



Working with EEA nationals after 30th June 2021

Briefing for homelessness services

Produced by

The National Practice Development Team

First published August 2021. Updated December 2021.

Let's end homelessness together

Homeless Link, Minorities House, 2-5 Minorities, London EC3N 1BJ | 020 7840 4430

www.homeless.org.uk | Twitter: @Homelesslink | Facebook: www.facebook.com/homelesslink

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Introduction

Following the departure of the UK from the EU and the ending of the transition period, European free movement no longer applies in the UK. Most EEA nationals¹ entering the UK **after 1 January 2021** are now subject to immigration rules which can restrict their right to work, claim benefit, access services and health care and rent property.

The rights and entitlements of EEA nationals and their family members who were living in the UK prior to 1 January 2021 (to live, work and claim benefits) are largely protected through the EU Settlement Scheme (EUSS) agreed as part of the Withdrawal Agreement. EEA nationals who were living in the UK prior to 1 January 2021 had until **30 June 2021** to apply to the EUSS to obtain settled or pre-settled status. The period between 1 January and 30 June 2021 was known as a 'grace period' which gave people an additional six months to apply. For those that have not applied by 30 June 2021, the Home Office will accept late applications if the applicant can show that they have a reasonable excuse for missing the deadline.

There is now a significant difference between those EEA nationals in the UK who have applied for, or have been granted, settled or pre-settled status under the EUSS and those who do not, with the latter having potentially restricted rights and entitlement to live, work, access services and claim benefits. Due to this legal complexity, homeless EEA nationals might require additional support and specialist advice to understand and advocate for their rights depending on their particular circumstances. Having in-house immigration advisers or linking with external immigration advice will be important to fully understand EEA nationals' entitlements and routes off the street, as well as to comply with legal requirements around provision of advice regulated by the Office of the Immigration Services Commissioner (OISC).

This is basic briefing for those in the homelessness sector who may be working with people from the EEA. It sets out the different types of immigration status that EEA nationals living in the UK can have following the EUSS application deadline and a brief summary of their associated rights and entitlements. It also sets out important information about the ongoing arrangements for making **late applications** to the EUSS.

Homeless EEA nationals might require support and specialist advice to:

1. Understand what status and entitlements they have;
2. Make a late EUSS application;
3. Access their digital EUSS status, update their contact details or identity documents and prove their status to employers, landlords and statutory agencies;
4. Apply for settled status for those who have pre-settled status and reach the 5 years continuous residence.

Types of immigration status following 30th June 2021

Set out below are the most common types of status that EEA nationals in the UK can have following the EUSS deadline of 30th June 2021 with a brief overview of associated rights and entitlements²:

¹ EEA nationals in this document is intended to mean citizens of countries within the European Union and the European Economic Area as well as Swiss nationals. The term EU nationals or EU citizens could also be used instead of EEA nationals.

² A more detailed briefing on these types of status has been produced by the NRPF Network (for Local Authorities):

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1. **Settled status** – This applies to someone living in the UK prior to 1 January 2021 and who has been granted settled status under the EU Settlement Scheme.

A person will normally have been given settled status for evidencing five years' continuous residence in the UK. They will have 'indefinite leave to remain' and will be able to work and can claim benefits and homelessness assistance in the same way as a UK national. They will be able to continue renting their home or take out a new tenancy. This settled status will be retained if the person leaves, then returns, to the UK as long as their absence is less than 5 years (if the absence extends beyond 5 years then settled status is lost).

2. **Pre-settled status** – This applies to someone living in the UK prior to 1 January 2021 who has been granted pre-settled status under the EU Settlement Scheme

A person who demonstrated less than 5 years residence in the UK will have been given 'pre-settled status'. This gives them 'leave to remain' in the UK for 5 years during which time they can work, continue claiming benefits (in certain circumstances) and renting their home or take out a new tenancy. Eligibility for benefits for those with pre-settled status can be complex and case law is being established around the issue of whether pre-settled status satisfies the residence requirements under the habitual residence test³. If a person with pre-settled status leaves the UK but returns within 2 years, they will retain their pre-settled status (although this may affect their entitlement to settled status).

Those with pre-settled status can apply for settled status as soon as they have lived in the UK for 5 years, regardless of when pre-settled status was granted (the EUSS continues beyond 30 June 2021 to deal with these and late applications). If a person does not make an application before their pre-settled status expires they will lose their status (and effectively then have no status) although there is some provision for late settled status applications. They may not be able to obtain settled status if they are absent from the UK for more than 6 months in any 12-month period (some exceptions apply).

3. **Pending 'in-time' EUSS application** – This applies to someone who was living in the UK prior to 1 January 2021 and has a valid EUSS application pending made **before** the 30 June 2021 deadline.

The period of time after an EUSS application is made and before a decision is issued can be complex in relation to rights and entitlements. When someone makes an application to the EUSS they will receive a 'Certificate of Application' (CoA) after providing the appropriate documents/information. Government guidance states that a person can use their CoA to show that they have the right to work, right to rent, and entitlement to free secondary healthcare. People who were already in receipt of benefits and statutory support and who have a pending in-time application retain their entitlements whilst they are waiting for a decision and this will continue until their EUSS application is concluded.⁴

<https://www.nrpfnetwork.org.uk/-/media/microsites/nrpf/documents/guidance/factsheet-eu-settlementscheme.pdf?la=en&hash=4B47BC7030DB7A459877902127FDAB93E7D9DE84>

³ See <https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status>

⁴ <https://www.nrpfnetwork.org.uk/-/media/microsites/nrpf/documents/guidance/factsheet-eu-settlement-scheme.pdf>

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The position regarding rights to make *new* benefit claims should also be protected during this period. The CoA is important in evidencing their 'pending' status.

4. **Pending late EUSS application** - This applies to someone who was living in the UK prior to 1 January 2021 and has a valid EUSS application pending made **after** the 30 June 2021 deadline.

Government has clarified that the rights of late applicants are protected until their application and any appeal is decided.⁵ This means that they can use their CoA to prove their right to work, rent and access secondary healthcare, though these temporary protections are not yet set out in legislation. Additional right to reside tests will need to be satisfied in order to qualify for benefits or homelessness assistance.

5. **Valid visa under new immigration rules** – This applies to someone entering the UK on/after 1 January 2021 and who is granted leave to enter to visit, work, or study.

As with non-EEA nationals the position with entitlement to housing or benefits will depend on whether a condition of having no recourse to public funds has been placed on their leave. Most EEA nationals granted visas for visiting, working or studying are likely to have a condition that restricts their access to public funds. Over time this will mean that some EEA nationals who enter with visas under these new rules may find themselves homeless or destitute and will have very limited access to statutory services.

6. **Unlawfully present/no status** – this will apply to a person in one of the following scenarios:

- (i) they failed to apply to the EU Settlement Scheme by 30 June 2021.
- (ii) they are refused status under the EU Settlement Scheme (and any subsequent appeal is unsuccessful).
- (iii) they have overstayed a grant of leave/visa to enter or remain.

Those without status will not be able to work or make new benefit claims or claims for homelessness assistance.

Many EEA nationals in the UK may not have applied to EUSS by the deadline (even though they were eligible through being resident). Many of these currently receive assistance by way of welfare benefits including Universal Credit and/or Housing Benefit as well as other types of homelessness assistance. They may be renting a property and/or working. They are now in a position of having no status/ being considered unlawfully present in the UK and will be at risk of losing access to benefits, rights to work and rent as well as being subject to other sanctions. However, this shouldn't happen immediately and homelessness services should ensure as far as possible that everyone who might be eligible for settled or pre-settled status is supported to make a late application to the EUSS and is also made aware of the changes to their rights and entitlements. For those who are in employment or renting, employers and landlords are not required to make immediate checks of their employees/tenants. However if they become aware that someone is without status they can be given notice to apply to EUSS and if status is refused (or action not taken to apply for status) this could result in loss of employment and/or housing.

⁵ https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlementscheme?utm_medium=email&utm_campaign=govuk-notifications&utm_source=3abea81a-120d-49be-b493db47fdac8524&utm_content=daily

Withdrawal of existing benefits for those who are without status

For people already in receipt of benefits who have no status following 30th June 2021 deadline – their benefits should continue for a short period. The Department for Work & Pensions (DWP) have advised that benefits will stop if the claimant does not take action to make a late application to the EUSS, but only after they have been given time to act. The DWP has sent a series of letters to people it has identified as being in receipt of benefits and not having status. It has said it will give them 28 days to submit an EUSS application before their benefits are suspended. On 21 October 2021, DWP sent a circular to local authorities informing them that suspensions must not start before 1 November 2021. The circular stated that:

- Benefits should not be suspended while the claimant awaits a decision on their EUSS application and has informed the DWP of this.
- Benefits should not be suspended until all options have been exhausted to make contact with the claimant. Following this, if the DWP/LA decides that suspension action is appropriate then the usual processes will be followed. The claimant will then be given one calendar month to apply to EUSS. If the claimant applies within one calendar month, benefits can be reinstated until a decision on their pending EUSS application is made.
- If an EUSS application is refused, claimants have the right of appeal. Benefits should not be suspended whilst appeal activity is underway. However, if the claimant does not appeal against the negative decision within 28 days, the claimant will have their benefits terminated and treated as a ‘person subject to immigration control’ and will have no recourse to public funds.
- Local authorities should not take action to suspend Housing Benefits of claimants who are also in receipt of another DWP benefit, unless instructed by the DWP.

Rights to NHS Services⁶

EU nationals in the UK, regardless of their immigration status, are and remain entitled to register with a GP and receive NHS primary care services free of charge. To access NHS secondary care services free of charge, a person must be considered ‘ordinarily resident’ in the UK. EU citizens with settled status and those granted pre settled status should be considered ‘ordinarily resident’ in the UK. Those who are awaiting the outcome of a valid EUSS application submitted on or before 30 June 2021 will remain entitled to free secondary care, subject to the ordinarily resident test, until the outcome of the application is known⁷. The situation is more complex for those who have submitted late EUSS applications and those who entered after 1st January 2021.

Late applications to EUSS

People who might have been eligible for settled or pre-settled status but didn’t apply by the deadline may be able to make a late application if they can show the Home Office they have a reasonable grounds for missing the deadline. It will be advisable for a person to get legal advice before submitting a late application. The OISC has provided guidance for EUSS advisers that must be referred to in order to establish whether a person can be assisted to apply by a level one advisor or a level two advisor⁸.

⁶ More detailed information on access to health services is included in a briefing from Doctors of the World [DOTW- Briefing_Access-to-NHS-Services-for-EU-Citizens-after-1-July-2021.pdf](https://www.doctorsoftheworld.org.uk/wp-content/uploads/2021/07/Briefing-Access-to-NHS-Services-for-EU-Citizens-after-1-July-2021.pdf) ([doctorsoftheworld.org.uk](https://www.doctorsoftheworld.org.uk))

⁷ See Doctors of the World resources in the Further Resources section

⁸ <https://www.gov.uk/government/publications/guidance-for-euss-advisers>

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Vulnerable residents, complex cases and people who are making late applications when they do not clearly meet the reasonable grounds threshold will require the assistance of an OISC level two advisor. In England and Wales, legal aid is not available for adults, children within families, and care leavers age 18+ applying to the EUSS. The Home Office has published a list of organisations in England that have been funded to assist people to apply, with funding currently confirmed until March 2022⁹.

The Home Office publishes detailed guidance for their staff on the EUSS (referred to as Case Worker Guidance¹⁰). This includes guidance on late applications and indicates that **homelessness, domestic violence and complex needs should be considered "reasonable grounds" for late applications.**

The guidance states that: *"there remains scope, indefinitely, for a person eligible for status under the EU Settlement Scheme to make a late application to the scheme where, in light of all the circumstances and reasons, there are reasonable grounds for their failure to meet the deadline applicable to them."*

Examples of reasonable grounds include the applicant having:

- physical or mental capacity and/or care or support needs
- a serious medical condition or undergoing significant medical treatment
- been a victim of modern slavery
- been in an abusive or controlling relationship or situation
- children (including children in care and care leavers)
- other compelling practical or compassionate reasons.

In the Case Worker Guidance, homelessness is included in the description of what could be considered "other compelling practical or compassionate reasons". More specifically it states that it would usually be reasonable for a late application to be accepted if someone was unaware of the requirement to apply to the EUSS by the deadline because of:

- a lack of permanent accommodation which meant that they did not have access to a computer or to the documents required to make an application;
- they have complex needs and were not aware of the support available to help them apply;
- they were hampered in accessing the support available to help them apply by restrictions associated with the COVID-19 pandemic;
- they overlooked the need to apply or they overlooked the deadline, or they failed to get round to applying by the deadline, in light of their personal circumstances.

A letter from a charity or homelessness service confirming the person's circumstances would be considered relevant evidence to allow a late application. Other acceptable evidence includes information from the DWP and information from the person about their attempts to access support in making an application¹¹.

As mentioned, a person who makes a late application should have their rights protected until it – and any appeal – is concluded.

Dealing with '28 day notice' letters

The Case Worker guidance describes a procedure whereby, if a person is encountered by

⁹ <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

¹⁰ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004627/main-eussguidance-v13.0ext.pdf

¹¹ We are keen to hear from organisations about their experience of this in practice: julie.cook@homelesslink.org.uk

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Immigration Enforcement who has yet to make an application to the EUSS and may be eligible to do so, they will be issued with written notice asking them to submit an application **within 28 days**. The Home Office has indicated that if this deadline is missed there can be a further period of notice given where there are reasonable grounds, including those related to homelessness or complex needs.

Given the short timeframe allotted to make an application in these circumstances, it is likely that individuals will require the support of homelessness and advice organisations. With this in mind, Homeless Link has produced a series of information leaflets for Greater London, which provide details of Streetlink and open access homelessness services per sub region. It has been agreed that these should be supplied to an individual by immigration or police officials alongside notice letters.

It is important that homelessness services connect anyone who has received a notice letter to immigration advice as soon as possible. Services should refer to the list of grant-funded organisations in their area in the first instance.¹² Given the limited capacity in the immigration advice sector, services should support individuals when possible to liaise with immigration advisers or, alternatively, to follow-up with the individual after signposting to ensure that they have been able to access the support they need. It is advisable that individuals obtain confirmation of the steps they are taking to make an EUSS application from an immigration adviser so that they can prove this to the Home Office if they are encountered again.

Outside Greater London, the Home Office is exploring the option of alerting local authorities about individuals who receive notice letters, as a means to ensure they are connected with support.

¹² <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

Further Resources

NRPF Network provides support, training and guidance to Local Authorities on NRPF issues. They have published an updated briefing/fact sheet for LA's on the changes following the 30th June 2021 deadline:

<https://www.nrpfnetwork.org.uk/-/media/microsites/nrpf/documents/guidance/factsheet-eu-settlementscheme.pdf?la=en&hash=4B47BC7030DB7A459877902127FDAB93E7D9DE84>

The Home Office provides extensive information and guides on the EUSS on gov.uk. These include:

Toolkit for Community Groups on the EUSS

<https://www.gov.uk/government/collections/eu-settlement-scheme-community-groups-toolkit>

Toolkit for LA's on the EUSS

<https://www.gov.uk/government/collections/eu-settlement-scheme-local-authorities-toolkit>

Leaflets and facts sheets on EUSS late applications

<https://www.gov.uk/government/publications/eu-settlement-scheme-information-for-late-applicants>

Right to Rent – update for Landlords on checks on EEA nationals from July

<https://www.gov.uk/government/publications/right-to-rent-checks-from-july-2021-important-informationfor-landlords3>

the3million is a campaign organisation for EU citizens in the UK. Updated information on rights and entitlements: <https://www.the3million.org.uk/rights-have-changed>

Housing Rights Information provides online housing rights advice produced by Chartered Institute of Housing which includes updated rights and information for EU nationals: <https://www.housing-rights.info/brexit-news.php>

Europeans Londoner Hub is the Mayor of London webpage specifically for EU nationals living in London with updated information following 30 June 2021:

<https://www.london.gov.uk/what-we-do/european-londoners-hub>

EU Citizens Rights for EU citizens living in the UK with website which includes an interactive database of local organisations providing support and information: <http://www.eurights.uk/>

Right to Remain is a Charity offering resources and a toolkit for community groups and organisations to help people establish their right to remain. Their online guide is for non UK nationals in the UK who need help to navigate the immigration system or for people working with them. Pages for EU nationals have been updated: <https://righttoremain.org.uk/toolkit/eu/>

Doctors of the World is a Charity working to empower excluded people to access healthcare. Updated briefing on access to health care for EEA nationals in the UK:

https://www.doctorsoftheworld.org.uk/wp-content/uploads/2021/06/DOTW-Briefing_Access-to-NHSServices-for-EU-Citizens-after-1-July-2021.pdf

New Europeans is a charity which helps EEA nationals in the UK to access their rights and entitlement. They provide a range of online films in different languages about applying to the EUSS:

<https://neweuropeans.uk/managing-your-status/>