

# Policy Briefing - EU Settlement Scheme: looked-after children and care leavers guidance

## Introduction

In May 2020 the Government issued [EU Settlement Scheme: looked-after children and care leavers guidance](#). This guidance relates to looked after children for whom the authority has parental responsibility, looked after children who are accommodated, care leavers and any other children in receipt of local authority support, for example children in need. It applies to all four countries within the United Kingdom:

The guidance 'sets out the role that local authorities and health and social care trusts have in ensuring that children in need, looked after children and care leavers, who are EU, other European Economic Area (EEA) or Swiss citizens, or their family member, make an application to the EU Settlement Scheme. The UK immigration status granted to eligible applicants under the scheme will enable them to continue living in the UK after 30 June 2021, with the same rights and entitlements as they had before the UK left the EU.'

In the event of a 'no deal' BREXIT, the UK will leave the EU at the end of December 2020. The Government has confirmed in this eventuality that the EU settlement scheme will still run until the end of June 2021.

After June 30<sup>th</sup> 2021 anyone who has not achieved pre-settled or settled status will find themselves 'undocumented' and, therefore, subject to the Government's 'hostile environment', which will mean they will be unable to work, to drive, or to open a bank account which will mean they will, effectively, be barred from college, university and secondary health care.

There are variations in the guidance relating to the four countries that make up the United Kingdom. This briefing will focus on the guidance that relates to England.

## Who does the guidance affect?

Local Authorities have a mandatory obligation to identify eligible children (looked after children for whom the local authority has responsibility, looked after children who are accommodated (i.e. whose parents retain responsibility under Section 20 of the Children Act 1989 (S20)), care leavers and any other children in receipt of local authority support, for example children in need.

The local authorities therefore should identify the children affected and what the local authority's responsibilities are toward such children and their families.

## Children in need and children who are accommodated under s20

The guidance merely notes that:

"If you identify other eligible children receiving support, for example children in need, you can promote the scheme and signpost to relevant available support. In identifying all eligible children and ascertaining what your responsibilities are, you should also consider the Department for Education's statutory guidance '[Care of unaccompanied migrant children and child victims of modern slavery](#)':

The local authority's responsibility is only to ensure the parents of children in need have been informed of the importance of applying for settled status and offered advice as to where or how they might gain support in applying for settled status for either themselves or their children.

It is unclear how many children in this group could be affected. Coram Children's Legal Centre, in its report: [Uncertain futures: the EU settlement scheme and children and young people's right to remain](#), notes that it is estimated there are 727,000 EU national children under the age of 18 living in the UK and a

further 239,000 UK-born children of EU parents. It is unclear as to what proportion of these children could be classified as 'children in need'. However, it will clearly be many thousands.

There may be significant barriers for parents wishing to apply on behalf of themselves and/or their children, which might include:

- A lack of understanding of the importance and urgency of applying
- A lack of the resources required to make an effective application – financial, knowledge, skills and expertise
- Language barriers and a lack of access to translators
- Some parents may have mental health issues or may be subject to abusive partners making application problematic
- A lack of access to legal and/or other expertise required for more complex cases
- A lack of documentation and an inability to access it
- Some may not be aware of their actual nationality status – for example European national children born in the UK are automatically British if one of their parents was already a British citizen or had permanent residence when they were born. Children can subsequently register as British citizens if they were born in the UK and they can prove that their parents become settled or naturalised before the child turned 18, or that they were born in the UK and lived here for 10 continuous years.

For a more detailed analysis of all these issues please refer to:

The Coram Legal Centre's publications [EU settlement scheme and children and young people's right to remain](#) and [Children left out? Securing children's rights to stay in the UK beyond Brexit](#)

For parents already struggling to meet their children's needs a requirement to pursue settled status may be more than they can manage. However, failure so to do will certainly impact on their children's future prospects and opportunities and is likely, in the future, to cause significant harm.

## **Looked after children**

The Government estimates there may be some 5000 Looked After children affected by their current nationality status. There is no national data regarding where these children are living. It may be that some local authorities will have no such children and others may have many. There is, currently, no national requirement to collect data regarding the nationality of children looked after.

There is a need, as a first step, for local authorities to embark on a process for determining how many children in their care may require support to clarify their current nationality status and, if necessary, apply for citizenship or pre- settled or settled status. Legal Aid for such cases should be available and the costs covered by the Government.

As with children in need there is likely to be a significant cohort of children whose cases will be complex and/or have significant cost implications, including children:

- Who may be separated from their parents
- Whose parents' whereabouts may be unknown
- Who lack documentation regarding their time in the UK- a passport or ID (perhaps because one or both parents refuse to consent to provide this or because applications for some European countries require application for documents to be made in person)
- Who may have difficulty proving residence for 3 years (for pre settled status) or 5 years (for settled status)

In addition, refusal can be made if, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application). In other words a refusal could arise if anyone acting on behalf of a child makes a mistake in the application.

## **Care Leavers**

Care leavers are a particularly vulnerable group and local authorities should 'track' care leavers still aged under 25 and invite them to contact the responsible local authority to explore if they might be able to provide them with further advice and assistance in accessing the EU settlement scheme, as per the 'local offer' outlined in the Children and Social Work Act 2017.

## **Further Reading**

This Briefing acknowledges a debt to two publications which are recommended reading for staff involved in issues related to nationality and status for EU nationals and their children:

[Uncertain futures: the EU settlement scheme and children and young people's right to remain in the UK:](#) (Coram Children's Legal Centre) and [EU Settlement Scheme and Looked After Children and Care Leavers. Policy Briefing](#) (The Children's Society)