



The EU Settlement Scheme: Barriers and solutions for children

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27 September 2021



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Brief Overview of the EUSS

- UK left the EU on 31 January 2021 under a negotiated deal called EU-UK Withdrawal Agreement
- Appendix EU of the Immigration Rules- two types of status- pre-settled status (EU 14) and settled status (EU 11)
- The basis of rights under EUSS is i) EU nationality/family relationship to EU citizen and ii) duration of presence/residence in the UK
- Deadline 30 June 2021 (end of grace period)- applicants must be in the UK by 31 December 2020 (end of transition period)
- There are a number of differences between EEA Regulations and Appendix EU i) exercise of EU treaty rights (such as work, study etc) is no longer required and ii) rights under EEA Regs are acquired automatically but to get status under EUSS an application must be made iii) status, if granted, will now be held digitally- people will not be issued with any hard evidence of their status



The EUSS- the requirement to apply

- Requires a pro-active step to be taken- application to be made before the deadline of 30 June 2021
- Failure to do so has real consequences for children and young people- described as a “cliff-edge loss of rights.”
- Risks include being undocumented and losing access to secondary health care services and public funds, the right to work or rent property when they transition into independence, and risk being barred from learning to drive, holding a bank account and going to university.
- Concern- many EU citizens will find themselves, unknowingly in the UK unlawfully after the deadline.
- No comparable scheme has ever had 100% prospects of success (even without the pandemic)

Children in care and EU rights

- Home Office estimate 9000 children in care and care leavers who are eligible to apply for EUSS
- Particular complications with EU children in care and care-leavers- identification, proof of residence/citizenship and suitability.
- Research from The Children's Society (April 2021)- more than 50% of of identified EU looked after children and care leavers have yet to apply to EUSS and highlights
 - Difficulty in identifying those who need to apply
 - Complicated application process and individual cases
 - Unclear or lack of statutory guidance
 - Over-stretched capacity within local authorities
- See also research from Coram Children's Legal Centre: Uncertain futures: the EUSS and children and young people's right to remain in the UK.
- 9 June 2021- 45 charities called for the deadline of 30 June 2021 to be lifted.



Children in care: Home Office guidance

- Home Office Guidance “*EU Settlement Scheme: Looked After Children and Care Leavers, Local Authority and Health and Social Care Trusts*” dated 4 May 2020:
<https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance>
- Page 7- sets out “mandatory obligations” on local authorities for children with care orders, s. 20 children, children in receipt of local authority support, care leavers and children in secure settings
- Not statutory guidance and difficult role for social workers in making immigration applications.
- See also “*Home Office looked after children and care-leavers survey 2020*”
<https://www.gov.uk/government/publications/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020>



Children in care: Home Office guidance

- Home Office EUSS case-worker guidance dated 20 July 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004627/main-euss-guidance-v13.0ext.pdf

- See in particular:
 - Alternative evidence of identity and nationality (page 54)
 - Applications in respect of children (page 122)
 - Late application guidance(pages 26-4)- where a parent, guardian or LA has failed to apply for a child, this will normally constitute a reasonable ground. The guidance stresses that the Home Office does not need to consider the reasons why the responsible adult failed to apply to the scheme.



Case-law: Looked After Children and EUSS

Re W and Re Z (EU Settled Status for Looked After Children) [2021] EWHC 783 -31 March 2021

- Local authorities have **mandatory obligations** to progress EUSS applications on behalf of Looked After Children and can apply for any identity documents necessary for such an application, even in the face of parental objection, under their powers in section 33 (3) of Children Act 1989 and without recourse to courts.
- Helpful comments on impact of insecure immigration status on children and young people, including on their identity- Mr. Justice MacDonald- 17 points and at [79]:

“It is not acceptable to leave children in a position of ‘limbo’ with respect to their immigration position....A late application will result in the child becoming undocumented for a period, with the concomitant impact on access to services and benefits and liability to immigration enforcement. Even a short period undocumented can have an adverse impact on a child or young person.”



Case work examples: Children

- A Polish baby in care without identity documents whose parents did not wish to co-operate with the scheme;
- A French homeless teenager who believed she was British but discovered shortly before the scheme closed that she was not and needed to make an urgent application;
- Three generations of a Czech family who struggled with literacy and were unable to confirm their nationality;
- A German teenager, born in the UK, who was subject to a criminal investigation but had not yet been charged;
- A Dutch care-leaver who had previously succeeded in his deportation appeal but who had committed a further criminal offence.



Barriers for children

- Many eligible children have not yet applied-
 - lack of oversight, identification,
 - lack of statutory guidance,
 - difficulties obtaining legal representation in complex cases (identity documents, parental consent, suitability)
 - Late applications (not automatic for children in care/care leavers);
 - Potential claims against local authorities?
- Many applications have not yet been determined- backlog/delay. Incorrect status being granted (in particular pre-settled status instead of settled status)
- Complexities and cost of British citizenship applications
 - Some children will qualify at birth if parent has Permanent Residence (arguably even if ordinarily resident and exercising treaty rights at birth in some cases)- can be evidential difficulties;
 - Some children will be entitled to register if born in the UK and lived for 10 years.
 - Re children in care- see *Re Y (Children in Care: Change of Nationality)* [2020] EWCA Civ 1038
- No right of appeal (if applied before 31 January 2020)-- need to withdraw and re-apply).



Solutions

- APPLY
- Consider withdrawing and re-applying to preserve appeal rights if application submitted before 31 January 2020;
- Broader policy campaign and advocacy work:
 - Government to extend deadline beyond 2021 alongside continued outreach, support and monitoring
 - Accept all out of time applications by looked after children and care leavers whether or not they are under 18 at the date of EUSS deadline
 - Issue settled status for children/care leavers
 - Physical documentation for looked after children and care leavers
 - Work with local authorities to help identify children care or those entitled to leaving care support
 - Reform to British citizenship fees/application process for children born in the UK.



Thank you

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