

Rights to benefits and tax credits for European nationals



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Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We provide training, advice and information to make sure hard-up families get the financial support they need.

Introduction and definitions

This factsheet provides *basic information* about the rights of European Economic Area (EEA) nationals and their family members to access benefits and tax credits following the UK's exit from the European Union (EU). For where to get more detailed information on these rights and the eligibility conditions for individual benefits and tax credits, see '*Where to get advice and further information*' below.

European national

In this factsheet, 'European national' refers to EEA nationals. The EEA is made up of the 27 EU states, plus Iceland, Liechtenstein and Norway. Under separate agreements, Swiss nationals have most of the same rights as EEA nationals.

The EU member states are:

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

Family member

'Family member' for the purposes of the residence rights of European nationals usually means:

- spouse or civil partner; *or*
- child, grandchild, etc., (or spouse or civil partner's) under the age of 21; *or*
- dependent children, grandchildren, etc., over 21 or dependent parents, grandparents, etc. (or those of the spouse or civil partner).

In some circumstances, 'extended family members' can be treated the same as the family members above, but extra conditions apply. These can include unmarried 'durable

partners', other dependent family members or those requiring the care of the European national. If someone is not a family member but might be an extended family member, get further advice – see '*Where to get advice and further information*' below.

Family members may be European nationals themselves and if so, may have their own individual rights under the EEA rules as well. Non-European nationals may have a right to reside via their European national family member.

EEA rules and right to reside

In this factsheet, 'EEA rules' means the residence rights ('right to reside') all European nationals and their families had in the UK up 11pm 31 December 2020 (ie the end of the 'transition period') under EU law. The EEA rules were revoked from the end of the transition period but those who remain in a 'protected group' can still use them. If in a protected group, European nationals may have residence rights under the EEA rules if they are:

- within the initial 3 months in another state; *or*
- a jobseeker; *or*
- a worker or self-employed person; *or*
- someone who has stopped working but who 'retains' worker or self-employed status; *or*
- a self-sufficient person; *or*
- a self-sufficient student; *or*
- someone who has acquired a permanent right of residence.

Family members (see above) of any of the above have the same rights as the European national.

In addition to the above types of right to reside, someone can have a 'derivative' right to reside under EU law. These derivative rights to reside had been established via EU caselaw and include a right to reside for the children of EEA workers while they complete their education and a right to reside for the primary carer of such children. Working out who has these derivative rights can be complex and is usually only necessary if another 'qualifying' right to reside for the benefit in question cannot be established. Seek more information and advice (see below) if someone may need to rely upon a derivative right to reside.

Overview

After the UK left the EU on 31 January 2020, a 'transition period' until 11pm on 31 December 2020 meant the rights of European nationals and their family members mostly remained the same. During the transition period, European nationals and their family members could apply to the EU Settlement Scheme ('EUSS') to protect their existing rights after 31 December 2020. At the end of the transition period, a further 6 months 'Grace period' applied ending on 30 June 2021 to allow those who had not already applied to the EUSS to do so. Anyone eligible for the EUSS who had not applied before the end of the Grace period can still make a 'late' application if the Home Office considers it reasonable to

allow one. Family members joining those with status under the EUSS are also eligible to apply to the EUSS.

Anyone who makes a successful application to the EUSS has their rights protected. If they have 'settled status' under the EUSS, they have full access to all benefits and other services in the same way as British nationals. If they have 'pre-settled status' under the EUSS, they have no general restrictions on their rights to access services in the UK but may be excluded from accessing some benefits and other forms of help unless they also have a 'qualifying right to reside' under the EEA rules.

The benefits requiring a qualifying right to reside are:

- universal credit;
- pension credit;
- housing benefit (HB);
- income-based jobseeker's allowance (JSA);
- income-related employment and support allowance (ESA);
- income support;
- child tax credit (CTC);
- child benefit

Note that it is not usually possible to make new claims for income-based JSA, income-related ESA, income support or CTC, and new HB claims can only be made by someone over state pension age or in other limited circumstances. However, those with existing awards of these benefits usually need to have a continuing right to reside to keep getting them.

Other benefits may have other residence and presence rules but do not require the claimant to have a qualifying right to reside. Getting some benefits may require someone to be entitled to one of the benefits listed above first.

If someone has applied to the EUSS but has not yet had a decision or is appealing a refusal of status, their rights are also protected in the same way as those with pre-settled status.

European nationals and their family members who are not eligible for the EUSS have the same rights as non-EEA nationals, ie they need to obtain leave to enter and remain in the UK and if it is granted that may include restrictions on their rights to work, access services and public funds. If someone is eligible for the EUSS but has not yet applied to it, they will be excluded from most benefits as a 'person subject to immigration control' until an application to the EUSS is accepted.

The rest of this factsheet provides more details about the above rights and information about where to get further advice and find out more.

Those with protected rights

Up to and including 30 June 2021 (the end of the ‘Grace period’), European nationals and their family members in the UK who had a right to reside (any type) under the EEA rules on 31 December 2020 were in a group who had ‘protected rights’, even if they had not applied to or been granted status under the EU Settlement Scheme (EUSS). From 1 July 2021, European nationals and their family members continue to be in a group with protected rights if they have ‘pre-settled status’ under the EUSS, ie limited leave to remain. This is referred to below as being in a ‘protected group’.

Under domestic UK legislation, if an application to the EUSS was made *before 1 July 2021* and has not yet been decided or it is being appealed, the applicant is in a protected group until it is decided. However, while the deadline for most to apply to the EUSS was 30 June 2021, ‘late’ applications can still be made.

The rights of those who have a late application to the EUSS accepted by the Home Office *after the 30 June 2021 deadline* are protected under the Withdrawal Agreements between the UK, the EU and the non-EU EEA states, rather than domestic legislation. The Home Office usually issues a ‘certificate of acceptance’ if they take such an application. The protection continues until the application is decided or while a refusal is being appealed. This covers European nationals and their family members in the UK before the end of the transition period who had an EEA rules right to reside *at some point before 31 December 2020* (even if it had ended by that date). There is further information below about the rights of those making ‘late’ applications – see ‘*Rights of those who have made late EUSS applications*’ below.

Therefore, the main ‘protected groups’ now are:

- anyone with ‘*pre-settled status*’ under the EUSS; *or*
- those who had an existing right to reside under the EEA rules *on 31 December 2020* and *applied to the EUSS before 1 July 2021* but who have *not yet had a decision on that application* or are appealing a refusal; *or*
- those who have had a *late application to the EUSS accepted* but not yet decided, or are appealing a refusal, usually evidenced by a ‘certificate of acceptance’ issued by the Home Office.

If anyone who may be eligible for the EUSS has not yet made an application or has been waiting for a decision for a long time, they should get urgent advice – see ‘*More information and resources*’ below.

As long as someone remains in one of the groups covered by the above bullet points, they are not a ‘person subject to immigration control’ and are not subject to any restrictions on accessing public funds, and so cannot be excluded from claiming benefits for that reason. However, the rules for some benefits may exclude those who only have pre-settled status or are otherwise in the protected group, unless they also have a right to reside under the EEA rules. Some other groups may also be protected in limited circumstances or have rights under different rules, so if someone does not fall into one of the above groups, seek further advice and information – see ‘*Where to get advice and further information*’ below.

See '*Rights under the EUSS*' below for more information on the rights of those who in a protected group.

Rights of those who make late EUSS applications

European nationals or their family members who make a late application to the EUSS which is accepted by the Home Office are protected under different rules to those who applied before the end of the 'Grace period' on 30 June 2021. Those who make a late application have their rights protected under the Withdrawal Agreements between the UK, the EU and the non-EU EEA states, rather than UK domestic law.

Under the Withdrawal Agreements, European nationals or their family members rights are protected pending the outcome of an application, including appeals against a refusal, to the EUSS, provided they had a right to reside under the EEA rules *at some point before the end of the transition period* (ie 11pm 31 December 2020). The right to reside they had could be any under the EEA rules including an 'initial' 3 month right to reside that applied to all EEA nationals, a jobseeker, worker, family member, etc. Unlike the domestic 'Grace period' rules, there is no need for them to have had such a right to reside *at the end* of the transition period.

This means anyone who has been allowed to make a late application to the EUSS by the Home Office has their rights covered by the Withdrawal Agreements protected pending a decision on it. This includes rights of residence (ie rights to reside – those covered by the EEA rules). Therefore, as long as they currently have a qualifying right to reside, they should have access to any benefits (and other services) that require one. There is no need to have had a right to reside on 31 December 2020 to have this protection. Note that the above could also apply to anyone who made their application before 1 July 2021 (ie within the Grace period) who has not yet had that application decided or who is appealing a decision on such an application.

The difference sources of protected rights (ie UK domestic legislation or the Withdrawal Agreements) may cause confusion. For example, COSLA guidance refers to DWP guidance issued to housing benefit (HB) departments, and that seems to have confused the rights of those who are covered by the Withdrawal Agreements only (eg those who have late EUSS applications accepted) with those covered by UK domestic law (eg who applied to the EUSS before 1 July 2021). This is different to other DWP guidance issued to universal credit and legacy benefit decision makers, and also Home Office guidance. As there is no significant difference between the relevant rules for these different benefits in this respect, there seems no reason for this difference and so can only be accounted for by there being a mistake made in the HB guidance. For further advice about the rights of those who have made a late EUSS application, see '*Where to get advice and further information*' below.

What being in a protected group means

Being in a protected group usually means that the same EEA rules apply as before 1 January 2021, ie someone can still have a right to reside under the EEA rules (which does not have to be the same one they had on 31 December 2020 or before) and may be entitled to means-tested benefits like universal credit or housing benefit, or benefits for children like child tax credit or child benefit. Also, claimants in a protected group should not be excluded from claiming other benefits that have no right to reside conditions, such as adult disability payment or carer's allowance, as long as they meet all the other entitlement conditions for those benefits.

Example:

Rosa is Portuguese and is married to Asif who is Pakistani. They came to the UK looking for work in November 2020 with their two school aged children and were initially living on their savings. Rosa got a job working 4 days a week in May 2021. They applied to the EUSS in the last week of June 2021 but have no decision yet. They are getting child benefit but want to know if they can also apply for universal credit as their savings are running out and Rosa's wages are not enough to live on?

As they had both an 'initial' 3 month right to reside and jobseeker right to reside as a European national and family members under the EEA rules on 31 December 2020, they had protected rights until 1 July 2021. Rosa now has a right to reside as a worker and Asif a right to reside as her family member. As they are yet to get a decision on their EUSS applications, they remain in a protected group. As such, they should be able to claim universal credit now but should also get advice about why their EUSS applications are taking so long.

Those without protected rights

European nationals and their family members coming to the UK for the first time after 31 December 2020 are usually treated the same as non-EEA nationals, ie they must apply for leave to enter and remain in the UK which if granted will usually be subject to restrictions on accessing services, working and public funds. Normally, they won't be eligible to apply to the EUSS and so cannot benefit from protected rights.

European nationals and their family members in the UK on 31 December 2020 who do not yet have a status under the EUSS, or a pending application accepted, do not have protected rights and may no longer have the right to be in the UK under UK immigration law. However, as they were in the UK before the end of the transition period, they may still be able to apply to the EUSS and if successful will be protected. As the normal deadline to apply to the EUSS, 30 June 2021, has now passed, they should seek urgent immigration advice – see '*Where to get advice and further information*' below.

Example:

Primoz is Slovenian, single and came to the UK to work 4 years ago but stopped to care for his terminally ill father who came to live with him in November 2020. His father died a month ago and Primoz intends to find work again but has not yet applied to the EUSS. He should get urgent advice and apply to the EUSS for pre-settled status as soon as possible to try and protect his rights in the UK.

Family members joining European nationals after 31 December 2020

European nationals who continue to have rights as described above because they have pre-settled status or those who have settled status under the EUSS, can be joined by family members who were not in the UK at the end of the transition period. The family members will need to get a EUSS family or travel permit first which will then allow them to come to the UK. Once in the UK, the family members have three months in which to apply to the EUSS and once an application is accepted will have protected rights as above. However, until they apply for status under the EUSS, family members with a EUSS family or travel permit are usually excluded from getting any benefits or tax credits which require a right to reside.

Rights under the EUSS

The EUSS provides status under UK immigration law to European nationals and their family members who, usually, were in the UK before 1 January 2021. If someone needs help applying to the EUSS or with questions about whether their leave under the EUSS is still valid, they need to get advice from an immigration adviser who is registered with the Office of the Immigration Services Commissioner (OISC), or someone such as a specialist immigration solicitor or a Citizens Advice Bureau service which is exempt from OISC registration. It is an offence for anyone who is not registered with or exempt from registration with the OISC to provide immigration advice or assist with immigration applications.

Status under the EUSS is not automatic and each individual who might qualify, including children, should apply and will usually need to have done so before 1 July 2021. However, late applications may still be accepted by the Home Office. If someone is granted status under the EUSS, this only gives them rights as an individual and family members do not automatically 'derive' rights from them. Family members who were not in the UK before 1 January 2021 but are joining European nationals who have been granted status under the EUSS may also be able to apply to the EUSS (see above).

European nationals and their family members who are granted status under the EUSS will be given either 'pre-settled status' if they have been living in the UK for less than 5 years (or if they cannot prove they have been living in the UK for that long) or 'settled status' if they have been living in the UK for 5 years or more.

If granted pre-settled status, currently they should apply again for settled status once they have been living in the UK for 5 years, although some may now have their status converted automatically by the Home Office. In some cases, settled status can be granted if someone has been living in the UK for less than 5 years, such as if they had to permanently stop working due to an industrial accident. If granted either status, it is not subject to any restrictions on access to public funds, work, education, etc.

Settled status

People with settled status under the EUSS are not in a 'protected group'. Those with settled status do not need protected rights as their status gives them a qualifying right to reside under UK law for any benefits that need it (such as universal credit or child benefit), and full access to all other benefits under the same rules as British nationals. As this means that those with settled status cannot now have a right to reside under the EEA Rules, their family members cannot derive rights from them. However, in practice DWP appear to treat those with settled status as if they can still have rights to reside under the EEA Rules, and so their family members can derive rights from them if the family member is themselves in a protected group.

If family members with pre-settled status are refused benefits because they cannot derive a right to reside from a European national with settled status, seek advice – see '*Where to get advice and further information*' below.

Example:

Mariam is Polish, has worked in the UK for many years and has settled status. Her mother Anya's health has deteriorated, and Mariam needs to care for her. Therefore, Anya applies for and is granted a EUSS family permit and joins Mariam in the UK. As soon as Anya arrives, Mariam helps her apply for pre-settled status which is granted.

Anya is now in a protected group and can have a right to reside under the EEA rules, including as a dependent family member of a European national with a permanent right to reside or right to reside as a worker. If so, she has a qualifying right to reside and can claim universal credit. Mariam doesn't technically have a right to reside under the EEA rules as she has settled status rather than pre-settled status and is not in a protected group. However, as DWP treat those with settled status as if they were in a protected group, they treat Mariam as having a qualifying right to reside and so Anya as her dependent family member.

Pre-settled status

Those with pre-settled status are in a protected group who can still have a right to reside under the EEA rules for any benefits that require one. Only means-tested benefits, child benefit and child tax credit require the claimant to have a right to reside. Other benefits, such as adult disability payment, carer's allowance, maternity allowance or contributory jobseeker's allowance, have no requirement that the claimant have a right to reside, although they may have other residence or immigration status related conditions – for example, those with pre-settled status are able to claim carer's allowance if they meet the

caring and earnings rules but also the two-year 'past presence test'. As long as they have pre-settled status, their rights are protected.

Means-tested benefits

For means-tested benefits, including universal credit (UC), pension credit (PC) and housing benefit (HB), the claimant must pass the 'habitual residence test', which includes having a qualifying right to reside. If they do not, they are treated as not being in Great Britain and so not entitled. UC is claimed jointly by couples, whereas most other means-tested benefits are claimed only by one member of a couple who may then be entitled to extra amounts for their partner.

For UC, if one member of a couple fails the habitual residence test but the other passes, UC is paid as if it was awarded to a single person, but still taking into account the other partner's income and capital. Therefore, even if a couple think one of them will not pass the habitual residence test for UC, they should still make a joint claim as UC need to know about the partner's circumstances to determine entitlement correctly. Note that if one partner is over state pension age and the other under (a 'mixed age couple'), special rules apply if the younger partner fails the habitual residence test that allows the older partner to claim PC and HB instead.

For other means-tested benefits, either member of a couple (ie the one most likely to be eligible) can be the 'lead' claimant and amounts should still be included for the partner regardless of whether they would pass the habitual residence test or not (unless, except for HB, they are someone subject a no recourse to public funds condition or otherwise fall within the definition of a 'person subject to immigration control').

To pass the habitual residence test for means-tested benefits, the claimant must have a qualifying right to reside. The rules for UC, PC and HB exclude someone from passing the habitual residence test if their *only* right to reside in the UK is:

- pre-settled status or a EUSS family permit; *or*
- as an EEA jobseeker or the family member of an EEA jobseeker; *or*
- an 'initial' right to reside; *or*
- as someone who has a derivative right to reside as the primary carer of a British citizen ('Zambrano carer').

Any other right to reside under the EEA rules that someone with protected rights has - eg as an EEA worker, retained self-employed status, permanent right to reside, family member of an EEA national with retained worker status or derivative right to reside as the primary carer of the child in education of an EEA worker - can allow them to pass the habitual residence test.

Note that if the *only* EEA rules right to reside someone has is as a self-sufficient person or self-sufficient student, or family member of either, while not excluded as a right to reside in the benefit rules, in practice it is often difficult to make a successful claim due to the need to demonstrate self-sufficiency – seek advice (see below) in such circumstances. Also note that someone can have more than one EEA rules right to reside at any one time and can rely on whichever they need to - for example, the family member of an EEA jobseeker may

also have retained EEA worker status in their own right, and so could rely on the latter to pass the habitual residence test for UC even though the former is excluded.

Pre-settled status and destitution

CPAG has challenged the exclusion from UC of those with only pre-settled status and no other qualifying right to reside in a number of cases.

While a challenge to the legality of simply excluding those with only pre-settled status from UC was ultimately unsuccessful at the Supreme Court, a subsequent challenge has been successful in arguing that those with pre-settled status are still protected by the EU Charter of Fundamental Rights and as such should be protected from destitution if that is likely to mean the claimant or their family cannot live in dignified conditions. At the time of writing the Court of Appeal is considering the DWP's appeal against that decision, and the case may ultimately go to the Supreme Court. In the meantime, those with only pre-settled status at risk of destitution if denied UC may be able to secure entitlement. Advisers should be prepared to provide detailed evidence showing why someone would be left at risk of destitution and argue that this means the DWP or a tribunal must decide the case urgently. CPAG have published notes for advisers and template letters to assist those making these arguments available via the test case pages of CPAG's website.

Benefits for children

For benefits for children, ie child benefit or child tax credit, there is no habitual residence test but there is still a requirement for the claimant (not the child) to have a qualifying right to reside. If someone has no qualifying right to reside, they are treated as not present in the UK and so not entitled. Pre-settled status or an EUSS family permit on its own is excluded as a qualifying right to reside but if someone has protected rights and so can still have a right to reside under the EEA rules, any such current right to reside will satisfy the requirement for these benefits other than if it is only a derivative right as the primary carer of a British citizen (sometimes referred to as 'Zambrano carers', after the case that decided there was such a right to reside under EU law).

Social security co-ordination rules

European nationals and their family members who have either status under the EUSS may still be covered by the EU Social Security Co-ordination Rules that applied before the end of the transition period. These rules include allowing periods of residence, employment and contributions equivalent to national insurance paid in EEA states to count towards benefit entitlement in the UK. In general, these rules will continue to apply to someone for as long as they are covered by the Withdrawal Agreements but that protection may end if that coverage is 'interrupted'. What counts as an interruption is not defined, and its interpretation is likely to be decided by future court cases but may include circumstance such as where someone no longer has a right to reside under the EEA rules. If someone is not or no longer covered by these rules, less generous new co-ordination rules with the EU, EEA, and Ireland or reciprocal agreements with individual states may apply instead.

European nationals only coming to the UK after 31 December 2020 are also likely to be covered by these less generous rules.

Social security co-ordination rules are a complicated area to advise on but see '*Where to get advice and further information*' below for further advice and information.

Where to get advice and further information

Independent benefits advice is available from agencies such as a local Citizen Advice Bureau or law centre. Housing association tenants often have access to their own support staff and specialist welfare rights officers who can help. Some local authorities may have their own welfare rights officers who can help. You can also search the [Advice Local](#) website for other agencies who can offer advice in your area.

For agencies who can help with non-benefits advice, including housing or immigration matters search Advice Local. The [OISC](#) provides a database of qualified immigration advisers who are registered.

If you are an adviser and need help with any benefits issues affecting those you support, you can contact CPAG.

Scottish based advisers can call 0141 552 0552 Monday to Thursday 10am to 4pm and Fridays 10am to 12 midday, or email advice@cpagscotland.org.uk.

Advisers in England, Wales and Northern Ireland can call 020 7812 5231 Monday to Friday between 10am and 12 midday and 2pm and 4pm, or (if about UC, child benefit or tax credits) email advice@cpag.org.uk.

If your questions are about your own benefit entitlement, we cannot help you but see above for the other agencies who may be able to.

More detailed information about benefits and how immigration and residence conditions affect entitlement, see CPAG's [Welfare Benefits and Tax Credits Handbook](#) and [Benefits for Migrants Handbook](#). For other CPAG resources about benefits for migrants, see the [Benefits for Migrants](#) topic page on AskCPAG.

Warning! The information in this factsheet is correct at the date produced and is primarily intended for those living in Scotland. However, benefit law changes often and so will need updating after some time.

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