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# Housing rights

Your quarterly newsletter from the housing rights website

April 2019

The [housing rights website](#) gets over 10,000 visits every month. This newsletter, from the Chartered Institute of Housing and BME National, keeps you up-to-date with developments around the housing rights of people with different kinds of immigration status. Please feel free to share it with anyone interested.

This bumper issue covers the 'right to rent', how Brexit delays affect people's rights, an article explaining how Queens Cross HA is helping its tenants who are EU nationals living in Glasgow, what happens when 'free movement' ends, and an update on the Windrush scandal. 'Other news' covers new allocations and homelessness regulations in England, problems for those applying for leave to remain, changes to immigration rules and other developments since January.

Remember, for the latest on Brexit and housing rights, go to the [Brexit page](#) of the website. And go the [What's New page](#) for other news.

## 'Right to rent' breaches human rights law

*The government's 'right to rent' checks on private tenants are discriminatory, the High Court ruled in March. 'Ministers should have listened' said John Perry in discussing the ruling in [Inside Housing](#).*

It's taken over five years but the Joint Council for the Welfare of Immigrants has now won an argument that was championed from the start by CIH. Back in July 2013 the housing minister wrote to CIH's chief executive setting out plans to deter 'illegal' immigrants by obliging private landlords to check the passport of anyone applying for a letting. CIH immediately said that it feared the checks would affect people living legally in the UK, because landlords would very likely play

safe by discriminating against anyone who couldn't produce a UK passport. Along with JCWI, we repeated our arguments in the run up to the pilot scheme that took place in the West Midlands. We were assured in October 2014 that discrimination was 'the most fundamental question' to be addressed in the official evaluation of the pilot.





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Our misgivings were backed by detailed evidence from a JCWI survey. It showed that, because of the scheme, some 42 per cent of landlords were unlikely to rent to those without British passports. And over 25 per cent would be less likely to rent to someone with a foreign name or foreign accent. CIH warned that, with something like 2.6 million people likely to be checked each year, 'landlords may simply discriminate against anyone they believe isn't British, even if they have a legal right to live in the UK'.



Yet these arguments were given short shrift when the evaluation of the pilot was eventually published and the government rolled 'right to rent' out across England in February 2016. A year later, it began talks to extend it to Scotland, Wales and Northern Ireland. CIH pointed out it was doing this despite the fact that a scheme costing £4.7 million a year to enforce had led to only 31 'illegal' migrants being removed from the country.

But concern about the 'hostile environment' towards immigrants was growing. The Home Office had had to abandon its 'go home' vans. The first stirrings of the Windrush scandal had started, with several victims caught by passport checks when they tried to rent a home. The Chief Inspector of Borders and Immigration said last March that right to rent 'had yet to demonstrate its worth' and pointed out that its effects weren't being monitored.

Early last year JCWI mounted a crowd-funded court action, arguing that the scheme was discriminating against people according to their nationality and was incompatible with human rights law. More evidence of discrimination had accumulated, including a devastating survey by the Residential Landlords Association of its own members.

When Mr Justice Martin Spencer's judgment arrived on 1st March it was an excoriating verdict on the scheme, saying it not merely risks causing illegal discrimination, but is certain to do so. Although it is able to appeal, the Home Office will soon have to find a way to make the scheme compatible with human rights law, which will very likely lead to its being closed down. In the meantime, it can't be extended to the rest of the UK.

While it is immensely satisfying for the JCWI and those who have worked with them to eventually be proved right, it is also frustrating that the government was so obdurate in refusing to listen to criticisms of the scheme at earlier stages. Any evidence against the scheme seemed to make the Home Office more determined to continue - with the plans to extend it (despite very real difficulties about doing so and few apparent benefits in parts of the UK with low immigration) and the toughening of the penalties against landlords in the Immigration Act 2016. Worst of all, unknown numbers of people - only a few of them revealed by the Windrush scandal - have found it more difficult than they should have done to find somewhere to live. In the process they may have suffered real discrimination with very little chance of proving that this was the case. And this was precisely what the Home Office was warned about back in 2013.

*Read the full High Court judgment here: [R \(Joint Council for the Welfare of Immigrants\) v Secretary of State for the Home Department \[2019\] EWHC 452 \(Admin\)](#).*

## Other reactions

JCWI produced a [briefing for MPs](#) on the court judgement. The Residential Landlords' Association said that right to rent is now [a farce](#). In response to the court case, the Home Office has [changed its guidance](#). It's likely that more than this will be required if the March ruling stands when the Home Office appeals. The guidance now covers cases such as the Windrush victims, six years after CIH pointed out that longstanding residents would be affected.







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Meanwhile the [Independent](#) featured a case showing other dangers of right to rent. A British man and his family were made homeless because his wife supposedly does not have the right to rent, despite having a right to reside here. Chai Patel of JCWI said that 'landlords and estate agents are simply not qualified to carry out immigration checks, and Sajid Javid needs to stop trying to make them do so'.

The government's [English Private Landlord Survey 2018](#) reported in January that 'a quarter (25%) of landlords and 10% of agents are unwilling to let to non-UK passport holders. Reasons for this were not explored' (see pages 7 and 38). Among the reasons for this, of course, is very likely the threat of fines under the right to rent scheme for landlords who get it wrong.



## EU nationals' rights at risk after Brexit

Brexit has been delayed again, this time to 31 October 2019. As [BBC News](#) reports, the UK can still leave earlier if MPs pass the prime minister's withdrawal agreement before the new deadline, while talks between Labour and the Conservatives on a consensus plan are ongoing.

The hiatus means there is continuing uncertainty about the exact legal position of EU nationals. Parliament's human rights committee [says that](#) the situation is 'precarious', despite government claiming it is 'committed' to protecting related rights. The committee has raised concerns that the Immigration and Social Security Co-ordination (EU Withdrawal) Bill could leave people in a 'rights limbo': 'Although the government has said that it is not its intention to strip EU citizens resident in the UK of their rights, that is the effect of this bill as it stands.'

## EU settled status scheme rolled out - but there are problems

The EU settlement scheme was rolled out on 30 March. The [guidance on how to apply](#) to the scheme is available in 26 European languages and a nationwide marketing campaign was launched.

EU citizens applying for settled status reported problems with the online application system, according to the [Independent](#), with dozens of users taking to social media to vent their frustration. In addition, the Android-only app that forms part of the application system will not work on Apple phones until the end of 2019, the Home Secretary has said ([Guardian](#)).

The Roma community may be particularly at risk because of the demanding process of applying for settled status. In a trial, the Roma Support Group [found](#) the process took two hours, and one-third still didn't get through.

Children of EU nationals are also at risk of becoming a new Windrush generation, [says legal charity Coram](#), because of the risks of their becoming undocumented after Brexit.

Social landlords are therefore urged to recognise that tenants who are EU nationals may need help in resolving their status in the run up to Brexit. One landlord that is doing so is Queens Cross Housing Association in Glasgow - see next page.



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## Queens Cross reassures its EU tenants over Brexit

Queens Cross is working to reassure tenants potentially affected by plans for the UK to leave the EU. The association is taking [several steps](#) to proactively explain the legal position of EU-born tenants after Brexit.

According to latest census figures there are 209,000 EU citizens living in Scotland, almost 4% of the population. Queens Cross currently has 250 households with tenants from other European Union countries, mainly Irish and Polish, but also from Latvia, Hungary and Romania.

'The uncertainty around the UK leaving the European Union is understandably very stressful for our tenants who are affected by this,' said Queens Cross chief executive, Shona Stephen.

'The confusion around the process of leaving is doing little to reassure them about what will happen when the UK eventually does leave. We feel as a responsible landlord we want to provide information and support to our tenants.'

EU citizens currently living in the UK will have to apply to the EU Settlement Scheme by June 30, 2021 if they want to keep living in the UK after this date. To be eligible to apply they will need to show they are resident in the UK by December next year.

Around 25 EU tenants turned up recently at a drop in session to hear from an immigration lawyer what the new rules are and to explain the legalities of their post Brexit status.

Tenant Justyna Gogolin said she found the session very useful.

'I didn't even know about the existence of settled status before today so this has been helpful. I have only looked at taking on UK citizenship but that was going to be too expensive,' she said.

Queens Cross will continue to make legal advice available to tenants impacted by Brexit changes and have produced a leaflet to explain 'Settled Status'.

'Our advisors can answer all tenants' questions and give them the reassurance they need that Queens Cross will still be their home and that they are still very much welcome in the city,' added Shona.

More information for EU nationals living in Scotland can be found on the [Scottish Government's website](#) and on the [housing rights website for Scotland](#).

*Picture shows: Queens Cross's event organiser Joanna Peters welcoming immigration lawyer Mark Lazarowicz to the Brexit session at the Courtyard, Westercommon.*







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## New immigration regulations herald the end of free movement if Brexit goes ahead

In February the government published two draft sets of changes to UK immigration law to cater for Brexit. They include ending the "Dublin III" system under which asylum seekers are sent back to Calais and elsewhere in mainland Europe, which would be scrapped if there is no Brexit deal.

Other changes include a system of granting temporary admission to the UK for EU migrants who arrive after the date of a no-deal Brexit. This recognises that, with EU free movement law potentially ending as early as October 2019, there is simply no time to set up a comprehensive new immigration and border system.

### The Immigration, Nationality and Asylum (EU Exit) Regulations 2019

These are about making sure that the existing immigration laws make sense after Brexit. Not being in the EU any more gives the government the opportunity to make wholesale changes to the system, as foreseen in the immigration white paper and Immigration Bill published last year. But those will take time. Meanwhile,

laws that refer to the EU or won't work without the co-operation of EU countries will no longer make sense and will need to be adjusted or scrapped.

The explanatory memo says:

*'All the provisions in this instrument will commence on exit day in a "no deal" scenario, or in a "deal" scenario from the end of the planned implementation on 31 December 2020, as set out in the draft Withdrawal Agreement with the European Union published on 14 November 2018. This is so that the UK's statute book and current arrangements can continue to operate effectively, until free movement is ended. This instrument also contains provisions that delay the effect of some of the measures until the "appointed day", which is the day on which new immigration rules providing for the new skills-based immigration system come into force.'*

The [Free Movement blog](#) pointed out that there are around 50 amendments. Some are holding measures to preserve the status quo. For example, where policing laws say that citizens of "a member state" are eligible to become special constables, this wording previously included British citizens. After Brexit, it would not. This needs changing to "an EEA state or the United Kingdom" so that British citizens are still eligible.







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Other amendments reflect change from the status quo, albeit that they just reflect the reality of non-membership. The landmark Dublin III regulation on the swift removal of asylum seekers to mainland Europe goes, as does the Eurodac fingerprinting system and the European Asylum Support Office. It is the UK's exit from the Union that really ends our participation in these institutions, not this legal tidying up, but it does bring the reality of Brexit into sharp relief.

There are various other technical, transitional and saving provisions. The government has the power to make these changes to existing Acts of Parliament using secondary legislation because of the European Union (Withdrawal) Act 2018.

## **The Immigration (European Economic Area Nationals) (EU Exit) Order 2019**

This is much shorter. Free Movement sums it up as the legal implementation of the government's plan for future EU immigration if there is no deal. It's hard to keep up with the various deal and no-deal permutations affecting different groups of people, but this is the business of allowing new arrivals into the country for an initial period of three months. The changes making this happen, according to the explanatory memo, 'will come into force when the Immigration (European Economic Area) Regulations 2016 are revoked and free movement is brought to an end'.

Under the order an EEA or Swiss national would in most cases have leave to enter to the UK for three months. There are also some changes related to the EU settlement scheme for existing residents. For example, those granted settled status under that scheme are placed on the list of people exempt from the immigration health surcharge.

The order is not the means to protect the rights of EEA nationals resident here before exit. In a no deal scenario, the government intends to protect these by making regulations under clause 4 of the Immigration and Social Security Co-operation (EU Withdrawal) Bill. Free Movement says this answers the puzzle of what law would protect the legal status of EU citizens in the UK before they apply to the settlement scheme, if there is no deal and the government scraps the EEA Regulations as promised. The government would replace the existing regulations with new ones, preserving their legal status for the time it will take everyone to apply to the settlement scheme.

The Joint Council for the Welfare of Immigrants (JCWI) has put together a [briefing](#) on the EU settlement scheme, including ways in which it could be improved.







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## Windrush compensation scheme opens

On April 3, the Home Secretary opened a scheme to compensate members of the Windrush generation who have suffered losses due to their inability to prove their right to live in the UK. It is open to those who settled in the UK from a Commonwealth country before 1973, and in certain circumstances their children and grandchildren. Additionally, it is open to all nationalities who arrived to live in the UK before 31 December 1988 and are settled here. [Read more](#) on all the categories of eligibility.

Claim forms can be downloaded and guidance on completing the application can be found [here](#). Claimants can also request a form to be sent by post by calling a helpline 0800 678 1925 (Monday to Friday, 9am to 5pm) or via email [WindrushCompensationScheme@homeoffice.gov.uk](mailto:WindrushCompensationScheme@homeoffice.gov.uk), where they can also request a call back if they are overseas.

The [Free Movement blog](#) pointed out several reasons why the scheme is inadequate:

- Only some application fees for documents are covered.
- There is only limited help with legal fees.
- Windrush victims have to show an effort to "resolve lawful status" when they already had it.
- The amount of evidence required can be formidable.
- Levels of compensation are inadequate given the suffering caused.

The scheme also comes with warnings for people giving false information and a denial by the Home Office of any liability for losses incurred by victims.

In the [Guardian](#), Sally Daghlion, head of Praxis Community Projects, described the compensation scheme as an 'insult'.

### The Public Accounts Committee's verdict on Windrush

In March, the Public Accounts Committee published a [report](#) into the Windrush generation and Home Office immigration policies. It complains of 'a combination of a lack of concern about the real-world impact of the Home Office's immigration policies compounded by a systemic failure to keep accurate records, meaning many people who are British Citizens or have leave to remain in the UK do not have the paperwork to prove it.' The Immigration Law Practitioners' Association told the committee that:

*'... compliant environment measures regarding private renting and employment checks had effectively forced employers and private landlords to become local immigration enforcement officers. ILPA also stated that the risk of penalties for non-compliance - £3,000 for a landlord and up to £20,000 for an employer - mean landlords and employers are less likely to go through the process of awaiting confirmation of identity, increasing the risk of discrimination against certain groups. It noted that ethnic minorities in particular, including those who are British citizens, are being filtered out of housing and employment processes because it is easier to do this than perform a series of checks.'*





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## New allocations and homelessness eligibility rules

[New rules](#) take effect on May 7. Full details will appear on the website soon. In the meantime for people in England covered by EU rights to reside, including 'Zambrano carers' who already have settled or pre settled status, new regulations are coming into force on that date. If you are thinking of applying as homeless or to go on to the housing register, it would be a very good idea to do that before then as there are rules protecting those who make applications before the new regulations come into force. Rules about claiming universal credit or housing benefit are unaffected.

## Applicants for leave to remain - complications when applying for benefits

The Home Office has moved to an electronic system for some applications for leave to remain, run by a firm called Sopra Steria. Apparently the system no longer produces receipts or acknowledgement letters for applications to renew or amend leave. Unfortunately the Home Office has failed to inform other departments of this so people applying for housing and/or benefits are being asked for receipts or acknowledgements that they cannot provide. Solicitors and advisers are raising this with the Home Office but meanwhile those administering housing and benefit applications need to find alternative ways of confirming that applications have been made.

Where a solicitor or OISC registered adviser is involved this could be confirmation from them that the application has been made / received. Applicants themselves should be encouraged to take a screen grab of the online acknowledgement if they can. Failing these, an enquiry to the Home Office can be made, with the HO reference number. Authorities who have liaison arrangements with the Home Office local/national teams may want to point out the extra work this involves.



## Migrant integration

In February, the government issued its [response](#) to the consultation on the Integrated Communities Strategy Green Paper along with an [action plan](#). Unfortunately, despite recognising that many respondents had focused on the role housing policy can play in relation to integration of communities, neither the response nor the action plan pay much attention to housing issues or the risks of homelessness faced by migrants.

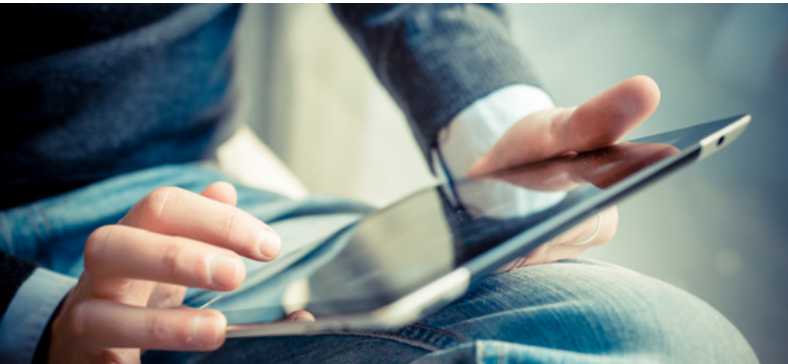
## Only standard damages for unlawfully detained rough sleepers

In March the High Court concluded that EU citizens who were unlawfully detained solely because they were homeless should be paid damages at the normal rate (see [R \(Majewski\) v Secretary of State for the Home Department \[2019\] EWHC 473 \(Admin\)](#)).



## New Fitness for Human Habitation Act in rental homes comes into force

A new act of parliament requiring homes to be fit for human habitation when a lease is granted, and remain fit for human habitation during the course of the tenancy, came into force in England on March 20. Official guidance has been [published](#) on the new requirement.







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## Councils in crisis for lack of funds to care for lone migrant children

Local councils have warned of a funding crisis because they are expected to care for more and more lone migrant children, the [Guardian](#) reports. The cost to councils of caring for unaccompanied children seeking refugee status has doubled over the past four years, from £77 million to £152 million.

But councils are also denying migrant families the safety net of section 17 support, the [Independent](#) says. A report by the charity Project 17 found that children are being made street homeless with support under section 17 of the Children Act 1989 'increasingly hard to access'. Project 17's report, [Not Seen, Not Heard: Children's experiences of the hostile environment](#), campaigns for an end to destitution among migrant children. The report includes recommendations for local authorities to improve access to support under section 17 for families with no recourse to public funds (NRPF).

## Changes to Immigration Rules in March and April

Changes to the Immigration Rules made in March include two new visas aimed at skilled business people, reforms to the Tier 1 (investor) route, extension of the salary exemption in the Tier 2 (general) visa, and rules changes so that eligible partners and children of Afghan interpreters can relocate to the UK at a later date. The list of countries which benefit from



the streamlined documentary requirements has also been updated. The initial period of leave granted to those who qualify for 'stateless leave' was increased to five years. Additionally changes make clearer that an individual is required to show that they have tried to obtain a nationality or right of residence in another country that they could reasonably expect to be entitled to, before benefitting from stateless leave. Read the statement of changes [here](#) and look at the current rules [here](#).

Changes made in April were short and technical, making a few tweaks to the rules for EU settled status. The main change is the cut-off date by which EU citizens must be living in the UK in order to apply for settled status, which is 31 December 2020 or alternatively the date of a possible future 'no deal' withdrawal from the EU, if it were to occur (the original cut-off date for 'no deal', March 29, of course no longer applies).

## Contributors

The newsletter is edited by John Perry from CIH. This issue was put together with help from Sue Lukes (consultant and main website contributor).

**Do you have any  
comments on this  
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Send them to [policyandpractice@cih.org](mailto:policyandpractice@cih.org)

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