EU Settlement Scheme: Looked-after Children and Care Leavers Guidance

**Introduction**

**NOTE:** in April 2020 the Government issued guidance relating to the EU Settlement Scheme (EUSS) as it relates to Looked After Children and Care Leavers. This guidance relates to all four countries within the United Kingdom, however information set out here relates ONLY to England. For information about the guidance for Scotland, Wales and Northern Ireland, please consult the guidance.

[**EU Settlement Scheme: Looked-after children and care leavers: local authority and health and social care trust guidance; April 2020**](https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance)

**The date by which applications for settled status in the UK will be finalised is 30 June 2021. The EU Settlement Scheme – Home Office Looked After Children and care leavers survey 2020 (Updated March 2021 states clearly that**: ‘…in line with the Withdrawal Agreement, where a person who was resident in the UK at the end of the transition period on 31 December 2020,  has reasonable grounds for missing the 30 June 2021 deadline for applications to the EUSS, they will be given a further opportunity to apply. This will include where a parent, guardian or local authority fails to apply on behalf of a child.’

However, it should be noted that: "Even a child who applies late will have a period of unlawful status in the UK – from 1 July 2021 until such time as they have affirmatively secured status. To fail to apply for an eligible child could mean that they are suddenly, through no fault of their own,  cut off from essential services and support as of 1 July 2021. They will lose the right to work, rent, hold a bank account or a driving license. Any period of unlawful residence will have serious impacts on any future application for citizenship and if a young person has ambitions to attend university, impact their eligibility for student finance. They could also face deportation from the UK." (Source: [**Children’s Society: Looked After Children and the EU Settlement Scheme, An update for Local Authorities – March 2021**](https://www.childrenssociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf)).

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| ***It is now a matter of the utmost urgency that Local Authorities ensure that all eligible looked after children and care leavers are identified and put forward for settled status by the end of June 2021*****Actions*** **Identify all children and/or young people who may need to apply for settled or pre-settled status within the Looked After cohort. This is a mandatory obligation. For more detail please go to:**[**The Mandatory obligations of local authorities**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#man_oblig)**;**
* **Clarify whether the child or young person is likely to be at particular risk as a result of the complexity of their case, are unable to prove their nationality or length of residence, have pre-settled status and are leaving care or have an existing claim to British citizenship. Some cases may need legal advice;**
* **Make an application at the earliest possible opportunity – for detail on what is required for making an application please go to:**[**Getting Started**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#getting_started)**;**
* **Keep hard copies of all correspondence and documentation as well as digital records – for more detail of the requirements please go to**[**Data Recording**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#data)**.**
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Under the EU settlement scheme, individuals will be granted ‘settled status’ if they can demonstrate their nationality and that they have been resident in the UK for 5 years (subject to criminality checks). Those who cannot supply 5 years residence will be granted ‘pre-settled status’ with the option to subsequently apply for settled status.

The latest Home Office estimate of eligible children and young people affected by this change is 3,300 ([**EU Settlement Scheme – Home Office Looked After Children and care leavers survey 2020 (Updated March 2021)**](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). However, this is likely to be a significant under-estimate. See, for example: [**Children’s Society: Looked After Children and the EU Settlement Scheme, An update for Local Authorities – March 2021**](https://www.childrenssociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf).

In a recent report, Coram Children’s Legal Centre noted that there are four groups of children who may be at particular risk in this process

* Children, young people and families with complex cases;
* Children who are unable to prove their nationality or length of residence in the UK;
* Children with an existing claim to automatic acquisition of British citizenship or a case to register at discretion;
* Children in care who are only granted pre-settled status and subsequently leave care (these children must apply to convert their pre settled status to settled status at the required time or they will lose their right to lawfully remain in the UK).

For further information please go to:

[**Uncertain Futures: the EU settlement scheme and children and young people’s right to remain in the UK; Coram Children’s Legal Centre**](https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing_Mar2019_FINAL.pdf)

[**EU Settlement Scheme and Looked After Children and Care Leavers (Policy Briefing) The Children’s Society**](https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/eu-settlement-scheme-and-vulnerable-children)

[**EU Settlement Scheme – 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’s Society: Looked After Children and the EU Settlement Scheme, An update for Local Authorities – March 2021**](https://www.childrenssociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf)

[**Apply to the EU Settlement Scheme (settled and pre-settled status)**](https://www.gov.uk/settled-status-eu-citizens-families)

**The Guidance**

The Mandatory obligations of local authorities

The mandatory obligations of local authorities a supporting looked after children and care leavers include:

* To identify adequately  trained resource(s) to manage and make applications;
* To identify eligible children, including;
	+ Looked after children for whom the authority has parental responsibility;
	+ Looked after children who are accommodated;
	+ Care leavers;
	+ Any other children in receipt of local authority support, for example children in need.
* To identify key signposting responsibilities towards each eligible child and put plans in place to ensure this signposting support takes place;
* To determine, for each child the local authority has parental responsibility for, whether you will be applying online and whether you can use the EU Exit: ID Document Check app or will be posting their identity document to the Home Office to be checked and returned;
* To keep an adequate record of each application made, including the status granted and which email address and phone number were used. You should also note the answers given to memorable questions in each case, in case the Home Office needs to authenticate you or the child to discuss the application;
* To record plans for monitoring the child’s status, including future actions, with deadlines, to be carried out. This will ensure that where the child is granted pre-settled status (generally this is where they have been continuously resident in the UK for less than 5  years) they  apply to convert this to settled status at the appropriate time. This information should be clearly marked in the child’s care plan or the care leaver’s pathway plan.

Data recording

When you make an application on behalf of a looked after child, or if you otherwise signpost or support someone to make an application for a looked after child or care leaver, it is essential that you record key information. This information needs to be accessible in the event that you, the child or the Home Office need to check on the progress of the application and to ensure the digital status granted can be accessed.

Detailed records and plans for monitoring the child’s status, including future actions with deadlines, to be carried out in order to convert pre-settled status into settled status once the child or care leaver has accrued 5  years’ continuous residence should be documented in the child’s care plan or the care leaver’s pathway plan. Information should be stored centrally so that changes in personnel do not affect the ability to access it if needed. Applicants and relevant third parties (e.g. parents/carers) should also be made aware of the need to store this information themselves, where appropriate. Data should be stored securely in line with your organisation’s GDPR policies. Ensure you record:

* The Unique Application Number (UAN) given when the application is made;
* The e-mail(s) and phone number(s) that were entered in the application form;
* The address that was entered in the application form;
* The answers that were given to the memorable questions at the end of the application form;
* The nationality of the child or care leaver;
* The status the child or care leaver was granted;
* The date that the child or care leaver can apply to convert their pre-settled status into settled status, and the date their pre-settled status expires (required only for those granted pre-settled status).

Getting started

Once you have identified which looked after children and care leavers are in the scope of the scheme you will need to follow the specific instructions below (England only) to find out what your responsibilities are. The EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members guidance will help you to identify who is within the scope. See the [**EU Settlement Scheme caseworker guidance**](https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance).

At this point, you should ensure that consideration is given to the child’s wishes and feelings and ensure that the child is aware of their right to access independent advocacy and support.

Barriers to a successful application

**The EU Settlement Scheme – Home Office Looked After Children and care leavers survey 2020 (Updated March 2021 suggests that Local Authorities have so far encountered three main barriers to a straightforward application. These are**: ‘lack of sufficient identity documents’. This was followed by ‘resistance or lack of co-operation by the applicant and/or their family members’, e.g. where a care leaver has refused to complete an application or where parents have refused to provide the relevant identity documents for looked after children. The third most referenced barrier was ‘a delay in obtaining the relevant identity documents’, COVID restrictions are impacting on information gathering as well. Currently, there are no plans to extend the application timescale.

Child with a care order, interim care order or placement order

If the child is looked after under a care order or interim care order under s.31 or s.38 of the Children Act 1989, or a child with an adoption placement order under s.21 of the Adoption and Children Act 2002 and the local authority has parental responsibility for the child, you should ensure that the application is made. You can either make the application on behalf of the child, or, if deemed more appropriate due to the age and maturity of the child, you can support the child to make their own application.

Accommodated children

Children accommodated under Section 20

If the looked after child is accommodated under s.20 of the Children Act 1989, the local authority does not have parental responsibility for the child. The local authority should ensure that the child and those with parental responsibility for that child are aware of the need to make an application to the scheme, signpost them to the scheme, explain why it is important to apply and offer practical support where needed.

The local authority should ensure that it works closely with the person with parental responsibility to monitor the progress of any application made, providing practical support as appropriate.

A child does not require consent from an adult in order to apply. They can make their own application. It is important therefore that the local authority ensures all eligible looked after children are aware of their eligibility to apply and that decisions are made in the child’s best interests.

In cases where the child is being accommodated because there is no-one with parental responsibility for the child or the child is lost or abandoned, the local authority will need to consider carefully how best to safeguard and promote the welfare of that child in accordance with the local authority duties under s.22(3) of the Children Act 1989.

Any other children in receipt of local authority support

If you identify other eligible children receiving support, for example children in need, you can promote the scheme and signpost to relevant available support.

In identifying all eligible children and ascertaining what your responsibilities are, you should also consider the [**Department for Education’s statutory guidance ‘Care of unaccompanied migrant children and child victims of modern slavery’**](https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children):

Care leavers

As per legislation and guidance, local authorities have a responsibility to provide ongoing support to young people who qualify for leaving care support up to the age of 25.

See ss.[**23A – 24D of the Children Act 1989**](https://www.legislation.gov.uk/ukpga/1989/41/part/III/crossheading/advice-and-assistance-for-certain-children): and the [**Care Leavers (England) Regulations 2010**](https://www.legislation.gov.uk/uksi/2010/2571/contents/made)

Ensuring that care leavers secure a status through the EU Settlement Scheme is relevant to these existing statutory responsibilities for care leavers.

Acknowledging that there may be occasions when extra support is necessary, the local authority should identify care leavers who may be eligible to apply to the scheme and offer them support to ensure that they make an application.

In some cases, if deemed more appropriate due to their age and maturity, the local authority may signpost them to make their own application or may need to offer practical support.

Identifying the support that can be provided to help eligible young people to make an application to the scheme and keeping an adequate record of applications made and status granted should form part of the necessary pathway planning for care leavers ordinarily carried out by local authorities in the discharge of their duties.

In the case of a pre-settled status outcome, plans for applying to convert this into settled status, including the deadline for doing so, must be documented in the care leaver’s pathway plan. In the event of a request for further information or a refusal decision, you should follow this up with the care leaver in a timely fashion to ensure the best possible outcomes are achieved for the individual. Activities may include contacting the Home Office (UK Visas and Immigration) via the [**Settlement Resolution Centre**](https://www.gov.uk/contact-ukvi-inside-outside-uk/y/inside-the-uk/eu-settlement-scheme-settled-and-pre-settled-status) on their behalf, and/or seeking independent legal advice for or with the individual.

You should consider whether you need to engage an independent immigration adviser. An immigration adviser can advise whether legal aid funding via the exceptional case funding scheme may be available to cover the cost of immigration advice.

**Information about legal advice and access to legal aid can be found in the appendices.**(See [**Appendix**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#appendix))

All issues relating to immigration status and ongoing monitoring should be included in detail in the care leaver’s pathway plan.

See [**Data Recording**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#data)

Youth Secure Settings (under 18)

Children and young people in youth secure settings (young offender institutions, secure training centres, secure children’s homes and secure schools (once opened)) who are EEA citizens or family members of EEA citizens, may be eligible to apply for the scheme. Youth secure settings should identify a designated EU Settlement Scheme lead (e.g. Resettlement Manager, Social Worker or Caseworker) to coordinate application planning and provide oversight. The designated lead will need to ensure that children and young people who may, or may on their release, be eligible to apply are identified, their legal carers are alerted and application plans are formulated in collaboration with the relevant authorities.

Where parental responsibility lies with the child or young person’s legal parents, they should be completing applications on their behalf. However, the youth secure setting and local authority still have a responsibility to raise awareness of the application process to family members so they can make informed decisions. The level of involvement required will need to be assessed on a case by case basis. All looked after children in the youth justice system will require additional support. Where parental responsibility lies with the local authority, the local authority is responsible for ensuring that applications for status under the EU Settlement Scheme are submitted. Alternatively, the local authority can support the child or young person to make their own application. If you are supporting a child or young person involved in the criminal justice system, you should consider seeking independent immigration legal advice. These cases can be complex, so may require expert assistance to ensure the best possible outcomes. For further information relating to changes to care status because of criminal justice decisions, please refer to [**Annex 8 of the Children Act 1989 guidance and regulations, Volume 2: care planning, placement and case review**](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf#page=182).

Youth secure settings should also work with Youth Offending Teams, especially in preparation for that child or young person’s release to ensure there is a smooth handover of relevant details. Application progress or planning should be discussed during sentence planning or detention training order reviews that Youth Offending Teams and Children’s Services will be attending. This will enable relevant information to be communicated to local authorities upon release. This process should form part of that child or young person’s constructive resettlement agenda. If it is necessary for a youth secure setting to complete an application on behalf of the child or young person, the designated lead can complete an online application or support the individual to complete their own paper-based application. Although the child or young person’s parents should be involved in the application process, the child or young person can make their own independent application if they wish without parental consent. The child or young person’s application details should be recorded centrally as part of their review so that information remains easily accessible during establishment transfers, transitions to the adult estate and upon release.

See [**Data Recording**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#data)

Pre-application Checklist

Please use the following checklist to help prepare you to apply, or to help prepare others who need to apply, on behalf of a looked after child:

* Consider British citizenship. Is the child a British citizen? Could they apply or register for British citizenship? What’s in the child’s best interests?
* Consider the child’s wishes and feelings. All looked after children should be made aware of their entitlement to independent advocacy support and the local authority  should facilitate this access where required;
* Gather identity document(s);
* Make an application for an identity document where there is none;
* Consider evidence of UK residence – usually this will be in the form of a letter by the local authority  confirming the length of residence;
* Consider the paper application form route where a valid identity document cannot be obtained or produced;
* Record all key information to be accessed by the child or other carers in the future.

Appeal Rights and Administrative Review

Some decisions under the EU Settlement Scheme can be challenged by an internal administrative review and/or an appeal. The decision letter will tell you whether there is the right to apply for an administrative review or to appeal and will provide links to further information on the process and the fees payable:

See [**EU Settlement Scheme: apply for an administrative review**](https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review)

or [**Appeal against a visa or immigration decision**](https://www.gov.uk/immigration-asylum-tribunal)

Do I need to be legally qualified to support a child or care leaver to make an application to the EU Settlement Scheme?

The Office of the Immigration Service Commissioner (OISC) is the regulatory body for the provision of immigration advice.

OISC has confirmed that, where there is a care order giving the local authority  parental responsibility, that authority or trust can advise and act for the child  about an application under the EU Settlement Scheme without the need for such advice and services to be regulated by the OISC or another designated qualifying regulator.

Whilst applications to the scheme are free and the process is simple to navigate, in more complex cases, such as cases where there are eligibility issues for non-EEA national children of EEA citizens, where the child resides  based on a derivative right of residence under EU law, or where British citizenship can be applied for, the local authority  may wish to seek independent legal advice, in line with its own organisation’s processes and policies.

The local authority  may choose to seek independent legal immigration advice. Public funding in the form of legal aid may be available for some particularly vulnerable individuals, such as victims of modern slavery or human trafficking, victims of domestic violence and separated migrant children.

Legal aid may also be available through the exceptional case funding scheme where a failure to provide legal aid would breach, or risk breaching, rights under the European Convention on Human Rights or enforceable EU law rights.

Further information about how to apply for legal aid to fund independent legal advice for a child or care leaver making an application to the EU Settlement Scheme can be found at:

[**Legal aid**](https://www.gov.uk/legal-aid)

The Home Office Settlement Resolution Centre can be contacted for support. Contact details are in the appendices (see [**Appendix**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#appendix))

In cases where there is no care order giving the local authority  parental responsibility, the local authority  should signpost to further information and offer support, to ensure the individual is able to make an application. For example, for a care leaver or a child for whom the local authority  does not have parental responsibility, it will need to ensure its support does not stray into that of giving ‘immigration advice’.

In accordance with existing statutory duties the local authority  must, in all circumstances, seek to secure the best possible outcomes for the looked after child, safeguarding and promoting their best interests and acting as a good corporate parent to enable each looked after child to achieve their full potential in life. Addressing immigration issues early as part of any assessment and care plan, offering support and if necessary, seeking legal advice about the appropriate action based on the circumstances of the individual looked after child is an important part of these responsibilities.

Further guidance about the OISC can be found here: [**Gov.uk**](https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner)

**Other Issues**

British Citizenship

Before making an application to the EU Settlement Scheme on behalf of a looked after child, the local authority  should consider whether the child might be a British citizen. If they are, they are not eligible for the scheme. The local authority or health and social care trust can check whether a child is a British citizen by following guidance available at:

[**Check if you're a British citizen**](https://www.gov.uk/check-british-citizenship)

It is important to consider this guidance and what is – or will be – in the best interests of the child in relation to any application for British citizenship. The local authority  should consider obtaining independent immigration legal advice.

Identity Documents

Verifying the applicant’s identity and nationality is a key requirement of the EU Settlement Scheme. If a child or young person does not have a valid passport or national identity card (for EEA citizens) or a valid passport or Home Office-issued biometric residence card or biometric residence permit (for non-EEA nationals) confirming their identity and nationality, it is important that the local authority endeavours to obtain a passport or national identity card for the child or young person from the authorities of their country of origin before an application to the scheme is made.

Obtaining these identity documents should be a familiar process for local authorities , as they will be required to obtain them in other circumstances. The local authority  is advised to contact the relevant embassy, consulate or high commission if it is experiencing issues obtaining an identity document or needs more information about how to do so on behalf of a looked after child or care leaver.

The Home Office recognises that there will be cases where the applicant (or a local authority trust acting on their behalf) is unable to obtain or produce the required identity document due to circumstances beyond their control or to compelling practical or compassionate reasons, and can accept alternative evidence of identity and nationality in such cases. Further information can be found in the EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members guidance see[**EU Settlement Scheme caseworker guidance**](https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance)

Paper application form process guide

If a child or young person does not have the required identity document (see [**Identity Documents**](https://www.proceduresonline.com/resources/brexit/eu_settlement.html#iden_docs)) and there are circumstances beyond their control or compelling practical or compassionate reasons why it is not possible to obtain or produce one, the local authority o will need to make the application using a paper application form.

You must contact the [**Home Office Settlement Resolution Centre (SRC)**](https://www.gov.uk/contact-ukvi-inside-outside-uk/y/inside-the-uk/eu-settlement-scheme-settled-and-pre-settled-status) which will confirm whether a paper application form is necessary and ensure that the correct form, if applicable, is issued. You can also contact the SRC if you have any questions about the scheme or to discuss an open application.

A local authority  will be able to request multiple paper application forms in a single enquiry.

A request for a paper application form should include details such as the name, nationality and date of birth of the child or young person, and details of why a paper application form is required rather than using the online form. The local authority will also need to state why it is requesting the form on behalf of a child – i.e. that the local authority has parental responsibility for them.

The paper application form will be uniquely coded, and therefore will only be for use in respect of the child or young person for whom it was issued.

Information about useful organisations and services can be found at the end of the guidance. See [**EU Settlement Scheme: Looked-after children and care leavers: local authority and health and social care trust guidance; April 2020**](https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance#page=20).

**Appendix**

[**Legal Aid**](https://www.gov.uk/legal-aid)

[**Home Office Settlement Resolution Centre**](https://eu-settled-status-enquiries.service.gov.uk/start)

[**Main Application guidance**](https://www.gov.uk/settled-status-eu-citizens-families)

[**EU Settlement Scheme – 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’s Society: Looked After Children and the EU Settlement Scheme, An update for Local Authorities – March 2021**](https://www.childrenssociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf)