valid leave to enter granted on or after 1 January 2021 as a visitor, student or worker	Ineligible when leave is subject to the 'no recourse to public funds' (NRPF) condition.	Child in need/ needs assessment
Unlawfully present - has not applied under EU Settlement Scheme by 30 June 2021	Ineligible.	Child in need/ needs assessment and a human rights assessment - provide person with an opportunity to make a late application to the EU Settlement Scheme before proceeding with a human rights assessment
Unlawfully present – no entitlement to apply to the EU Settlement Scheme	Ineligible.	Child in need/ needs assessment and a human rights assessment

Appendix: 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

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 \('EU Settlement Scheme: person with a Zambrano right to reside'\)](#), 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.

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

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 section 3 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

The [Home Office caseworker guidance](#) contains information about 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.

Late applications

For a person who was living in the UK by 31 December 2020, the deadline to apply to the EU Settlement Scheme is 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, 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 [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	N/A	May apply as soon as have lived in the UK for 5 years, regardless of when pre-settled status was granted.

granted pre-settled status

May not obtain settled status if they:

- 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	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	<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 have one of the following three options:

- Request an [administrative review of the decision](#)
- Lodge an appeal against the refusal
- Make another application by 30 June 2021

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

Although making an application will be straightforward for many people, certain groups will have complex situations and will require legal advice, such as a child, a non-EEA family member, a Zambrano carer, a person with a criminal conviction, a person who is struggling to evidence their residence or identity, or a person who has been refused.

The Office of the Immigration Services Commissioner (OISC) has provided [guidance on immigration assistance and authorised work at level one](#). 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, 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 vulnerable 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](#).

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