

# Children left out? Securing children's rights to stay in the UK beyond Brexit

## Executive summary

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# Executive summary

With one year left before the close of the EU settlement scheme on 30 June 2021, this report looks at what the UK needs to do to make sure no eligible child living in the UK is left without status.

The purpose of the EU settlement scheme is to allow European Union, European Economic Area and Swiss citizens to remain living lawfully in the UK. The scheme also covers their family members and some former family members from countries outside the EU, EEA and Switzerland, as well as some people with rights derived from EU law. All those eligible to apply to the scheme are required to make an application by the deadline of 30 June 2021. If they do not apply but remain in the UK they will be undocumented and unlawfully resident. This means that they will be subject to hostile environment policies which restrict access to homes, healthcare, education, work, benefits, bank accounts and driving licences. They will be liable to be removed from the UK, even if this is where they grew up.

High numbers of applications have been made to the EU settlement scheme overall, but looking only at the headline number may be masking a specific gap when it comes to children. Of the over three million grants of status made by March 2020 412,820 were for children.<sup>1</sup> We do not know how many children in the UK need to apply to the settlement scheme, but while estimates are approximate, it is thought that there were more than 900,000 children of EU citizen parents (not including Ireland) living in the UK in 2017, born either here or abroad.<sup>2</sup>

Many among these 900,000 children, especially those who are UK-born, may either be British citizens automatically by birth or may be entitled to apply to become British through a process known as 'registration'. Indeed, there may be parents who are applying for a British passport for their child or applying to register their child as British instead of applying for their child under the EU settlement scheme. Yet in our experience families, parents, carers and young people themselves struggle to understand the complexities of UK nationality law and we are concerned that there could be a high level of misunderstanding. This could lead some children to lose out both on their citizenship rights and their rights to settled or pre-settled status under the EU settlement scheme.

In summary, the significant gap between the number of applications received from children so far and the number of children potentially needing to apply raises serious questions about whether the EU settlement scheme is working for children. It should prompt decision-makers to ask what can be done in the next year to ensure that no child becomes undocumented on 1 July 2021. Coram Children's Legal Centre has supported hundreds of children and young people to make applications to the EU

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<sup>1</sup> EU Settlement Scheme quarterly statistics tables, March 2020, at <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2020>

<sup>2</sup> <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

settlement scheme since the scheme was piloted in November 2018. Based on our experience, we make the following headline recommendations:

1. The Home Office must take concrete action, including scrapping the £1012 fee, to help children who are entitled to British citizenship to understand and realise their rights.
2. The Home Office, Department for Education and Ministry of Justice must work with local authorities, the devolved administrations and civil society to make and resource a comprehensive plan to identify and support every single eligible child in care and care leaver, including those eligible to apply as family members of EEA citizens, as soon as possible.
3. The deadline to apply to the EU settlement scheme must be extended beyond 30 June 2021.
4. After the deadline, children and young people eligible under the EU settlement scheme must not be brought under the UK immigration system's existing long and expensive routes that are currently failing other children and young people.

The report also highlights specific issues arising in relation to children and young people and makes a number of detailed recommendations relating to these.

### **Children and young people's citizenship rights**

Many of the estimated 900,000 children of EEA citizen parents living in the UK will be British citizens, either automatically by birth or because they have registered and become British. Many more will have a right in law to register and become British. However, many parents and carers simply do not know whether or not their child is, or could be, a British citizen. To register as a British citizen a child must pay a high fee – even if they are in local authority care.

- The Home Office should provide better public information on when a child is automatically born British and when they can register as British, and link to this from the EU settlement scheme information.
- The Home Office should take a proactive approach to helping a child or young person establish their claim to British citizenship
- The fee for a child to register as British should be abolished. As an interim measure, the fee exemption that applies to many immigration applications for children in care should be extended to also cover nationality applications. All such fee exemptions should be extended to care leavers too.

### **Looked after children and young people**

The Home Office has estimated that there were around 5000 looked after children and a further 4000 care leavers across the UK who would be eligible to apply to the EU settlement scheme. This figure does not count children and young people in alternative forms of care. Our concern is that there has not been any successful, systematic attempt to accurately identify and count the true number in order to support each one to apply before the deadline.

- The Home Office, Department for Education and Ministry of Justice must work with local authorities, the devolved administrations and civil society to make and resource a comprehensive plan to identify and support every single eligible child in care and care leaver, including those eligible to apply as family members of EEA citizens, as soon as possible.
- The Home Office should support and resource local authorities to identify all eligible children known to them so that social workers can disseminate information on the EU settlement scheme where possible.
- The Office of the Immigration Services Commissioner and the Home Office should make it clearer to social workers what they can do within their role: whether they should be making applications for any child or young person and if so, how this work is regulated and overseen.

### **The challenges posed by pre-settled status.**

We are concerned that applicants granted pre-settled status may not always understand that they will need to re-apply in order to remain in the UK lawfully, and that there is a risk of hundreds of thousands of people falling out of the EU settlement scheme because they do not make the application for settled status before their pre-settled status expires.

- The Home Office should introduce a provision to grant settled status to all looked after children and care leavers who apply to the EU settlement scheme; grants of pre-settled status are simply not in these children's best interests.
- No child or young person who previously held pre-settled status should fall off their route to settled status in the event that they do not make the settled status application at the right time. To prevent this, the Home Office should at the very least commit to prompting holders of pre-settled status before their status expires and telling them what they need to do to remain lawfully in the UK.
- And to prevent unnecessary hardship, the Department for Work and Pensions and the Home Office should amend regulations so that all those with pre-settled status can access benefits.

### **The operation of the scheme in practice.**

The EU settlement scheme requires an applicant to have an ID document. For children with some nationalities acquiring an ID document without the active participation of both of their parents is very difficult – and at times impossible. While it is helpful that in such cases a child can still apply, these applications, which are made on paper forms rather than digitally, are extremely slow. The system of automated checks that makes the scheme quick for the majority of adults puts some vulnerable young people at risk of being granted a weaker form of status. And there have been teething problems with the digital status system, as well as a risk of discrimination if people cannot easily prove their status.

- As well as digital status, the Home Office should issue physical documents. At minimum, the Home Office should create a discretionary system through which people who are particularly vulnerable can apply to get physical proof of their status under the scheme, such as a biometric residence permit.

- In the absence of physical documents, the Home Office should undertake a large-scale information campaign prior to 1 July 2021 to ensure everyone who needs to – including landlords, employers, educational establishments, banks and benefits advisers – understands digital status.

### **Applicants to the EU settlement scheme who are citizens of countries outside the EEA.**

We do not know how many people from outside the EEA need to apply to the EU settlement scheme before the deadline. However, one of the dangers demonstrated by this report is that people eligible to apply to the scheme who are from outside the EEA are among those most at risk of becoming undocumented. We have seen practical issues for those who are eligible accessing the scheme. The complex situations for the individuals we have supported have also thrown into relief the edges of the scheme: who falls under it and who is excluded; family units where some are covered and some are not.

- The Home Office should adopt a more proactive approach to help children and young people to establish their family relationships.
- The requirement for Zambrano carers to have applied for, but not to hold, status under the Immigration Rules prior to an application under the EU settlement scheme must be removed.
- People who were dependant on an EEA citizen as a child should not be excluded from the scheme once they turn 21.

### **Applications by children and young people with a criminal record.**

There is still a great deal of uncertainty about how applications from individuals with criminal records are being considered by the Home Office. Children and young people with criminal records who are eligible to apply can have very complex cases and need comprehensive legal advice and support. But first these people – including children and young people in custody – must be urgently identified and accurately informed about the scheme.

- We believe no child should be refused on suitability grounds and deported. The suitability guidance should be amended to reflect the specific legal tests that apply to children and the very different nature of childhood offending from adult offending.
- There must be discretion for Home Office decision-makers to consider the proportionality of residence being broken by a child's or young person's short custodial sentence.
- The Home Office must provide accurate information that makes clear that applicants can apply for settled status while in custody, and the Department for Education should work to support local authority social work and youth offending teams to identify all looked-after children and care leavers in custody whose nationality and immigration status needs to be resolved.
- Looked after children are entitled to legal aid and professionals should help them to get a lawyer, and should support care leavers to get legal aid through the exceptional case funding system.