

## **EEA Citizens' Eligibility for Social Housing or Homelessness assistance**

The UK has left the EU. From 1 January 2021 new immigration and eligibility rules apply.

### **EEA citizens moving to the UK from 1 January 2021**

Newly arriving EEA citizens, moving to the UK from 1 January 2021, will have the same access to social housing and homelessness assistance as non-EEA migrants, unless they are a family member joining an EEA citizen who was residing in the UK by 31 December 2020.

All non-British nationals (excluding Irish citizens) who arrive in the UK from 1 January 2021 will be able to apply for an immigration status under the new points-based immigration system. They will require leave to enter or remain in the UK and will generally have no recourse to public funds, as is currently the case now for other third country nationals. This means they will not be eligible for an allocation of social housing or homelessness assistance, unless covered by the exemptions in our Eligibility Rules (for example, having a refugee status), or until they are eligible and are granted indefinite leave to remain (typically after 5 years continuous residence in the UK).

### **EEA citizens who resided in the UK before 31 December 2020**

The Withdrawal Agreement protects the rights of EEA citizens and their family members who were lawfully residing, or frontier working, in the UK before 11pm on 31 December 2020, including access to social housing and homelessness assistance. They will need to apply to the [EU Settlement Scheme](#) (EUSS) before the deadline of 30 June 2021 to continue residing in the UK.

Those granted settled status under the EUSS will have the same access to social housing and homelessness assistance as comparable British citizens. They should be eligible provided they can demonstrate habitual residence in the Common Travel Area, under provisions in [Regulation 3\(c\)](#) and [Regulation 5\(1\)\(c\)](#) of the Eligibility Regulations

Those granted pre-settled status will be eligible if they meet the eligibility rules under [Regulation 4](#) and [Regulation 6](#) of the Eligibility Regulations:

- Regulations 4(1) and 6(1) which prescribe the classes of persons from abroad who are to be treated as ineligible for an allocation of housing accommodation or for homelessness assistance, respectively; and
- Regulations 4(2) and 6(2) which prescribe the classes of people from abroad not subject to immigration control who are to be treated as eligible for an allocation of social housing and homelessness assistance

For further guidance on eligibility to social housing and homelessness assistance please refer to the relevant statutory guidance. These have been reviewed to reflect the changes to the eligibility regulations (*The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2020*) that came into effect from 1 January 2021. These guidance are available at:

- ❑ Chapter 3 of the *Allocation of Accommodation Statutory Guidance*- available at: <https://www.gov.uk/guidance/allocation-of-accommodation-guidance-for-local-authorities>
- ❑ Chapter 7 of the *Homelessness Code of Guidance* – available at: <https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities>

## **Grace Period**

EEA citizens who were lawfully residing in the UK by 11pm on 31 December 2020 will have until 30 June 2021 to apply to the EUSS. The 6 month period between 1 January to 30 June 2021 is referred to as 'the grace period'.

EEA citizens and their family members who have still to apply to the EUSS during the grace period will be able to access social housing and homelessness assistance provided they were lawfully resident in the UK before 11pm on 31 December 2020, and provided they meet the eligibility rules under [Regulation 4](#) and [Regulation 6](#) of the Eligibility Regulations. These protections will also apply to those with pending applications or a decision on an appeal, provided they applied to the EUSS before the deadline of 30 June 2021.

## **Late applicants to the EUSS**

Those who have missed the 30 June 2021 deadline and who do not have a different form of UK immigration status will be considered a person subject to immigration control and will not be eligible for an allocation of social housing or homelessness assistance. They will need to resolve their immigration status.

The Home Office have indicated that the Immigration Rules for the EUSS will provide scope for late applications to the EUSS to be accepted where there are reasonable grounds for missing the 30 June 2021 deadline.

## **Existing social housing tenants**

Failure to apply to the EUSS before the deadline of 30 June 2021 for eligible EEA citizens and their family members should not affect the terms and conditions of their social housing tenancy. However, it might impact their access to benefits. They would need to resolve their immigration status to ensure their rights to access benefits and services continue to be protected.

## **Family reunification**

EEA citizens arriving from 1 January 2021 will be eligible to apply to the EUSS where they are a close family member (i.e. spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) joining a resident EEA or Swiss citizen, if the relationship existed on 31 December 2020 and still exists when the family member wishes to join them in the UK.

Information relevant to this can be found at: <https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>

## **Frontier Worker**

An EEA citizen is a frontier worker if he/she is employed or self-employed in the UK on or before 31 December 2020 and continues to work in the UK, but lives in another Member State (and therefore not primarily resident in the UK).

Until 1 July 2021, protected frontier workers can continue to enter the UK for work using a valid passport or national identity card. From 1 July 2021 onwards, frontier workers (excluding Irish frontier workers) will be required to hold a valid frontier worker permit in order to enter the UK for work. Evidence that the EEA citizen has applied to, and been granted, a frontier worker permit will assist in clarifying the applicant's immigration status, but it's not a requirement.

EEA citizens frontier working in the UK, and their family members, will be eligible for an allocation of social housing or homelessness assistance if they meet the eligibility criteria under Regulations 4 and 6 of the Eligibility Regulations.

## **Checking Eligibility**

Until 1 July 2021, EEA citizens can continue to use their passport or national identity cards to evidence their rights. During the grace period, local authorities cannot insist on evidence that the EEA citizen or their family member have applied to the EUSS. Those who have applied and been granted status under the EUSS will be able to use their digital status to demonstrate their entitlement to access social housing or homelessness assistance, if they are content to do so. Evidence of their immigration status will become a requirement from 1 July 2021 onwards.

## **Court of Appeal Judgment on Fratila**

The case concerns two economically inactive EEA claimants who were denied access to benefits by DWP as they do not satisfy the Habitual Residence Test (HRT) as they were not exercising an EU Treaty right (such as jobseeker, student etc).

The claimants challenged this decision stating that on the basis of EU law, having been granted pre-settled status (alone) gives them a domestic right of residence which grants them a right to access benefits on the same basis as a comparable UK national.

At the High Court last year, a ruling found that the DWP regulations clarifying that existing restrictions on access to income-related benefits for EU nationals would continue to apply to those granted leave under the EU Settlement Scheme (EUSS) to be lawful and indirect discrimination to be justified.

The claimants appealed, their appeal was considered by the Court of Appeal and judgment was given in the claimants' favour. The CoA granted a stay of execution until 4pm on 26 February. On Thursday 14 January, DWP sought permission to appeal to the Supreme Court and a further stay of execution which has been granted and the case is listed to take place on the 18<sup>th</sup> and 19<sup>th</sup> of May. The stay of execution will continue to apply until the appeal has been determined.

DWP existing Regulations (2019) will continue to apply to all claims made from 1 January 2021 subject to the outcome of the appeal in the Supreme Court.

Regarding access to social housing and homelessness assistance, the eligibility rules as amended in 2019 will also continue to apply for applications made by EEA nationals and their family members from 1 January 2021 onwards, but again, subject to the outcome of the appeal in the Supreme Court.

## **Relevance of EU case law**

The position regarding retained EU law at the end of the transition period is set out in sections 2 – 7 of the [European Union \(Withdrawal\) Act 2018](#) (EUWA), and provision regarding the interpretation of retained EU law is made at section 6 and in regulations (SI 2020/1525) made under section 6(5A) and 6(5B) of the EUWA. Further explanation is provided in the relevant section of the [Explanatory Memorandum](#).

## **Homelessness Case Level Collection (H-CLIC) Data**

Updated guidance on entering eligibility data on H-CLIC will be issued prior to the end of the grace period. In the meantime, please continue using the existing guidance which can be found at [https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/H\\_CLIC\\_v1.4.1\\_guidance.pdf](https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/H_CLIC_v1.4.1_guidance.pdf) .

The latest data on the EU Settlement Scheme can be found at <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-september-2020/eu-settlement-scheme-quarterly-statistics-september-2020> .

From 1 January 2021, when determining the eligibility of an EEA citizen, and their family member, for an allocation of social housing or homelessness assistance, the local authority should consider the following:

Has the EEA citizen, and the family member, resided in the UK before the end of the Transition Period on 31 December 2020?

**If no:** Unless the person has entered the UK on the basis of a [family permit granted under the EU Settlement Scheme](#) (to join an EEA citizen who resided in the UK prior to the end of the Transition Period), all third country nationals arriving to the UK from 1 January 2021 will be subject to immigration control, and will need to be granted a right to enter and remain under the new points based immigration system. Leave granted under the new points-based system will be granted with no recourse to public funds.

They will be ineligible for an allocation of social housing or homelessness assistance, unless they are:

- within one of the categories under Regulations 3 and 5 of the Eligibility Regulations; or
- they are eligible to and have been granted indefinite leave to remain (typically after 5 years continuous residence in the UK)

**If yes (to the question above)** - local authorities would need to then consider the following:

Has the EEA citizen, and their family member, applied for and been granted leave under the EU Settlement Scheme before the end of the Transition Period?

**If yes:** Those with settled status will be eligible under [Regulations 3\(1\)\(c\)](#) and [5\(1\)\(c\)](#) of the Eligibility Regulations.

Those with pre-settled status or frontier working in the UK will be subject to the eligibility rules under [Regulations 4](#) and [6](#) of the Eligibility Regulations.

**If no (to the question above):** local authorities would need to then consider the following:

During the Grace Period (from 1 January to 30 June 2021), was the EEA citizen and their family member lawfully residing in the UK (as per the EEA Regulations 2016) immediately before the end of the Transition Period on 31 December 2020?

**If no:** If they resolve their immigration status with the Home Office (by obtaining leave under the EUSS) they will be subject to the eligibility criteria, as per Regulations 4 and 6 of the Eligibility Regulations.

**If yes (to the question above)** - local authorities would need to then consider the following:

Can the EEA citizen and their family member demonstrate they meet the eligibility criteria, as per Regulations 4 and 6 of the Eligibility Regulations?

**If yes:** They and their family members will be eligible, per [Regulation 4\(2\)](#) and [Regulation 6\(2\)](#).

**If no:** They will be ineligible as per [Regulation 4\(1\)](#) and [Regulation 6\(1\)](#) of the Eligibility Regulations.

**Important:** They will have to ensure they apply to the EUSS before the deadline of 30 June 2021 to protect their rights to live in the UK and access social housing or homelessness assistance, as well as other benefits and services. These protections will apply until their applications to the EUSS are finally determined (provided these were made by 30 June 2021), including until the outcome of an appeal against a decision to refuse status under the EUSS.

Post 30 June 2021, can the EEA citizen and their family member demonstrate they have applied to the EUSS before the deadline of 30 June 2021?

**If no:** Those who have missed the 30 June 2021 deadline and who do not have a different form of UK immigration status will be considered a person subject to immigration control and will not be eligible for an allocation of social housing or homelessness assistance. Late applications to the EUSS will be accepted where there are reasonable grounds for missing the 30 June 2021 deadline.

**If yes (to the question above)** - local authorities would need to then consider the following:

Can they demonstrate they meet the eligibility criteria, as per Regulations 4 and 6 of the Eligibility Regulations?

**If yes:** They and their family members will be eligible, per [Regulation 4\(2\)](#) and [Regulation 6\(2\)](#).

**If no:** They will be ineligible as per [Regulation 4\(1\)](#) and [Regulation 6\(1\)](#) of the Eligibility Regulations.

**To note:** During the grace period (from 1 January to 30 June 2021), family members arriving to the UK with a family permit issued under the EUSS (granting them limited leave to enter the UK by virtue of the Immigration (Leave to Enter and Remain) Order 2000, to join their EEA sponsor will be subject to the eligibility rules under Regulations 4 and 6, provided their EEA sponsor can demonstrate they fall within the definition of the grace period cohort under [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#). If their EEA sponsor has already secured pre-settled status under the EUSS, they will only be subject to the eligibility rules under Regulations 4 and 6 from the point they apply and are granted pre-settled status under the EUSS.