

EU Exit and the EU Settlement Scheme

The 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 (EUSS) 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** and the transition period ended on the 31 December 2020.

EU, EEA¹ and Swiss nationals were required to make an application under the EU Settlement Scheme for their right to reside in the UK and be eligible to work and access services until the 30 June 2021. The EU Settlement Scheme also applies to children with the person holding parental responsibility being required to make an application for each child.

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*" was published in 2017.²

¹ EEA countries: European Economic Area which includes EU member states and Iceland, Lichtenstein and Norway.
<https://www.gov.uk/eu-eea>

² https://www.childrenslegalcentre.com/wp-content/uploads/2017/08/Brexit_Discussion_Paper_FINAL.pdf

EU children in the UK

In 2019 there were approximately 3,7 million (ONS) people living in the UK, who held an EU nationality and an estimated 689,000 children under the age of 18 were non-Irish EU citizens³ ⁴. There are currently 80,080 Children Looked After in England (March 2020⁵), 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 are affected by EU Exit and the EU Settlement Scheme, 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 children that 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 nationality 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 on 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 to the EU Settlement Scheme or possible other immigration requirements in the future. Such information is also useful in understanding the family's links abroad; particularly in cases 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 with the correct information about their settlement status, rights and entitlements to safeguard their futures.⁶ 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 a rapport with children and their families. Social workers may feel that asking for proof of citizenship or immigration status could undermine trust-building, as the families may become suspicious of social workers' motives. Transparency is usually a good policy and families may appreciate and be reassured by professionals' sincere open approach. We can explain to the families the 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.

³ Irish nationals are not required to apply for EUSS (<https://www.gov.uk/settled-status-eu-citizens-families/eligibility>)

⁴ <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>

⁵ <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2020>

⁶ Current government guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918663/looked-after-children-EUSS.pdf

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 a 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 - ceased to apply **in the UK** on 31 December 2020. This means that citizens of other EU countries, EEA and Swiss nationals, who wished to remain in the UK needed to apply for a new residence status. The EU Settlement Scheme allowed citizens, and their families, of EU member states, Norway, Switzerland, Iceland and Lichtenstein to apply until 30 June 2021 to continue living in the UK in order to enjoy the same access to work, benefits, education and other public services as they had before. Applicants needed to demonstrate that they lived continuously in the UK for 5 years in order to be granted settled status, and those who were unable to do so (who did not have 5 years' continuous residence) may have been granted pre-settled status, as long as they (or a family member, if joining a EU, EEA and Swiss resident in the UK) had started living in the UK by 31 December 2020– the end of the transition period. Provisions have been made to consider applications made after 30 June 2021 depending on reasonable grounds for a late application. These applications should be made as soon as possible.

Since 1 July 2021 EU, EEA and Swiss nationals are now required to evidence their immigration status in the UK to proof their right to work, rent a home and to access benefits. They either need to evidence their right to live in the UK through the EU Settlement Scheme or through a visa obtained through the points-based immigration system. Please refer to the following government guidelines:

- how to evidence the immigration status: <https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa>
- Applying to the EU Settlement Scheme: <https://www.gov.uk/settled-status-eu-citizens-families>.
- Translated guidance (currently being updated): <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. <https://www.gov.uk/contact-ukvi-inside-outside-uk/y/inside-the-uk/applying-to-continue-living-in-the-uk-including-settled-and-pre-settled-status/using-the-eu-exit-id-document-check-app>

Applying for children

Parents and guardians need to apply for settled status on behalf of their children and each child needs their own application.

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. Provisions to make or support late applications may apply:

- **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.
- **Children, who are accommodated,** but the Local Authority does not have parental responsibility for them: The Local Authority needs to ensure that the person with parental responsibility makes the application or determine how best to safeguard the children's welfare
- 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.
- 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.

Please refer to the government guidance for more information: <https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance>

Practical steps to take for social workers

Assessing social workers should **gather basic information** such as names, dates of birth, nationalities, (previous) 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 serve as a guide 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 the 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 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.

EU Exit does not only affect children with an EU nationality in the UK, but also has consequences for British children, who may be placed with family members in an EU Member State. Professionals should consider if these British children would be subject to immigration requirements and check their eligibility for support services and how to access these. The potential impact on the child in case of a placement breakdown in relation to their residence in the country and access to support needs to be explored.

Instruments for international civil judicial cooperation

During the transition period the UK was still being 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, continued to apply.

However since the 31 December 2020 Brussels IIa no longer applies to care proceedings issued after this date and the key instrument now used is the ***Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*** (Hague 1996⁷)

The Hague 1996 has three core functions covering jurisdiction, cooperation as well as recognition and enforcement of court orders between its contracting states (which includes all EU member states). Hence this legal instrument can be used to determine the following:

- which court (in which country) has the power to make long term decisions based on the child's best interest.
- Seeking cooperation from other countries through designated institutions (Central Authorities)/ This can include cooperation about background/record checks, completing assessments for a possible placement with family members overseas as well as seeking consent for the placement of a child in another country.

⁷ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>).

- Recognizing and enforcing court orders from one country in another country. Court orders made in the UK *should* be recognized in another member state, but additional steps may need to be taken to ensure this is certain, especially where there are differences in the court order issued.

In a child protection context, the Hague 1996 facilitates dialogue and cooperation between its member states to share information required to safeguard a child and to request that protection measures are considered for child protection purposes.

Please see additional factsheets for more information

Practical steps to take using legal instruments

Professionals should 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 the 1996 Hague Convention. Establishing early on in the process which legal framework applies 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 has 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 EU Member States.

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.ⁱ

ⁱ Updated November 2021