

EU Exit, Transition Period, and the EU Settlement Scheme – How They Impact on Children and Families Crossing Borders

Introduction

This factsheet is for local authority social workers, although it provides relevant reading for any professional working to safeguard and/or protect children. It explores the impact of the UK leaving the EU on children and families who are crossing, or separated by, international borders.

The EU Settlement Scheme and future international cooperation in relation to family law cases are explored here and practical steps which may be taken by professionals are also suggested.

This factsheet is part of a series – see also:

- Placing Children with Family Overseas
- International Child Protection
- UK Social Workers Practising Overseas: Assessing family members abroad

EU Exit – where are we now?

As of 31 January 2020, the **UK is no longer a member state of the European Union**, however discussions about the UK's future relationship with the EU are ongoing. During the 11-month transition period, current rules will continue to apply until new rules come into effect on 01 January 2021.

Over the last few years, CFAB has worked together with other charities and experts to draw attention to how EU Exit will affect children and their families, to protect children's' rights and raise awareness of concerns as EU law is moved into domestic law. The discussion paper "Making Brexit work for children – The impact of Brexit on children and young people"ⁱ was published in 2017.

EU children in the UK

In 2016, there were **679,000 European national children under the age of 18** living in the UKⁱⁱ. There are currently **78,150 looked-after children in England** (March 2019)ⁱⁱⁱ, but due to inconsistent data collection and recording of nationality of looked after children among

local authorities, we do not know how many of them are EU nationals. This implies UK local authorities may not know which, or how many, children, even those in their care will be affected by EU Exit and the EU Settlement Scheme^{iv}, let alone care leavers, the families and children who are known to them in the category of child in need and children at risk.

It is very important to obtain information on a child's nationality, citizenship and/or immigration status to identify any of them are going to be subject to the EU Settlement Scheme or any other immigration requirements. Professionals should be mindful that some children may hold more than one nationalities and ensure that information about every child's nationality is accurately recorded. Consideration should be given to record the nationalities and immigration statuses of the parents /carers as well, as this may become relevant in the future to secure a child's status. It is not enough to note their parents' racial and ethnic background, or the region where they come from, and then speculate their child's nationality. Equally it is not sufficient to assume the child's place of birth would determine their nationality, as different countries have different eligibility criteria for nationality.

Where children have an EU connection, professionals should seek to take copies of passports, birth certificates or travel documents as early as possible in any assessment process. These documents will be essential for the applications of the EU Settlement Scheme. Such information is also useful in understanding the family's links abroad; particularly in the case of families fleeing overseas with children in need of protection or seeking alternative carers including extended family members overseas

It is vital that local authorities are provided with clear guidance on how to support these children's interests' post-EU Exit so that they can provide these EU national children the correct information about their settlement status, rights and entitlements to safeguard their futures. ^v There is a risk to children becoming undocumented and subject to immigration requirements if an application for settled status is not made. This can have far reaching consequences including children and young people becoming destitute.

Practical steps to take to identify children affected by the EU exit

Obtaining and recording this type of information can have its own challenges when working to build rapport with children and their families. Social workers may feel that in asking for proof of citizenship or immigration status could undermine trust-building, as the families may become suspicious of social workers' motive. Transparency is usually a good policy and families may appreciate and be reassured by professionals' sincere open approach. We can explain to the families a primary purpose of knowing their nationality, citizenship, or immigration status, along with other information shared, is to understand their resources, strengths and challenges unique to them, so that appropriate advice and support can be provided to ensure their child's safety and welfare.

Professional practice on recording citizenship may vary depending on individual social worker's values and organisational culture, as there is no statutory policy guidance to mandate local authorities to collect such data. For example, social workers may resort to

obtain such information verbally from family members while others may request factual evidence such as travel documentation or birth certificate.

Employing a tool such as a genogram interactively as part of the assessment process may offer a creative solution in collecting such personal and contentious information without provoking suspicions or anxieties. Fluidity of dialogue and participative approach whilst drawing a genogram / family tree together can be perceived less intrusive and oppressive in ascertaining the family relationship and exploring their identity.

Professionals should also note that the 26-week timetable set within a child's public law proceedings may be revised and extended in increments of eight weeks, in cases with an international element where investigation or assessments have to be carried out abroad.

EU Settlement Scheme

EU Exit means that Freedom of Movement- which allows EU citizens to move to, live, work and study in other EU countries - will cease to apply **in the UK** at the end of the transition period. This means that citizens of other EU countries who wish to remain in the UK need to apply for a new residence status. The EU Settlement Scheme allows EU, EEA¹ and Swiss Citizens and families to apply to continue living in the UK after the end of the transition period and enjoy the same access to work, benefits, education and other public services as they do currently. Whilst Freedom of Movement will cease after 31 December 2020, the deadline for applications is 30 June 2021. Applicants will need to demonstrate that they have lived continuously in the UK for 5 years in order to be granted settled status, and those who are unable to do so (who do not have 5 years' continuous residence) may be granted pre-settled status, so long as they have started living in the UK by 31 December – the end of the transition period.

To check eligibility, please refer to the government guidelines, which can be found at: <https://www.gov.uk/settled-status-eu-citizens-families>. Access to information regarding the scheme is also available in 26 languages and can be found at: <https://www.gov.uk/guidance/settled-status-for-eu-citizens-and-their-families-translations>.

An EU Settlement Resolution Centre has been set up to help with the process and can be contacted on Tel: 0300 123 7379 with any queries.

Applying for children

Parents and guardians will also need to apply for settled status on behalf of their children. However, children who are supported by a local authority may fall into one of the following four categories and require a different approach to applying:

1. Children Looked After: For children the Local Authority has parental responsibility for, their Local Authority needs to apply for EU Settlement Status on their behalf.
2. Children, who are accommodated, but the Local Authority does not have parental responsibility for them:² The Local Authority needs to ensure that the person with parental responsibility makes the application.

3. Children, who are Care Leavers: The children, who used to be looked after by their Local Authority and need to apply for settled status should be identified by their Local Authority. The Local Authority should inform those young adults support them in their application as necessary.
4. Children supported by the local authority (Children In Need, Children at risk of harm): Eligible children living with their parents or guardians, who are supported by the local authority, should be identified and provided with relevant information and or should be signposted to make the application.

Practical steps to take for social workers

Assessing social workers should **gather basic information** such as names, dates of birth, nationalities, addresses (including those in other countries) and **activities such as employment or study of family members of EU children**. Gathering this information should be prioritised in the initial assessment process as they can guide us in assessing the child's needs, and planning the child's future including settlement status of children and young people.

For the children already looked after, consider **examining historical information** such as chronology as a source of information relating to the activities of family members to check their family connections to the EU and locate the right documents that are required for settled status application. As part of the EU Settlement Scheme application, the **child will need to have proof of identity** - this could be a valid passport or national identity card. Professionals should ensure that they check and obtain proof of nationality of the child they work with in case an application for settled status needs to be made. This is the reason why it is very significant to take copies of any relevant documents wherever possible if originals cannot be retained.

Professionals should consider the status of the local authority's parental responsibility and the effect of any orders in place relating to the individual child. Thoughts should be given to whether a **settlement application could be made for a child relating to a safe family member**, for example where a Special Guardianship Order might be appropriate and the adult in question is exercising their treaty rights.

Professionals should also consider whether **parents are open to working alongside the local authority to achieve settlement applications** and start making a plan even during ongoing care proceedings to ensure the child concerned has all necessary documents and evidence to apply for settled status irrespective of the outcome of proceedings. Breakdown in communication with the child's parents is likely to hinder this process, highlighting an importance of forming partnership-working with the parents even during difficult times throughout the child protection intervention, care proceedings and beyond.

Professionals can also consider **if children can make applications in their own right with support from their social worker**, for example in the case of young people aged sixteen and over as they should have competency to have their own views and opinions about their

future. This may be the most appropriate recourse to a settlement application for the young person.

Professionals may also want to **verify if the child is eligible for British citizenship** and check the other country's nationality laws to confirm whether the acquisition of British citizenship would result in the child losing their other nationality.

Instruments for international civil judicial cooperation

There is still some uncertainty about the future of family law post-EU Exit, not knowing what agreements and rules will apply post EU Exit will depend on the UK's future relationship with the EU and its individual Member States. During the current transition period the UK will still be treated as if it were a member of the EU and EU regulations including one known as Brussels IIA, which governs matters of parental responsibility, will continue to apply.

In a child protection context, Brussels IIA ensures that care proceedings concerning a child with European connections are heard by the 'correct and competent' court and that protective orders issued for children can be recognised and enforced across the EU. Brussels IIA also provides a vital legal framework of cross-border cooperation and communication between EU Member States which can, for example, enable family members overseas to be assessed as potential carers for a child and facilitate the exchange of information between authorities to protect children.

It is possible that Brussels IIA will be replaced by more bi-lateral agreement between the UK and EU countries, but otherwise the UK can apply the 1996 Hague Convention in cross-border cases. In this case, local authorities' social workers and legal professionals may benefit from training to get familiar with the 1996 Hague Convention and learn the differences between the two legal instruments.

Practical steps to take using legal instruments

Professionals should again record the child's nationality accurately at the first possible opportunity. Assessments and care plans relating to EU national children should contain a reference to the family's country of origin.

Professionals should communicate the international element for any child or related family member to their local authority's legal service, for early consideration of any differences between the two legal instruments of Brussels IIA and the 1996 Hague Convention. Establishing early on in the process which legal framework the family's country of origin falls under will inform how assessment and care planning is shaped. This will also ensure that opportunities for family placements overseas or with settled family members in the UK would not be overlooked.

Conclusions

It is clear that EU Exit and the ongoing negotiations regarding the UK's future relationship with the EU will have far-reaching implications for children and families crossing the EU/UK border; for EU children residing in the UK who are separated from their parents and for British children being looked after by family members in another EU Member States.

Whatever the outcome of the negotiations during the transition period between now and 31 December 2020 it is important that the voices of children and families are represented whenever possible to ensure that vulnerable children are not further disadvantaged or prevented from enjoying their right to a family life.

CFAB will continue to work in partnership with other charities and experts to identify not only the impact on children and their families, but also working with other professionals to ensure the children receive the necessary support so that they are not negatively impacted by EU Exit.