

By email to: [REDACTED]

30 July 2019

Dear [REDACTED],

**Re: EU settled status and entitlement to housing and homelessness assistance**

Thank you for your enquiry about the information on our website [www.housing-rights.info](http://www.housing-rights.info) concerning entitlement to local authority housing and homelessness assistance for people with EU settled and pre-settled status.

I thought I would set out fully the reasons why our advice is that everyone with settled status is entitled assistance, and that those with pre-settled status are entitled provided they also possess an EEA qualifying right to reside.

Our view is supported by the [explanatory memorandum](#) issued by the DExEU that accompanied the amending regulations ([SI 2019 No. 861](#)) it states (paras 7.4-5) that:

*It is our intention that this benefits regime – which is not the regime UK nationals and those with settled status will be subject to – will remain in place for those on the pathway until they achieve settled status [...]. If these individuals go on to acquire settled status, they will then be able to access benefits on the same terms as comparable UK residents [...].*

The changes made by this instrument will amend the existing Eligibility Regulations in order to clarify that the current rules [...] remain in place for EEA nationals and Zambrano carers granted pre-settled status under the EU Settlement Scheme.

Our full reasoning that leads us to the same conclusion is as follows:

1. EEA nationals can either be 'subject to immigration control' or not depending on their status. They are not subject to immigration control if they are exercising 'an enforceable EU right or of any provision made under s2(2) of the European Communities Act 1972' (Immigration Act 1988, s7(1)). So, any EEA national who is exercising **any** EU right as set out in the Immigration (European Economic Area) Regulations 2016 (hereafter 'the EEA regulations') cannot be disqualified as being a person who is 'subject to immigration control'.
2. Those who don't have a right to reside under the EEA regulations but who have settled status fall under eligible Class C because settled status is 'leave to enter or remain in the UK' that is not subject to 'any limitation or condition'. The [Immigration Rules Appendix EU](#) state that settled status is 'indefinite leave to enter or remain'.

[www.cih.org](http://www.cih.org)

Chartered Institute of Housing

Octavia House, Westwood Way, Coventry, CV4 8JP

Tel: 024 7685 1700 Email: [customer.service@cih.org](mailto:customer.service@cih.org)

Whereas pre-settled status is 'limited leave'. So, anyone with settled status cannot be disqualified as a 'person subject to immigration control' but a person with pre-settled status doesn't fall within Class C and so is disqualified unless s/he also has a right to reside under the EEA regulations.

3. So, a person with settled status can only be disqualified under regulations 4 or 6 (as appropriate) if his/her 'only right to reside' is one of the non-qualifying rights listed in sub-paragraphs (1)(b) or (1)(c) (i.e. first three months, jobseeker, 'Zambanro carer').
4. But what constitutes a 'right to reside' isn't defined in the regulations (see regulation 2) so it must be taken as having its ordinary everyday meaning. Following [Abdirahman v SSWP \[2007\] EWCA Civ 657](#) (at para 19) it seems clear that it isn't confined to those rights in the EEA Regulations but has a broader meaning that includes the rights conferred on British citizens, Commonwealth citizens with the right of abode and those with indefinite or limited leave, etc.
5. A person who has both a non-qualifying right to reside **and** settled status clearly isn't a person whose '**only** right to reside' is a non-qualifying right and only 'limited leave to enter or remain' (pre-settled status) is disregarded by the new paragraph (1A). Therefore, a person with settled status can't be disqualified by regulation 4 or regulation 6, regardless of any other right to reside s/he may or may not possess and so must be entitled to housing or homelessness assistance.
6. As set out in (1) above a person who has pre-settled status and a right to reside under the EEA regulations, including a non-qualifying right, isn't 'subject to immigration control' and so can only be disqualified by regulation 4 or regulation 6.
7. But the new paragraph (1A) inserted by the amending regulations ensures that a person who has been granted 'limited leave to enter or remain' (i.e. pre-settled status) has that status disregarded when considering whether any other right to reside s/he has is their 'only right to reside'.
8. If the purpose of the new paragraph (1A) was merely to avoid doubt as to what is meant by a 'right to reside', then it rather begs the question why it doesn't also refer to 'indefinite leave to enter or remain' (i.e. settled status).
9. Therefore, a person with pre-settled status whose only other right to reside is one of those non-qualifying rights under the EEA regulations is disqualified, whereas a person with pre-settled status and a qualifying right (worker etc.) continues to be entitled as before. As far as I can see this is only interpretation that makes sense of the amendments, is consistent with Abdirahman and the explanatory memorandum.

I hope that helps.

Yours sincerely,

**Sam Lister**

Policy and Practice Officer

Co-author: [www.housing-rights.info](http://www.housing-rights.info)