

## Briefing: Settlement for European national children in care

### Summary

Brexit has brought a great deal of uncertainty and confusion, not least for those EU nationals currently living in the UK. In 2016, there were 679,000 European national<sup>1</sup> children under the age of 18 residing living in the UK.<sup>2</sup> A small additional number of non-European children also live in the UK under rights provided for by EU law. 38% of these children were born in this country.<sup>3</sup> Many of these children have grown up in the UK, been educated here and speak English.<sup>4</sup> Some children have no memories of life in another country, lack relationships with family or friends abroad, and/or have no meaningful connection with their 'home country'.

The draft Withdrawal Agreement text set out by the EU Commission on 28 February outlines that the administrative procedures for applications for settlement should be 'smooth, transparent and simple', avoiding any 'unnecessary administrative burdens'.<sup>5</sup> The text requires applicants to demonstrate that they are exercising their treaty rights in order to have lawful residence. In order to qualify for settlement, this lawful residence will need to have been continuous for five years.

Lawful residence means that an individual must be a worker, self-employed, student, self-sufficient or a jobseeker, or a family member of someone who is exercising these treaty rights. The majority of European national children will be able to rely on their family relationships to meet the requirements of settlement or permanent residence. However, children in care are often estranged from their parents, and will not be able to meet the current definition of lawful and continuous residence. Neither the European Commission nor the Government have addressed the specific needs and rights of children in their plans – the UK government's references to children see them simply as 'family members': appendages of their parents/relatives with status in the UK dependant on their parents' status and residence.

Migrant children currently struggle to regularise their immigration status in a system which is complex, expensive and for which there is no free legal advice.<sup>6</sup> The application system must be as simple as possible and the evidential threshold must be one that *all* children can meet. The Withdrawal Agreement will make provision for states to introduce more favourable arrangements should they see fit and the UK has already identified two specific areas where it intends to be more generous: in respect of comprehensive sickness insurance and the need for work to be 'genuine and effective'. The government should go further to ensure that all children who have been living in the UK for some years are protected.

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<sup>1</sup> In this briefing, 'European national children' is used to identify all children in the UK with an EU free movement right. This includes nationals of Switzerland and the European Economic Area, as well as children who may be family members of EU nationals, or in some cases, British children whose parents are relying on rights to reside derived from the case-law in *Ruiz Zambrano*.

<sup>2</sup> Migration Observatory analysis of *Labour Force Survey 2016, Quarter 1 (Jan-Mar), conducted May 2017*, Numbers are rounded to nearest 1,000 prior to calculating percentage

<sup>3</sup> Ibid and Migration Observatory, *Young People and migration in the UK: an overview*, December 2016 <http://www.migrationobservatory.ox.ac.uk/resources/reports/young-people-migration-uk-overview/>

<sup>4</sup> Migration Observatory, *ibid*

<sup>5</sup> [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf), Article 17

<sup>6</sup> Coram Children's Legal Centre, 'This is my home', 2017 <http://www.childrenslegalcentre.com/this-is-my-home/>

## **Eligibility for settled status**

Currently, European national children who are removed from their parents may struggle to demonstrate their entitlement to reside in the UK. Due to a lack of understanding of the free movement directive, the need to be exercising treaty rights in order to have a qualified right to reside is overlooked for this group. Often, it is only when a young person is planning for their future with a personal advisor that it becomes clear that they will not be able to access benefits as a care-leaver in the same way as a young British national, and that their right to reside in the UK is linked either to their economic activity, or the activities of their parents from whom they are estranged.

In determining who is eligible for the new settled status, it is unclear what could happen to children in care who cannot show that they have been here lawfully for five years. Thousands could end up undocumented because they are not covered by the settlement, and will be subject to the 'hostile environment', seriously limiting their access to education, healthcare, accommodation and other services.

## **Numbers of European national children in care and resource implications**

There are currently 72,670 looked after children in England,<sup>7</sup> but no information on how many are European nationals, because the data is not collected. Research conducted by Coram Children's Legal Centre (CCLC) has found that there were more than 2,000 European national children and young people in care in England in 2016. However, many local authorities do not routinely collect information on the nationality of children in their care, meaning that this number is likely to be a significant underestimate. Through a series of Freedom of Information (FOI) requests, CCLC has found that only ten local authorities in England do not have any known European national children in care, and that one in three local authorities do not know how many children in their care may be directly affected by Brexit.<sup>8</sup>

Of the European national children and young people for whom local authorities hold centralised records, there are at least 1,526 under the age of 16. The most common nationalities held by children are Polish, Czech, Portuguese, Lithuanian and Irish.

Half of all London boroughs (16 local authorities) do not hold the information in an accessible format, despite having the highest percentage of births to women born outside the UK. The average number of children in care and care leavers supported by London boroughs

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<sup>7</sup> <https://www.gov.uk/government/collections/statistics-looked-after-children>

<sup>8</sup> CCLC submitted FOI requests to the 152 children's services department in England requesting data from the year 2016. Of those that replied 111 responded with full or partial data, while 39 said they were unable to do so. In 21 cases this was due to cost of collating the data. For the remaining 18 local authorities the information simply was not collected in the first place. The FOI requests revealed that there are between 1,899 and 2,023 European national children under 18 in care, and between 476 and 538 care leavers between 18 and 25 years of age. Assuming that the local authorities who did not hold or could not access this information have similar numbers of EEA national looked after children as their neighbours, it can be reasonably be assumed that there are more than 3,000 children and young people in England in desperate need of legal advice before their lives are turned upside-down by Brexit.

was 34, with an average of 20 children under the age of 16 looked after in each London borough.

More than one in four local authorities that provided data were corporate parent to more than 30 European national children or were providing leaving care support. At their most straightforward, these cases would attract legal costs and fees of just under £1,000. However, many are significantly more complicated. An average legal bill of £2,500 per child or young person would cost one in four local authorities in England £75,000. 11 local authorities with more than 50 European national children in care or leaving care face a bill of £125,000 in order to regularise the legal status of children whose future lies in the UK. In addition to the costs of providing independent legal advice, in some instances the local authority will need to meet the cost of a citizenship application, which is currently £973. There is no fee exemption for this.

### **Case study**

Greta came to the UK in 2011 with her parents aged 6. Her father, an electrician, was working intermittently. However, the family situation was volatile and abusive and Greta was taken into care under an interim care order aged 7. A full care order was made some months later, and Greta settled into a long-term foster placement. She is now 13 and has been in the UK for more than half her life. She is doing well in school and sees herself as British. She has no contact with her parents. Greta no longer speaks Lithuanian.

Greta's social worker does not know if Greta's parents are still in the UK. If they are, and are working, Greta may already have Permanent Residence through them, but she will need assistance in order to demonstrate this to a satisfactory standard for the Home Office. The application form for permanent residence is 85 pages long, and there is no legal aid available. Greta's social worker cannot help her to prepare the application, and unless the local authority has any information about her parents' whereabouts, Greta is unlikely to be able to complete the application.

It is unclear whether she will be eligible for settlement, because on her own account she cannot demonstrate five years of lawful residence.

### **Conclusion**

It is critical that any new rules governing the rights of European nationals in the UK after Brexit must be workable, fair and take into account the rights of children and young people who have grown up in this country. Non-EU children in care currently struggle to regularise their immigration status in a system which is complex, expensive and for which there is no free legal advice. Local authorities often do not pick up on the immigration concerns of children in their care, meaning that legal issues are not addressed before they turn 18. Any new system for EU nationals must avoid an increase in children finding themselves undocumented as a result of practical barriers or policy decisions.

## Recommendations

A child-friendly settlement for European nationals currently residing in the UK should:

- Allow all European nationals in the UK with permanent residence and all European nationals who are able to show simply *five years' residence*, as well as all family members and those with derivative rights, settlement through a simple process that is easy to administer with fee waivers for children in care, care-leavers and other vulnerable groups;
- Ensure that all children and young people who wish or need to are able to apply for settled status in their own right; and
- Ensure that the settlement process is explained in language that is simple and accessible so that children are able to both find the information they require and, where necessary, go through the process.

The following recommendations would ensure that migrant children in care do not fall through the gaps:

- There should be a streamlined route to settlement, with right of appeal, for EU national children and families whose lives are in the UK but who are unable to qualify under the new settled status;
- The government should provide and promote clearer guidance on European national children who may be automatically British but unaware of it, who may be eligible to apply to become British, or who may be registered as British citizens through the Secretary of State's discretion;
- Free, high quality legal advice should be available for those who cannot access any form of straightforward registration system; and
- Local authorities should take positive steps to identify European national children in their care and assist them to access legal advice and presentation where necessary. They should ensure that they have recorded information about how many children in their care are European.

Part of the Coram group, Coram Children's Legal Centre is a leading children's legal charity, committed to protecting and promoting the rights of children. Founded in 1981, CCLC has over 35 years' experience in delivering legal services, guidance, training, policy and law reform and international consultancy on child rights. CCLC is a centre of specialist expertise in the rights of children affected by UK immigration control. See [www.coramchildrenslegalcentre.com](http://www.coramchildrenslegalcentre.com)

For further information please contact:

Frances Trevena, Legal and Policy Manager: [frances.trevena@coramclc.org.uk](mailto:frances.trevena@coramclc.org.uk) / 020 7713 2019