

## **Guidance to Children's Services and Leaving Care Teams on Brexit Immigration Changes**

**October 2019**

### **Summary**

Brexit means that some children in care and care leavers are at risk of being in the UK unlawfully.

To make sure this does not happen to the children and young people you support there are five steps you need to take

Step one: Learn – read this guidance

Step two: Identify – do you know which of your children/young people are not British citizens?

Step three: Plan – make sure immigration needs are part of Care/Pathway Plans

Step four: Take action – urgently connect children/young people with legal advice

Step five: Follow up – check actions on immigration needs at every review

NB the political context for this guidance is changing very quickly – check this is accurate before using.

### **What is going to change?**

1. European Union (EU), European Economic Area (EEA) and Swiss nationals in the UK currently exercise free movement rights because of their citizenship. In other words – if you can demonstrate you are a national of one of those countries you do not need a visa to live and work in the UK.
2. As a result of Brexit, this will change. EU/EEA/Swiss nationals, including children, who want to remain in the UK lawfully must proactively take steps to make sure their immigration status is secured. For example they will need to apply to the EU Settlement Scheme, which opened on 30 March 2019, or register rights to British citizenship.
3. Going forward having an EU/EEA/Swiss passport or ID card will no longer be enough for people to be lawfully in the UK. This is the case whether the UK leaves the EU with or without a deal.

### **What immigration applications need to be made?**

4. All EU/EEA/Swiss national children in care and care leavers need legal advice to look at their particular circumstances and to assess what immigration applications should be made in keeping with their best interests.

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5. For many this will mean an application to the EU Settlement Scheme, the UK's largest ever registration scheme, set up to secure the immigration status of EU nationals after Brexit. It is designed around three requirements:
  - Proving identity and nationality
  - Proving residence in the UK
  - Assessing criminality and good characterIt is free to make an application to the EU Settlement Scheme.
6. If the UK leaves the EU on 31 October 2019 with a deal, EU/EEA/Swiss nationals who are resident in the UK before 31 December 2020 will need to apply to the EU Settlement Scheme by 30 June 2021 to secure their immigration status. At the time of writing, if there is a deal, until 31 December 2020 EU/EEA/Swiss nationals will be able to rely on their passports and ID cards as evidence of their right to live and work in the UK. There will be no changes to how EU/EEA/Swiss nationals access healthcare, pensions or other social security rights during this period and those who secure their settled status in time will continue to access benefits and services after Brexit in the same way they do now.
7. If there is no deal, EU/EEA/Swiss nationals who are resident in the UK by 31 October 2019 will need to apply to the EU Settlement Scheme by 31 December 2020 for their immigration status to be secured. If there is no deal, EU/EEA/Swiss nationals will be able to rely on their passports and ID cards as evidence of their right to live and work in the UK until 31 December 2020. There will be no changes to how EU/EEA/Swiss nationals access healthcare, pensions or other social security rights until 31 October 2019 and those who secure their settled status in time will continue to access benefits and services after Brexit in the same way they do now.
8. It is important to remember that regardless of official government policy, in the case of a deal or not, it is highly likely that EU nationals will face barriers to services and benefits from employers, landlords, healthcare providers etc. who are unintentionally wrongly applying the law. This makes it doubly important that the immigration status of EU children in care and care leavers is resolved at the earliest opportunity.
9. Successful applications to the EU Settlement Scheme result in two types of immigration status:
  - Settled status: usually given to people who started living in the UK by 31 December 2020 (or by the date the UK leaves the EU without a deal) and who have lived in the UK for a continuous 5 year period. People with settled status can stay in the UK indefinitely but are subject to immigration control.
  - Pre-settled status: usually given to people who started living in the UK by 31 December 2020 (or by the date the UK leaves the EU without a deal) and who have lived in the UK for less than a continuous 5 year period. People with pre-settled status can stay in the UK for up to 5 years, until they can apply for settled status, and are subject to immigration control.
10. Most EU/EEA/Swiss children in care and care leavers will have been born in the UK or have been in the UK for a long time. Many are likely to have either automatic rights to British citizenship or rights to register as British citizens. In most cases this will be the best, most secure immigration option for a child/young person as it means they will no longer be

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subject to immigration control and the applications, fees, restrictions and uncertainties this brings.

11. For this reason it is very important that EU national children in care and care leavers receive legal advice on British citizenship alongside advice on the EU Settlement Scheme. The Home Office charges a £1,012 application fee for registering British citizenship. Campaigns are taking place in and out of parliament, as well as in the courts, to persuade the Home Office to waive the fee for EU national children in care and care leavers. In the meantime as corporate parents it expects local authorities to pay the fee.

## Who do these changes affect?

12. All EU/EEA/Swiss nationals in the UK will be affected by Brexit immigration changes – including children. This means nationals of the following countries:

Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and also Iceland, Liechtenstein and Norway.

Irish citizens are not affected because their free movement rights come from a different legal agreement that will continue after Brexit. However, having Settled Status may well make it easier for them to prove their lawful status in the UK. It is likely that many Irish citizens in the UK will also be eligible for British citizenship.

13. Particular groups of children and young people have been identified as at risk of missing out in Brexit immigration changes, including children in care and care leavers.
14. The Home Office has estimated there are 5,000 EU national children in care in the UK (our research suggests 700 of these children are looked after in the North West) and a further 4,000 EU nationals accessing leaving care services.
15. During a pilot phase of the EU Settlement Scheme in other parts of the country, children in care and care leavers were shown to need proactive support from local authorities to understand how Brexit affected their personal circumstances and how then to connect to legal advice to resolve their immigration issues. Because of their life histories, they also struggled to acquire the evidence needed to demonstrate citizenship and continuous residence in the UK without significant support from social workers and personal advisers.

## Why is this important?

16. To avoid another Windrush generation, it is really important that EU national children in care and care leavers are supported to resolve their immigration status now.
17. Not having secure immigration status risks life-long personal suffering, forcing people to live outside the formal economy and drastically limiting their potential. In turn this has a significant loss, and cost, to our community. When children get their status resolved, it unlocks their potential and benefits society. Without status they run the risk of falling on the wrong side of hostile environment policies that limit their access to healthcare,

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education and benefits and could go on to leave them destitute, detained or removed from the UK.

18. The timing is really important. If children do not get their immigration status resolved while they are under 18 or young adults, not only does it mean their childhood is spent in uncertainty but legally it becomes significantly harder for them to resolve matters when they are older.
19. Several Local Government and Social Care Ombudsman investigations have now found against local authorities deemed to have acted in an inappropriate or untimely manner to support looked after children with their immigration issues. See: [Investigation into a complaint against Royal Borough of Greenwich \(reference number: 13 019 106\) 19 January 2016](#) and [Investigation into a complaint against Dudley Metropolitan Borough Council \(reference number: 15 015 327\) 19 May 2016](#).

## What do you need to do?

20. To best support a child or young people in your care through Brexit immigration changes there are five steps you need to take:
  - Step one: Learn
  - Step two: Identify
  - Step three: Plan
  - Step four: Take action
  - Step five: Follow up
21. Step One: Learn – you don't need to be an expert on Brexit or immigration rules to do the right thing by the children and young people you are supporting. The key thing is to become an expert in identifying relevant children/young people and connecting them with legal advice. Read this guidance, act upon it and ask GMIAU if you have further questions. For more information online Coram Migrant Children's Project produces [factsheets](#) on legal issues affecting young migrants and refugees.
22. Step Two: Identify – this is key. Make sure that for all the children and young people you support you are asking the right questions to identify those who might be EU/EEA/Swiss nationals. Remember, nationality refers to the country of which a person is a citizen, and is not the same as country of birth or ethnic origin. Some EU/EEA/Swiss nationals may have dual nationality or be of dual heritage.
23. It will not be enough to rely solely on data pulled off departmental databases to identify all relevant children/young people. It may be that relevant nationality or immigration fields have not been completed, that details about nationality have not been fully handed over when the young person transitioned to leaving care, or that a young person may think they are 'British' but have no identity documents to evidence whether they are or not.
24. It can help to try and work through the following details (if known) which should be written within Care/Pathway plans:
  - Name

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- Date of Birth
- Nationality
- Current and previous addresses in UK
- When and how did the young person enter the UK
- What is their current/previous immigration status
- Details of their parents, including names, dates of birth, nationalities, current whereabouts, immigration status in UK, contact details

25. And to try and locate the following documents:

- Current or expired passport
- Current or expired national ID card
- Any British Residence Permit/Visa/Vignette
- Birth certificate

26. If you or a child/young person are not sure about their nationality and/or if they have no documents to prove their nationality, don't leave it, ask GMIAU for advice. For example, if a child/young person thinks they are British but has no documents to prove it, get advice.

27. Step Three: Plan - because resolving immigration status will have a key impact on future plans (as well as access to services and benefits), a child/young person's immigration situation needs to form a central part of their Care/Pathway Plan. Best practice is for children and young people with insecure immigration status to be 'triple pathway planning' depending on different immigration outcomes: a transitional period where the outcome of immigration applications is unknown, a longer-term plan where immigration status/citizenship options have been successfully resolved, and a longer-term plan that involves leaving the UK (either because the child/young person wants to or the Home Office requires them to).

28. Young people from the All4One group have told GMIAU that they sometimes don't understand how their immigration situation is integrated within their Pathway Plans. Depending on their personality and personal circumstances, some like to have it clearly set out on paper for them, others prefer conversations, and many know that talking about the possibility of leaving the UK is hard (both for them and social workers/personal advisers). What they ask for is a relationship of trust so that they can establish how to manage the uncertainties of their immigration situation with their social worker/personal adviser.

29. Step Four: Take Action – once you have identified that a child/young person you support is an EU/EEA/Swiss national (or even if you are not sure) it's time to take action and connect them with legal advice. It is never too early to resolve their immigration status.

30. An important way to help children and young people with any immigration application they need to make is by gathering evidence. For example, it might be necessary to apply for a passport or to get further evidence of their residence in the UK. This could be letters from previous social workers, current and former schools, college, school reports, letters from church/mosque, clubs attended, GP records, court orders etc.

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31. Step Five: Follow Up - progress in resolving a child/young person's immigration status should be followed up as part of every review meeting with outstanding actions tracked and updated.
32. If a child/young person has EU Settled Status or EU Pre-Settled Status or any other form of immigration status with a time limit on it, this should be flagged on the young person's electronic records so that staff are alerted to take action and refer them for legal advice six months before it comes to an end. Action to renew or amend immigration status should always be made before any existing immigration status expires.

## What do you do if you need more information?

33. Greater Manchester Immigration Aid Unit (GMIAU) is a registered charity (1123908) based in the North West of England providing free, confidential, independent legal advice and representation on immigration and asylum. We currently support around 200 children and young people in Greater Manchester to access their rights through a combination of advice and representation in immigration law and public law, one-to-one support and group work.
34. If you have questions about the immigration status of a young person you are supporting contact [amanda@gmiau.org](mailto:amanda@gmiau.org)

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