



Kevin Foster MP
Parliamentary Under Secretary of State
for Future Borders and Immigration
Home Office
2 Marsham Street
London
SW1P 4DF

Thursday 11th June 2020

Dear Minister.

I am writing to follow up on the evidence session from the Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee on Tuesday 9 June 2020, for which we provided oral evidence. As I was unable to answer your questions fully due to technical issues, I will also be sharing a copy of this letter with the other committee members as our supplementary evidence.

You asked how looked after children and care leavers would evidence their status if they were to be granted automatic status through the EU Settlement Scheme, as we have recommended. I wanted to reiterate that we are not proposing a separate declaratory system, but rather that this status would be derived under the existing EU Settlement Scheme, through a simplified process with a lower evidential threshold. Given the low levels of applications and received status for looked after children and care leavers to date¹ – and the often complex situations these young people face, which can make acquiring identity documents extremely difficult – we believe this would significantly improve the lives of this already vulnerable cohort.

We have outlined here a suggested process for identifying and granting Settled Status to looked after children and children entitled to care leaving support, under the EUSS. In the first instance, local authorities would be required to identify these young people, after which they should be granted automatic Settled Status through the EU Settlement Scheme, evidenced through a digital status. This would allow these young people to have access to the evidence they need to prove their rights and entitlements in the long term, in the same way as the three million others who have secured their status through the Scheme to date. We would also recommend that additional physical documentation is available to all those who receive status, providing a much-needed additional layer of security and peace of mind.²

¹ Please see our briefing 'EU Settlement Scheme and Looked After Children and Care Leavers' for further details

<https://www.childrenssociety.org.uk/sites/default/files/eu-settlement-scheme-looked-after-children-and-care-leavers-data-policy-briefing-1.pdf>

² the3Million have consistently raised the need for physical documentation to evidence (pre)-settled status. Further, in the largest survey to date of EU citizens' experience of the EU Settlement Scheme that they conducted, 89% expressed unhappiness about their dependence on a digital-only status.

We would of course be happy to work with officials and practitioners to develop such a proposed process further:

- 1) The local authority must identify any child who has their right of free movement removed by the provisions contained in the Act and who is a child in their care or entitled to care leaving support (each as defined under subsections (7) and (8) of the Amendment).³
- 2) The local authority should communicate with the child, letting them know that they have been identified as falling in this category and will be identified to the Home Office to secure their status of indefinite leave to remain under the EU Settlement Scheme. The local authority should ensure the child's views and best interests are taken into account.
- 3) The local authority should provide a list of the identified children to the Home Office, for each providing a letter setting out the name of the child, their age, an email address for the child and his/her social worker or legal representative, and that they are a child "in the care of the local authority" (as defined by the Amendment) or a child "entitled to care leaving support" (again, as defined in the Amendment). A copy of this letter should be provided to the child for their records.
- 4) The Home Office will enter this information into their database, issuing an electronic settled status for each child. As with all applications to the EUSS, a letter confirming the child's status should be emailed to the addresses provided with the requisite code.
- 5) In addition, as is already provided for under the EUSS for persons who are from outside the EU, EEA or Switzerland, a physical document should be issued under the EUSS to prove the child's rights in the UK (see 'Viewing and proving your status: If you're from outside the EU, EEA or Switzerland' <https://www.gov.uk/settled-status-eu-citizens-families/after-youve-applied>).
- 6) Any personal data relating to nationality that is processed by local authorities for purposes of identification under paragraph (1) is to be used solely for this purpose and no further immigration control purpose.
- 7) Any child or young person who should have been identified and granted status by the EUSS deadline and is only identified and granted status thereafter, will be deemed to have had such status and all rights associated with the status from the time of the Scheme deadline.
- 8) This Amendment is time-limited. This process of identification and granting status is only to be in effect until 30 June 2026 (5 years after the deadline of the EU Settlement Scheme).

We would also recommend that those looked after children who have so far received Pre-settled Status⁴ through the Scheme to date are automatically upgraded to Settled Status via the proposed mechanism above, to ensure they do not face difficulties in re-applying in future.

We know it is difficult for local authorities and health and social care trusts to obtain the appropriate documentation for looked after children, especially during the current public health crisis. We also know that rates of applications for vulnerable groups, such as looked after children and care leavers, are shockingly low. As you will be aware, the government has estimated that across the UK, there are 9,000 EU/EEA and Swiss national looked after children and care leavers in the care of authorities in England, Scotland, Wales and Northern Ireland. Late last year, The Children's Society sent a Freedom of Information request to all 211 authorities across the four nations of the UK. Of the 153

³ Please see Appendix

⁴ 122 as of 6 January 2020, as per our research Please see our briefing 'EU Settlement Scheme and Looked After Children and Care Leavers' for further details <https://www.childrensociety.org.uk/sites/default/files/eu-settlement-scheme-looked-after-children-and-care-leavers-data-policy-briefing-1.pdf>

authorities who responded and were able to provide data, we found that as of January 2020 just 3,612 EEA/EU/Swiss national looked after children had been identified and that only 11% of those identified had received status.⁵ Given the worryingly low numbers of EU/EEA/Swiss national children and young people with care experience who have been granted status, we strongly urge you to grant this relatively small group automatic status under the Scheme, and hope the above supplementary evidence will help further this cause.

We would of course be happy to work with officials and practitioners to develop such a proposed process further.

Yours sincerely,

Lucy Leon

Policy and Practice Advisor – Refuge & Migrant Children

⁵ 730 applications had been made to the EUSS and 187 for citizenship; of the 730 applications just 404 had secured status. Please see our briefing 'EU Settlement Scheme and Looked After Children and Care Leavers' for further details <https://www.childrenssociety.org.uk/sites/default/files/eu-settlement-scheme-looked-after-children-and-care-leavers-data-policy-briefing-1.pdf>

Appendix: Amendment NC41

“Children in care and children entitled to care leaving support: Entitlement to remain

(1) Any child who has their right of free movement removed by the provisions contained in this Act, and who are in the care of a local authority, or entitled to care leaving support, shall, by virtue of this provision, be deemed to have and be granted automatic Indefinite Leave to Remain within the United Kingdom under the EU Settlement Scheme.

(2) The Secretary of State must, for purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Northern Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.

(3) Before issuing guidance under this section the Secretary of State must consult—

- (a) the relevant Scottish Minister;
- (b) the relevant Welsh Minister; and
- (c) the relevant Northern Ireland Minister.

(4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose and no further immigration control purpose.

(5) Any child subject to subsection (1) who is identified and granted status after the deadline of EU Settlement Scheme (“the Scheme”) will be deemed to have had such status and all rights associated with the status from the time of the Scheme deadline.

(6) This section comes into force upon the commencement of this Act and remains in effect for 5 years after the deadline of the EU Settlement Scheme.

(7) For purposes of this section, “children in the care of the local authority” are defined as children receiving care under any of the following—

- (a) section 20 of the Children Act 1989 (Provision of accommodation for children: general);
- (b) section 31 of the Children Act 1989 (Care and Supervision);
- (c) section 75 Social Services and Well-being (Wales) Act 2014 (General duty of local authority to secure sufficient accommodation for looked after children);
- (d) section 25 of the Children (Scotland) Act 1995 (Provision of accommodation for children);
- (e) Article 25 of the Children (Northern Ireland) Order 1995 (Interpretation); and
- (f) Article 50 Children of the (Northern Ireland) Order 1995 (Care orders and supervision orders).

(8) For the purposes of this section, “children entitled to care leaving support” means a child receiving support under any of the following—

- (a) paragraph 19B of Schedule 2 Children Act 1989 (Preparation for ceasing to be looked after);
- (b) s.23A(2) Children Act 1989 (The responsible authority and relevant children);
- (c) s.23C(1) Children Act 1989 (Continuing functions in respect of former relevant children);

- (d) section 104 of the Social Services and Well-being (Wales) Act 2014 (Young people entitled to support under sections 105 to 115);
- (e) sections 29-30 Children (Scotland) Act 1995 (Advice and assistance for young persons formerly looked after by local authorities), as amended by s.66 Children and Young People (Scotland) Act 2014 (Provision of aftercare to young people);
- (f) Article 35(2) Children (Northern Ireland) Order 1995 (Persons qualifying for advice and assistance).

Member's explanatory statement

This amendment aims to ensure that the children of EEA and Swiss nationals who are in care, and those who are entitled to care leaving support, are granted automatic Indefinite Leave to Remain under the EU Settlement Scheme to ensure they do not become undocumented.