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People from abroad: what benefits can they claim?



UK Border

Summary

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Summary

The rules on eligibility for benefits for people coming to the UK from abroad are one of the most complex areas of welfare rights law. Whether or not a person can claim benefits and, if so, which benefits, may depend on a number of factors. These include nationality, immigration status (and any conditions attached to it), the circumstances under which the person arrived in the UK, whether they are deemed 'habitually resident', whether they are in work or looking for work, and whether they arrived alone or with other family members. Many other factors may be relevant.

This briefing gives a broad overview of the rules on access to benefits for people coming to the UK from abroad. It describes the situation for three groups:

- Asylum seekers and refugees
- Nationals from countries which are not part of the European Economic Area (EEA)
- EEA nationals – including how the rules on eligibility for benefits are changing following the UK's exit from the European Union

It is not intended to be a definitive statement on who can claim what, but rather to indicate in broad terms the factors which can determine what people in each of the three categories may be able to claim.

Links are included to further Library briefings which give more detailed information, and to other resources. This is however a very complex area of the law. It is important that individuals who are uncertain about what they are entitled to seek specialist advice before making a claim for any benefit. For some people, a claim for benefits may mean that they are in breach of immigration conditions and could result in their removal, a refusal of further leave and/or prosecution.

1 Introduction

To understand the rules on access to benefits and tax credits for people coming to the UK from abroad, it is helpful to split the migrant population into three broad groups:

- People seeking asylum and refugees
- Nationals of European Economic Area (EEA) countries
- Nationals of non-EEA countries

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Asylum seekers and refugees

Asylum seekers – i.e. persons waiting for a decision on an asylum application – are not entitled to mainstream non-contributory social security benefits such as Universal Credit. Instead, they may be eligible for [accommodation and/or financial support \('asylum support'\) from the Home Office](#).

Cash support for asylum seekers is less generous than social security benefits. The support available to asylum seekers in the UK is outlined in a separate Library briefing, [Asylum support: accommodation and financial support for asylum seekers](#).

Refugees – i.e. asylum seekers whose application for asylum has been successful, and people brought to the UK under an organised refugee resettlement scheme – will be able to claim social security benefits on the same basis as UK nationals, provided they are granted leave that is not subject to a condition that they have 'no recourse to public funds' (see section 3 below).

Members may be contacted by constituents complaining that 'illegal immigrants/refugees' in Britain receive significantly more financial assistance from the Government than UK pensioners, citing an email. The Library has produced a briefing, [Viral emails protesting about financial assistance for "illegal immigrants/refugees living in Britain"](#), which looks at the origins of this email, examines the claims it makes, and gives information on actual entitlements for immigrants and pensioners in the United Kingdom.

The fact-checking organisation Full Fact also published an article in January 2019 prompted by a graphic circulating on Facebook repeating claims made in the viral email – see [This image on benefits for pensioners and refugees is not correct](#). On 7 May 2020 Reuters also published a fact check piece, [False claim: Illegal immigrants and refugees receive £29,900 a year in benefits while UK pensioners get just £6,000](#).

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Non-EEA nationals

The [European Economic Area \(EEA\)](#) comprises the EU Member states plus Iceland, Liechtenstein and Norway. For people who are not Swiss nationals or nationals of countries outside the EEA (from here on referred to as ‘non-EEA nationals’), immigration status is the key factor determining which benefits they can claim.

Non-EEA nationals with **indefinite leave to remain** (often called ‘settled status’) have no time limit on their right to stay in the UK, and no conditions may be attached to their leave. They can therefore access social security benefits and tax credits on the same basis as UK nationals (unless their right to remain was awarded as a result of a formal undertaking by another person to maintain and accommodate them).

Most people admitted to the UK from outside the EEA will however have **limited (i.e. temporary) leave to remain** and will be subject to the condition that they have ‘**no recourse to public funds**’ during their stay in the UK. A person with limited leave to remain who claims/accesses public funds in breach of their leave conditions can find themselves liable to removal, refusal of further leave and/or prosecution.

Some categories of migrant who are subject to a no recourse to public funds condition as part of their immigration status can apply to the Home Office for a change of conditions of leave to allow access to public funds. This is available to people who are destitute or at imminent risk of destitution, or where there are particularly compelling reasons relating to the welfare of a child on account of the person’s low income, or there are exceptional circumstances relating to the person’s financial circumstances. This concession is available to people with limited leave in a family, private life or European Convention on Human Rights (ECHR) route, or who have limited leave under the Hong Kong British National (Overseas) visa route. Further information is available on GOV.UK – see [Application for change of conditions of leave to allow access to public funds if your circumstances change](#).

‘Public funds’ covers a wide range of benefits including:¹

- income-based Jobseeker’s Allowance (JSA)
- Income Support
- Income-related Employment and Support Allowance (ESA)
- Housing Benefit
- Child Tax Credit

¹ [Paragraph 6\(2\) of the Immigration Rules](#)

- Working Tax Credit
- Universal Credit
- Social Fund payments
- Local welfare assistance (except the Discretionary Assistance Fund in Wales)
- Child Benefit
- Council Tax reduction
- Pension Credit
- Attendance Allowance
- Personal Independence Payment
- Carer's Allowance
- Disability Living Allowance
- an allocation of local authority housing
- local authority homelessness assistance

With the completion of the geographical rollout of Universal Credit in December 2018 however, with very limited exceptions it is no longer possible for people – whatever their immigration status – to make a new claim for one of the ‘legacy’ benefits covered in the first six bullet points.

Further information on public funds can be found in Home Office guidance, [Public Funds: Migrant access to public funds, including social housing, homelessness assistance and social care.](#)

Separately, [section 115 of the Immigration and Asylum Act 1999](#) provides that a ‘Person Subject to Immigration Control’ (PSIC) is not entitled to most social security benefits and tax credits, except in certain limited circumstances.

Person Subject to Immigration Control (PSIC)

A person who:

- requires leave to enter or remain in the UK but does not have it; or
- has leave to enter or remain subject to the condition that they do not have recourse to public funds; or
- has leave to enter or remain as a result of an undertaking by another person to maintain them during their stay; or
- has leave to enter or remain only because they are appealing a decision refusing an application to vary their leave

The benefits a PSIC is prevented from claiming include:

- Attendance Allowance

- Carer's Allowance
- Child Benefit
- Child Tax Credit
- Disability Living Allowance
- income-related ESA
- Housing Benefit
- income-based JSA
- Income Support
- Pension Credit
- Personal Independence Payment
- Social Fund payments
- Universal Credit
- Working Tax Credit

Immigration status does not currently affect eligibility for benefits which depend on National Insurance contributions, such as 'New Style' JSA and ESA. Other work-related benefits including Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, Statutory Sick Pay and Industrial Injuries benefits are also payable regardless of immigration status.

The Welfare Reform Act 2012 includes powers² to restrict eligibility for New Style JSA and ESA, Maternity Allowance and statutory payments to those who are entitled to work in the UK, but these are not yet in force. The Department for Work and Pensions intends to commence the relevant sections of the Act when Universal Credit has fully replaced 'legacy' benefits such as income-based JSA and income-related ESA.³ The DWP currently expects all households claiming legacy benefits to have moved across to UC by the end of 2024.

There are some **limited exceptions** to the rules preventing a Person Subject to Immigration Control from claiming benefits. For example, sponsored immigrants may be able to claim means-tested benefits if they have been resident for at least five years (or before then, if their sponsor has died).

For couples with **mixed immigration status** (i.e. where one partner is a Person Subject to Immigration Control but the other is not), the rules are complicated, and can vary from benefit to benefit.

In Universal Credit, for example, while couples must make a joint claim, if one partner is a PSIC the award will be calculated based on the standard allowance for a single person (although if the partner who is a PSIC has income and/or capital, this will be taken into account). As the award does not include an additional amount for the PSIC partner, it does not breach any 'public funds' restriction. However, where a UC award includes the housing costs element, there are situations where a claim could potentially breach the public funds condition. Mixed immigration status couples should obtain

² [Sections 61-63](#)

³ DWP email to the House of Commons Library, 15 April 2021

specialist immigration advice if they have concerns about the implications of making a claim for UC, or for any other benefit.

In addition, the UK also has a number of [reciprocal social security agreements](#) with non-EEA countries which may help individuals gain entitlement to certain UK benefits where they would not otherwise have been able to. However, the scope of the reciprocal agreements varies widely, in terms of who is covered, the benefits in question and the provisions which apply.

Further information on the rules for non-EEA nationals can be found at the [Citizens Advice](#) website. The organisation [Turn2Us](#) also has information on migrants' entitlement to benefits on its website.

3.1 Habitual residence

Even if a non-EEA national is not prevented from claiming benefits because of their immigration status, they may still be prevented from claiming certain benefits within a certain period of arrival in the Common Travel Area (the UK, Ireland, Channel Islands and the Isle of Man) if they are deemed not to be **'habitually resident'**.

The Habitual Residence Test is applied to people (unless they are in an exempt category) who have recently arrived in the country and who make a claim for certain benefits, or seek housing assistance from a local authority. It applies to returning UK nationals as well as to those coming to the UK for the first time. The UK benefits covered by the Habitual Residence Test are:

- Attendance Allowance
- Disability Living Allowance
- Personal Independence Payment
- Carer's Allowance
- income-based Jobseeker's Allowance
- income-related Employment and Support Allowance
- Income Support
- Pension Credit
- Universal Credit
- Housing Benefit
- Council Tax reduction

There is no statutory definition of 'habitual residence' but factors which may be taken into account by DWP or a local authority when considering whether a person is habitually resident include how long they have been in the country, the person's reasons for coming here and their future intentions, what the person has done to establish themselves since arriving, their employment prospects, and where their 'centre of interest' lies. Commons

Library briefing SN00416, [The Habitual Residence Test](#), gives further background.

Since December 2013, a more ‘robust’ process has been used to determine whether claimants are habitually resident, involving more rigorous questioning of individuals.⁴

3.2 Help and advice

The [No Recourse to Public Funds \(NRPF\) Network](#) is a network of local authorities and partner organisations focusing on statutory duties to people from abroad who are unable to access mainstream support. Its website has detailed [information and resources](#) about how immigration status impacts on a person’s entitlement to services, and on [support options for people with no recourse to public funds](#). It is however aimed primarily at local authority staff involved in assessing and supporting people who have no recourse to public funds, rather than individuals themselves.

The NRPF website includes information to help [signpost people who need advice](#) about immigration, asylum, benefits, or housing issues.

⁴ See section 3 of Commons Library briefing SN06889, [Measures to limit migrants’ access to benefits](#)

4 EEA nationals

Under European Union law, the right to move and reside freely in another Member State is one of the rights enjoyed by all those with EU citizenship. Free movement is also enjoyed by citizens of non-EU countries in the [European Economic Area](#) (Iceland, Norway and Liechtenstein – sometimes referred to as the EEA EFTA states), and by Swiss citizens. In this briefing, for ease of reference ‘EEA nationals’ means people from this broader group of countries.

The United Kingdom formally left the EU on 31 January 2020, but free movement – and associated rights, including on access to benefits – continued to apply during the ‘transition period’, which ended on 31 December 2021.

The UK-EU [Withdrawal Agreement](#) (WA) – together with the corresponding agreements reached between the UK and the EEA EFTA states⁵ and with Switzerland⁶ – sets out the framework for the continued legal residence (and associated rights, including social security and healthcare) for the ‘protected cohort’ of EEA nationals living in the UK, and UK nationals living in EEA countries, at the end of the transition period (and their family members). In the UK this was implemented by Part 3 of the [European Union \(Withdrawal Agreement\) Act 2020](#) and the establishment of the [EU Settlement Scheme](#) (EUSS).

With the end of free movement, newly arriving EEA migrants from 1 January 2021 have (unless they are joining an EEA family member already resident in the UK at 31 December 2020) been prevented from registering with the EUSS and have been subject to the same immigration regime as applies to non-EEA nationals. This is likely to mean that any leave to enter or remain they are granted will be subject to the condition that they have ‘no recourse to public funds’ during their stay.

This section outlines:

- The rules on access to benefits in the UK that applied to EEA nationals before Brexit (and which continue to apply to some EEA nationals who have registered under the EU Settlement Scheme)
- The situation for EEA nationals who were resident in the UK at 31 December 2020

⁵ See [UK and EEA EFTA States sign Separation Agreement](#), Department for Exiting the European Union press release, 28 January 2020

⁶ See [Swiss Citizens’ Rights Agreement](#), Department for Exiting the European Union press release, 20 December 2018

- The rules on access to benefits for newly arriving EEA migrants from 1 January 2021
- The situation for Irish citizens in the UK (who have, and continue to have, a special status in the UK).

4.1 Pre-Brexit rules

When the United Kingdom was a member of the European Union (and during the transition period, when free movement continued to apply), people coming to the UK from EEA countries did not have unrestricted access to UK social security benefits and tax credits. For EEA nationals in the UK, entitlement to certain benefits depended on them satisfying the ‘**right to reside**’ requirement. Broadly speaking, a person had a right to reside if they were economically active, or otherwise able to support themselves.

The right to reside test applied to claims for a range of benefits including:

- Universal Credit
- Income Support
- income-based Jobseeker’s Allowance
- income-related Employment and Support Allowance
- Pension Credit
- Housing Benefit
- Child Benefit
- Child Tax Credit
- Council Tax reduction

For means-tested social security benefits, the right to reside requirement was part of the Habitual Residence Test – a person could not be ‘habitually resident’ for benefits purposes (see section 3.1) unless they had a right to reside in the [Common Travel Area](#) (the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland). For Child Benefit and Child Tax Credit, people who did not have a right to reside were treated as not present in the UK, and therefore ineligible for benefit.

The detailed rules on rights of residence were set out in [Directive 2004/38/EC](#) (the ‘Free Movement’ or ‘Citizens’ rights’ Directive), transposed into UK law by the [Immigration \(European Economic Area\) Regulations 2016, SI 2016/1052](#) (‘the EEA Regulations’), and in associated case law.

British and Irish citizens automatically satisfied the right to reside requirement. People from other EEA countries could satisfy the right to reside requirement in a number of ways, such as a:

- **worker or self-employed** person

- **jobseeker** (seeking employment and having a genuine chance of being engaged)
- **self-sufficient person** (including while enrolled as a student)
- person with **permanent residence** (acquired automatically after residing legally for a continuous period of five years, or less in certain circumstances)
- **family member** of one of the above
- person with a '**derivative right to reside**' (e.g. as a primary carer of a child in education).

For a person to have a right to reside as a worker or self-employed person, they had to be undertaking 'genuine and effective' work. A person could however in certain circumstances retain their status as a worker or self-employment when they stopped working, such as if they were temporarily unable to work because of illness, or had been made unemployed and were looking for work.

A person whose only right to reside was as a jobseeker only satisfied the right to reside requirement for income-based JSA, Child Benefit and Child Tax Credit, but not for other benefits, such as Universal Credit

Further information on the right to reside requirement can be found at the Citizens Advice website – see [Check if you have the right to reside for benefits](#). Turn2Us website also has information on the [Right to Reside](#).

Guidance on the right to reside requirement for DWP staff is in [Chapter 7, Part 3 of the DWP Decision Maker's Guide](#), and (for Universal Credit) [Chapter C1 of its Advice for Decision Making guidance](#).

Social security coordination

EEA nationals in the UK could also rely on the long-established [EU Social Security Coordination Regulations](#) to help access some social security benefits. The rules are complicated, but four key principles are at their core:⁷

- At any one time a person is covered by the social security system of one country and is only liable to make contributions in one country – the 'competent state' (the '**single state principle**');
- A person has the same rights and obligations as a national of the Member State where they are covered ('**equal treatment**');
- Periods of insurance, employment or residence in other Member States can be taken into account when determining a person's eligibility for benefits ('**aggregation**'); and

⁷ For further background see TRESS network, [Short introduction to the European Coordination of social security schemes](#)

- A person can receive certain benefits from one Member State even if they are resident in another Member State (**‘exportability’**).

The coordination rules do not cover all benefits, however. Benefits are classed as ‘social security’ – and therefore come within the scope of the coordination rules – if they provide cover against certain categories of ‘risk’ (such as sickness, maternity/paternity, unemployment, or old age). The UK benefits listed as coming under the coordination rules were almost always either contributory benefits (i.e. those that depend on National Insurance contributions), or non-contributory, non-means-tested benefits.⁸ Benefits categorised as **‘social and medical assistance’** are not covered by the coordination rules. The UK Government did not specify all the benefits it considered to be social assistance, but it considered Universal Credit to be a social assistance benefit and as such outside the scope of social security coordination.⁹

Further information on social security coordination, including examples of how the Coordination Regulations work in practice, can be found in section 4.1 of Commons Library Briefing Paper CBP-8928, [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-21](#), 13 May 2020.

4.2

People in the UK at 31 December 2020

The United Kingdom’s [Withdrawal Agreement](#) with the EU – together with the corresponding agreements reached between the UK and the EEA EFTA states¹⁰ and with Switzerland¹¹ – set out a framework for the continued legal residence (and associated rights, including social security and healthcare) of EEA nationals living in the UK, and UK nationals living in the EEA, at the end of the transition period and their family members (the **‘protected cohort’**). Individuals can rely on the agreements directly to assert their rights.

The UK implemented the continuous residence rights for EEA citizens and their families through the introduction of the [EU Settlement Scheme](#). The Withdrawal Agreement also provides for the existing EU social security coordination provisions to continue to apply to people in the protected cohort.

⁸ See Volume 2, Chapter 7, Part 1, paras 070150-070165 of the DWP [Decision Maker’s Guide](#)

⁹ Home Office and DWP, [Review of the Balance of Competences: Internal Market: Free Movement of Persons Call for evidence](#), May 2013, para 51

¹⁰ See [UK and EEA EFTA States sign Separation Agreement](#), Department for Exiting the European Union press release, 28 January 2020

¹¹ See [Swiss Citizens’ Rights Agreement](#), Department for Exiting the European Union press release, 20 December 2018

EU Settlement Scheme

Not all EEA nationals had to apply to the [EU Settlement Scheme](#) (EUSS). People who had already been given indefinite leave to enter or remain, for example, did not need to apply to the EUSS, but could choose to do so. Most EEA nationals do however need to apply to the EUSS to continue to have the right to live and work in the UK, and to access benefits and services. For most applicants, the deadline for applying to the EUSS was 30 June 2021, although there is some scope to submit a late application, as discussed further below.

For successful applicants to the EU Settlement Scheme, there are [two possible outcomes](#).

To be granted **settled status**, an EEA national/family member will normally have to have lived in the UK for a continuous period of five years. People with settled status automatically satisfy the right to reside requirement for benefits.

EEA nationals who have not yet been in the UK for five years are normally granted **pre-settled status**. To access means-tested benefits and Child Benefit, they must still satisfy the right to reside requirement (as outlined in section 4.1 above), until they have been in the UK for five years, at which point they can apply for settled status.

There are ongoing legal challenges to the rule which states that pre-settled status alone is not a qualifying right of residence for benefits. The next section gives details.

Although the ‘transition period’ ended on 31 December 2020, there was a ‘**grace period**’ until 30 June 2021. EEA nationals had until this date to make an application to the EUSS for settled or pre-settled status. In the meantime, people who had not made an application under the EUSS had to demonstrate that they had a right to reside (as outlined in section 4.1) when making a claim for benefits, and that they had also had a right to reside on 31 December 2021.

EEA nationals who made an ‘in time’ application to the EUSS before the 30 June deadline but are still awaiting a decision can continue to receive benefits, or (provided they meet the eligibility criteria) make a new claim for benefits, until the final decision is made on their EUSS application. This includes pending any appeal against the decision on their EUSS application.¹²

Throughout May 2021, both the DWP and HM Revenue and Customs contacted people in receipt of benefits and tax credits they believed might need to apply to the EUSS, to alert them to the need to apply before the 30 June deadline. [Late EUSS applications](#) may however be accepted, where there are ‘**reasonable grounds**’ for a person’s failure to meet the deadline. Further

¹² See for example [DWP Memo ADM 07/21](#), May 2021, paras 27-29

information can be found in the Commons Library briefing, [EU Settlement Scheme application deadline](#).

[Guidance for Home Office caseworkers](#) gives detailed information on what might constitute ‘reasonable grounds’ for applying late, but it is ‘not exhaustive’ and it emphasises that ‘every case must be considered in light of its particular circumstances’. The guidance instructs caseworkers to take a ‘flexible and pragmatic approach’ when considering whether there are reasonable grounds for a person’s failure to meet the deadline.

As the 30 June deadline approached, there was some concern that EEA nationals who had not submitted EUSS applications by that date might have any benefits they were receiving stopped straight away.¹³ However, DWP Ministers gave assurances that EEA nationals who had not submitted an EUSS application by the deadline would not see their payments stop automatically from 1 July.¹⁴

In response to a Parliamentary Question on whether the DWP had issued any guidance on benefit entitlement for individuals who had missed the EU Settlement Scheme application deadline of 30 June 2021, the DWP Minister Justin Tomlinson said in a written answer on 8 July¹⁵:

Access to benefits for non-UK nationals depends on their immigration status. EEA and Swiss nationals, and their family members, resident in the UK at the end of the transition period need to apply to the EU Settlement Scheme to maintain entitlement to taxpayer funded benefits.

Those currently receiving benefits will not see their payments stop automatically from 1 July. However, it is important that anyone eligible who hasn’t applied to the EUSS does so quickly to ensure that benefit payments don’t stop.

Further information can be found here - [https://homeofficemedia.blog.gov.uk/2020/07/02/media-factsheet-eu-settlement-scheme/\(opens in a new tab\)](https://homeofficemedia.blog.gov.uk/2020/07/02/media-factsheet-eu-settlement-scheme/(opens%20in%20a%20new%20tab))

We are working with the Home Office and HM Revenue and Customs to identify existing benefit claimants who have yet to apply for status under the EUSS. Letters had been issued to encourage existing benefit recipients to apply to the EUSS to protect their existing rights in the UK before the deadline.

The Home Office will shortly be writing to benefit recipients who have still not applied for a status, giving a further 28 days to apply, after

¹³ Guidance issued to DWP Decision Makers in December 2020 stated that anyone submitting an EUSS application after the end of the grace period would become “an unlawful resident in the UK until that application is decided” ([DWP Memo ADM 34/20](#), para 17)

¹⁴ [PQ 19715 \[Social Security Benefits: EU Nationals\], 24 June 2021](#).

¹⁵ [PQ 25109 \[Social Security Benefits: EU Nationals\], 8 July 2021](#).

which the department will be notified of those recipients who have still not applied.

Detailed guidance will be issued through our Advice to Decision Makers in due course -

<https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>

The Home Office blog of 2 July cited in the written answer, [Media factsheet: EU Settlement Scheme](#), gives answers to FAQs regarding EEA nationals who are eligible for the EUSS but did not apply by the deadline. In relation to continued access to benefits, this repeats the messages in the above written answer, but it adds that “a process is in place to prioritise resolution for highly vulnerable applicants”, and that “Safeguards will help protect against removal of benefits for potentially vulnerable individuals who may ultimately be eligible for [settled or pre-settled] status”.

At the time of writing, the DWP has not yet published any guidance for its benefits Decision Makers relating to people who missed the 30 June EUSS application deadline. The Department did however send a ‘Dear colleague’ letter on 2 July to local authority revenues and benefit managers, which was subsequently published by the welfare rights website, Rightsnet: [EU Settlement Scheme update on future access to benefits following the end of the grace period](#).

The letter confirmed that the DWP would continue to support EEA migrant benefit claimants who had not applied to the EUSS by the end of the grace period by making “extra statutory payments”. These extra statutory payments would allow “benefit payment to continue for existing claimants for a short period of time..., whilst DWP does some final signposting”. The letter goes on to give further details of the work undertaken to identify claimants who had not applied to the EUSS, how people would be signposted to make a late application, and when and how benefits would be terminated where a person fails to make an EUSS application:

Existing claimants - Data matching exercise

In March 2021, the Home Office ran a scan of current HB claimants against Home Office data to identify any EEA and Swiss nationals who do not have an EUSS status.

Letters were then issued through automatic mailing between 14 May 2021 to 28 May 2021 to those claimants informing them of the need to apply for a status before the end of the Grace Period.

On 1 July 2021, a further data match exercise was conducted by the Home Office. The Home Office will now write to all EEA and Swiss nationals who have still not applied for their EUSS status and prompt the customer to urgently contact the Home Office and apply or risk their benefit payments being stopped.

The data matching letters are due to be issued mid-July 2021 by automatic mailing to all DWP and HB claimants who have not applied to EUSS.

DWP additional signposting

DWP will issue a final letter to all DWP and HB claimants in September 2021 to ensure that they understand the requirement to make a late application for EUSS.

The claimant will also be advised that their benefit will be disallowed where no EUSS application is made.

If there is still no application made within one month, then benefits will be suspended after any ‘business as usual’ processes looking at potential vulnerability are considered.

Following suspension, the claimant will have a further month to make an application for EUSS.

If a claimant subsequently applies for EUSS within this month then extra statutory payments can continue until a final immigration decision is made.

If the claimant does not apply for EUSS within this month then extra statutory payments will cease and their claim will be terminated as they will be treated as a Person Subject to Immigration Control.

If a claimant appeals against an EUSS decision they can continue to receive extra statutory payments until the outcome of the appeal is known.

This letter also includes an annex with answers to FAQs.

Pre-settled status and benefits: legal challenges

Regulations introduced in 2019 provided that having pre-settled status was not in itself sufficient to satisfy the right to reside requirement for means-tested benefits.¹⁶ An EEA national with pre-settled status would therefore still have to demonstrate that they fell into one of the existing right to reside categories – e.g. as a worker or a self-employed person – to access benefits.

In a judgment handed down on 18 December 2020, the Court of Appeal held (by a 2:1 majority) that the rule preventing EU nationals from relying on pre-settled status to access Universal Credit was unlawful.¹⁷ The case had been brought on behalf of two Romanian nationals, Ms Fratila and Mr Tanase. The DWP’s decision to refuse their claims for Universal Credit was challenged on

¹⁶ [The Social Security \(Income-related Benefits\) \(Updating and Amendment\) \(EU Exit\) Regulations 2019: SI 2019/872](#)

¹⁷ [Fratila & Another v Secretary of State for Works and Pensions & Another \[2020\] EWCA Civ 1741](#)

the grounds that Article 18 of the Treaty on the Functioning of the European Union requires that EU nationals with a right of residence under domestic law cannot be treated differently to nationals of the host Member State in relation to access to social assistance. The Court held that the rule preventing people from relying on pre-settled status to claim benefits was directly discriminatory on the grounds of nationality, and since such discrimination is not capable of being justified under EU law, was unlawful.

The Court of Appeal issued an [order](#) ‘quashing’ the regulations providing that pre-settled status is not a sufficient right to reside for benefits, but also granted a short ‘stay’ until the end of February 2021 so that the quashing order would not have immediate effect.

The Court also refused the DWP permission to appeal the judgment in *Fratila*, although this was subsequently granted by the Supreme Court. At the same time, the Supreme Court also extended the stay to the quashing order.

Alongside this, on 30 December 2020 (the day before the end of the transition period) an Appeal Tribunal in Northern Ireland succeeded in referring a separate case which raised the same issue as in *Fratila* to the Court of Justice of the European Union (CJEU). In light of this, the Supreme Court postponed its consideration of *Fratila* pending the CJEU’s judgment.

The CJEU’s judgment was handed down on 15 July 2021.¹⁸ The Court held that the UK legislation preventing EU citizens with pre-settled status alone from claiming Universal Credit is compatible with EU law. However, it also held that the refusal of support is only justified so long as there is no risk of breaching rights under the EU’s Charter of Fundamental Rights. The UK was, therefore, under an obligation to check that a refusal to grant social assistance does not expose the claimant (CG) and her children to a risk of infringement of their rights enshrined in the Charter of Fundamental Rights of the European Union, in particular the respect for human dignity.

It is now up to the Supreme Court to resume its consideration of *Fratila* in light of the CJEU’s judgment, which one prominent commentator has described as “convoluted and incoherent”.¹⁹

The Child Poverty Action Group has provided information on both the *Fratila* and the CJEU cases, and their implications for EEA nationals, on their website – see [Access to means-tested benefits for EU citizens with pre-settled status](#).

¹⁸ [CG v The Department for Communities in Northern Ireland, Case C-709/20](#); see also the accompanying [CJEU press release](#).

¹⁹ Charlotte O’Brien, [Hanging EU nationals out to dry: CJEU protects the UK’s fundamental right to discriminate](#), EU Rights and Brexit Hub blog, 16 July 2021

4.3

People arriving from 1 January 2021

With limited exceptions²⁰ – including family members of EEA nationals already resident in the UK at 31 December 2020 – newly arriving EEA migrants from 1 January 2021 cannot apply to the EU Settlement Scheme. For most newly arriving EEA nationals, the immigration regime has been aligned with that for people coming to the UK from non-EEA countries.

This means that, like most people admitted to the UK from outside the EEA, most newly arriving EEA migrants will have limited leave to remain and will be subject to the condition that they have ‘no recourse to public funds’ (NRPF) during their stay. As explained in section 3 of this briefing, a person with limited leave subject to them having NRPF, or limited leave granted as a result of an undertaking by another person to maintain them during their stay, is a ‘Person Subject to Immigration Control (PSIC)’. A PSIC is prevented from claiming most benefits.

Newly arriving EEA migrants may be able to rely on provisions in the Social Security Coordination Protocol to the [UK-EU Trade and Cooperation Agreement](#) to help claim benefits which depend on National Insurance contributions, such as New-style Jobseeker’s Allowance, or benefits which are linked to employment, such as the Maternity Allowance. However, compared with the EU Social Security Coordination Regulations, the Protocol applies to a relatively narrow list of benefits. In addition, a newly arriving EEA migrant may not be able to rely on the provisions in the protocol on aggregating periods of insurance or employment for benefits purposes if their leave to enter or remain does not give them the right to work in the UK.

4.4

Irish citizens

For Irish citizens arriving in the UK from 1 January 2021, the situation as regards access to benefits is unchanged from that prior to Brexit. As the Republic of Ireland is part of the [Common Travel Area](#), Irish citizens automatically satisfy the right to reside requirement, and can access UK benefits subject to the requirement on the same basis as UK nationals.

For United Kingdom and Irish nationals moving between the UK and Ireland after the end of the transition period, the [Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland](#), signed on 1 February 2019, broadly replicates the existing provisions in EU law on EU social security coordination. The DWP’s [Explanatory Memorandum](#) on the Convention notes that the two governments “recognise the special status that UK and Irish nationals have in

²⁰ See section 2.2 of Commons Library briefing CBP-9259, [EU Settlement Scheme application deadline](#), 10 June 2021

each other's countries", stating that the Convention "upholds the principles of equal treatment and reciprocity created by the Common Travel Area in 1922." It adds:

The Convention demonstrates a continued commitment to the principles of the Common Travel Area and ensures that reciprocal benefit and social security rights for Irish and UK nationals and their family members continue to operate independently of those afforded to EU nationals from other Member States.

The Convention came into force at the end of the transition period.

5 Further information

The list of information sources below includes material which has been cited throughout this paper, although it is not exhaustive.

For comprehensive information about the rules governing access to benefits for migrants in the UK, the Child Poverty Action Group (CPAG) has a [Benefits for Migrants Handbook](#), which is available in print as well as online via subscription.

Comprehensive information on benefit entitlement more broadly is available in the CPAG's [Welfare Benefits and Tax Credits Handbook](#), which is also available in print and online via subscription.

5.1 Asylum seekers and refugees

- [Asylum support](#), GOV.UK
- [Asylum support: accommodation and financial support for asylum seekers](#), Commons Library briefing paper SN01909, 22 April 2021
- [Viral emails protesting about financial assistance for “illegal immigrants/refugees living in Britain”](#), Commons Library briefing paper SN05621, 30 March 2015
- [This image on benefits for pensioners and refugees is not correct](#), Full Fact, 31 January 2019
- [False claim: Illegal immigrants and refugees receive £29,900 a year in benefits while UK pensioners get just £6,000](#), Reuters, 7 March 2020

5.2 Non-EEA nationals

- Home Office, [Immigration Rules](#), updated on 2 July 2021
- Home Office, [Public Funds: Migrant access to public funds, including social housing, homelessness assistance and social care](#), version 17.0, updated on 17 March 2021
- [‘Information and resources’ section](#), NRPF (No Recourse to Public Funds) Network website
- [Accessing UK benefits and services if you’re subject to immigration control](#), Citizens Advice

- [Nationals of Non-European Economic Area \(EEA\) Countries – Can You Claim Benefits?](#), Turn2Us

5.3

EEA nationals

- [Claiming benefits if you're from the EU](#), Citizens Advice
- [The Habitual Residence Test](#), Commons Library briefing paper SN00416, 18 May 2011
- [Apply to the EU Settlement Scheme \(settled and pre-settled status\)](#), GOV.UK
- Home Office, [EU Settlement Scheme caseworker guidance](#), updated 21 July 2021
- Home Office, [EU Settlement Scheme: information for late applicants](#), updated 16 July 2021
- [EU Settlement Scheme update on future access to benefits following the end of the grace period](#), DWP letter to local authority revenues and benefit managers, 2 July 2021
- [Media factsheet: EU Settlement Scheme](#), Home Office blog, GOV.UK, 2 July 2020
- [EU Settlement Scheme application deadline](#), Commons Library briefing paper CBP-9259, 10 June 2021
- [EU Settlement Scheme](#), Commons Library briefing paper CBP-8584, 25 February 2020
- Charlotte O'Brien, [Hanging EU nationals out to dry: CJEU protects the UK's fundamental right to discriminate](#), EU Rights and Brexit Hub blog, 16 July 2021
- [Access to means-tested benefits for EU citizens with pre-settled status](#), Child Poverty Action Group webpage

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