

EU Settlement Scheme and Looked After Children and Care Leavers. *Policy Briefing.*

Summary

The European Union Settlement Scheme (EUSS) is the process through which all EU/EEA and Swiss nationals, including children and family members, who are living in UK, must apply for status to allow them to continue living, working and enjoying their rights in the UK.

Since the inception of the EUSS, The Children's Society has maintained that vulnerable groups, such as looked after children and care leavers will struggle to settle their immigration status through the scheme. The Home Office has estimated that there are 9,000 looked after children and care leavers in the UK who would need to regularise their status by the deadline of June 2021. As of 6th January 2020, **only 3,612 had been identified by local authorities and just eleven per cent (11%) had been awarded status in the 153 local authorities across the UK who were able to provide us with information.** In some instances these children will be eligible for citizenship, and in these instances, authorities must make sure that they pursue this.

The Children's Society is calling on the government to grant automatic status to looked after children and care leavers who would have to apply to the EU Settlement Scheme and delay the deadline so that other vulnerable groups do not miss out on securing status.

EU Settlement Scheme

The EU Settlement Scheme (EUSS) was designed to provide EU, EEA and Swiss nationals with a digital immigration status should they wish to remain in the UK after freedom of movement ceases. Based on how long they have lived in the UK, an applicant will be granted either settled status or pre-settled status. Both statuses allow the recipient to continue living and working in the UK. Those with pre-settled status will need to re-apply for settled status once they have accrued 5 years' residence (or once they are able to **evidence 5 years' residence**) in the UK, and will need to meet a certain criteria to access benefits. Applicants have until 30th June 2021 to apply for the EUSS (owing to a 6 month grace period after the transition period ends on 31st December 2020). If they have been unable to settle their status by this deadline they will be considered undocumented and subject to detention and removal from the UK – this includes children.

The scheme thus far has seen 3,147,000 concluded applications¹, reflecting the relatively straightforward process for applicants with a long tax or benefit history in the UK. Whilst the EU Settlement Scheme is continuously hailed a success by the Home Office due to the number of applications, it will remain impossible for the Government to state with any certainty that everyone who needs to settle their status has done so with available data being used.² As the Migration Observatory and the ONS³ have recently highlighted, there is currently no way to know how many EU citizens and their family members are eligible for the settlement scheme and how many have not yet applied. The official estimation of 3.4 million non-Irish EU citizens living in the UK was a snapshot at a particular point in time and does not account for every eligible EU citizen. Working on

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879569/eu-settlement-scheme-statistics-march-2020.pdf

² <https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/>

³ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/noteonthedifferencebetweenonpopulationestimatesbynationalityandhomeofficeeuropeanunionsettlementschemeueusstatistics/2020-02-24>

estimations rather than a definitive data set is dangerous when the scheme's deadline is fast approaching. It is therefore important that additional flexibility is built into the scheme urgently to account for those who may miss the deadline.

As The Children's Society has continuously stated, the application process can be far more complex for children, particularly those that are vulnerable, such as looked after children and care leavers. There is a substantial risk that children who have been taken into the care of the state for their protection may be left undocumented as a result of this scheme, with a hugely damaging and potentially dangerous impact on their lives. Government has not yet taken pre-emptive action to prevent this and is at risk of sleepwalking into another Windrush scandal.

EU/EEA and Swiss Looked After Children and Care Leavers in the UK

The Home Office has estimated that there are 5000 looked after children and 4000 care leavers in the UK who would need to apply to the EU Settlement Scheme.⁴ The exact number is not known but The Children's Society's analysis has found that 153 out of 211 local authorities across the UK have identified just **3,612 EU/EEA or Swiss looked after children and care leavers, with just eleven percent of those having secured status.**⁵ The Home Office has indicated that it has conducted its own survey to better understand the numbers of looked after children who would need to apply to the scheme, but this has never been published.

The Home Office and Department for Education have stated that it is the role of local authorities to identify children in their care and care leavers who need to apply through the EU Settlement Scheme. The Home Office produced non-statutory guidance to local authorities on the EUSS regarding their roles and responsibilities to making or supporting applications to looked after children. Through our evidence gathering on the EUSS, we have found many local authorities are still unaware of the existence of this guidance and it is therefore clear that the Department for Education and Home Office need to do much more work with local government to raise awareness and provide additional resources. The Children's Society is working to fill this gap by providing councillors with a new resource aimed at helping them in their accountability, overview and scrutiny roles.

Local authorities are corporate parents to collectively thousands of European children and care leavers across the UK who will become subject to immigration control once they are no longer protected under EU law. As any parent would, local authorities need to help secure their children's status or citizenship. The Children's Society has repeatedly raised concern about the difficulty this cohort face whilst applying to the EUSS⁶, many of the young people for example do not have the required documentation⁷ and social workers in turn are spending months acquiring the necessary documents from European embassies.

In order to develop a clearer understanding of the rate of application to the EUSS from European children in the care system or whom had recently left care, The Children's Society sent Freedom of Information requests to every local authority or children's services provider in the UK⁸. As of 6th January 2020, **only eleven per cent (11%) of European children either currently in the care system or who have recently left care in the 153 UK Local Authorities who were able to provide information had been awarded status.**

⁴ Immigration: EU Nationals: Written question – 222791 Answered on: 26 February 2019: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%26clords&uin=222791>

⁵ A number of applications may have been made for non-EU/EEA/Swiss looked after children through an EU/EEA/Swiss family member.

⁶ <https://www.childrenssociety.org.uk/sites/default/files/briefing-the-eu-settlement-scheme-in-relation-to-looked-after-children-and-care-leavers.pdf>

⁷ <https://gmiau.org/not-so-straightforward/>

⁸ The data collected was from 30th March 2019 – 6th January 2020. Many Authorities gave responses in ranges, as low numbers meant there was a fear individuals could be identified by the data. For the statistics provided within this briefing, we took the mid-point of the range for our calculations. A number of applications may have been made for non-EU/EEA/Swiss looked after children through an EU/EEA/Swiss family member.

FOI Summary Findings

- We sent Freedom of Information requests to 211 authorities, accounting for every children's service provider in the UK:
- **58 Local authorities** did not respond or were not able to answer the FOI
 - 26 did not respond in time and **32 Local Authorities were unable to provide the data or did not hold the information in reportable format.**
- **3612 looked after children and care leavers were identified** by 153 Local Authorities across UK, which we can confidently say is a large **underestimate**
 - This includes a **minimum of 1794 children for whom the state has parental responsibility.**
- There have been **730 applications for looked after children or care leavers to the EUSS, and 187 applications for citizenship.**
- **Of these 730, there are only 404 receipts of status through the EUSS (282 settled, 122 pre-settled – meaning they will need to reapply in the future)¹**
- This data, although not fully representative, offers a very strong indication that there are serious and urgent concerns around identifying and settling the migration status of vulnerable children whose status is impacted by Brexit.

In just over a nine month period, only 11% of these vulnerable children and young people were able to settle their status compared with 79% of the overall official estimate of 3.4m non-Irish EU citizens over the same nine month period⁹. If this application rate continues up until the EU Settlement Scheme deadline, it will result in **thousands European children and young people either currently in the care system or who have recently left care becoming undocumented and left without immigration status.**

This risk is now further compounded by the coronavirus national crisis. As local authority resources are being diverted elsewhere, identifying and assisting children in care to apply for an immigration status which is seemingly non-urgent will inevitably be de-prioritised. Even if applications continue, the Home Office has warned that there will be delays to EUSS application process¹⁰ especially with complex applications that would need querying through the EUSS Resolution Centre. This comes at a time when support services are temporarily closed or are struggling with capacity.

The Home Office has previously stated that: "*Children who do not apply because their parent or guardian did not submit an application on their behalf can submit a late application. This includes children in care and care leavers*"¹¹. However there has been no further policy announcement that allows for this automatic guarantee and therefore losing their immigration status remains the legal default. In the Home Secretary's correspondence with the Home Affairs Select Committee on 14th April¹², the Home Secretary reiterated that children whose parents/ guardian did not apply on their behalf before the EUSS deadline would be considered reasonable grounds for a late submission. We urge the Home Office to commit to this policy change within a ministerial statement.

Furthermore, even a short period of living undocumented, between when the deadline ends and the young person makes an out-of-time application, could be devastating. As corporate parents to these young people, authorities need to be acting in a way that any good parent would and be thinking about children's security and life chances, including ensuring their immigration and citizenship status

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865367/eu-settlement-scheme-statistics-january-2020.pdf This estimation is based on the total number of concluded application (2.7 million) by 31st January 2020

¹⁰ <https://www.personneltoday.com/hr/eu-settlement-scheme-delay-coronavirus/>

¹¹ Brandon Lewis in response to written Parliamentary Question: 22/01/2020 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=3314>

¹² <https://committees.parliament.uk/committee/83/home-affairs-committee/publications/3/correspondence/>

is resolved as soon as possible. This applies to local authorities as well as the Home Office, which has a statutory duty to safeguard and promote the welfare of *all* children within all its functions, including as it designs and implements policies.

Almost nine in ten of looked after children and care leavers who have been identified in our research still need to regularise their status before the EUSS deadline. This situation is urgent and government has been slow to recognise the needs of this group, who most need the government's support.

The Children's Society is therefore calling for the following:

UK government

- The Home Office need to provide automatic settled status to all looked after children and care leavers who would need to apply for status through the EUSS.
- The Home Office need to extend the EUSS deadline beyond June 2021 to ensure not one vulnerable child or young person becomes undocumented.
- The Home Office need to commit to accepting all out of time applications by children in care and care leavers, whether they are under or over 18 at the time of the EUSS deadline, and protect their immigration status despite any out of time applications.
- The Department for Education needs to further clarify its expectations of local authorities, make guidance to local authorities public and ensure that local authorities have the resources they need to identify and regularise the status of every looked after child or care leaver in their area who would need to apply through the EUSS.

Devolved governments

The Minister with responsibility for children's social care:

- Commission a survey to build accurate data about the size of the population of looked after children and
- Write to all local authorities to remind them of their responsibilities to identify looked after children and care leavers who would need to apply through the EU Settlement Scheme.
- Write to the Home Secretary to call for looked after children and care leavers to be given automatic status and call for a delay to the EU Settlement Scheme deadline to ensure that other vulnerable groups of children and families do not miss out.

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