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Your quarterly newsletter from the housing rights website

January 2019

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



What happens after Brexit?

We are still unclear what EU citizens' rights will be when Britain leaves the EU. The withdrawal agreement includes arrangements but it still hasn't been approved by Parliament. Here **Sue Lukes** tells us how things stand in mid-January.

EU citizens are supposed to be able to apply for settled status or for leave to stay long enough to get settled status. And there have been some trials of the scheme. During the planned transition period until 31 December 2020, current rules will apply, and there is a deadline of 30 June 2021 for EU citizens to sort out their residence rights. After that date, EU citizens (except Irish citizens) will be treated like anyone else who is subject to immigration control.

There is a lot of guidance on how the 'settled' and 'pre-settled' schemes will work. For clearer guidance you can refer to this [website](#) produced by the Mayor of London. Here are the headlines:

EU citizens and family members who can prove that they have lived in the UK for **five years can apply for settled status**. People who cannot prove the five years can apply for **pre-settled status and serve out their five years** then apply for settled status.

- The scheme applies only to EU nationals and family members but the government intends to make similar rules for EEA nationals.
- Everyone has to apply, including children and people who now have the permanent right to reside.
- EU citizens or family members (defined as now) who have indefinite leave to remain do not have to apply but may wish to, as settled status will give them more rights.





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- Residence to qualify for settled status must be continuous, with no breaks of more than six months in any 12 month period, with some exceptions.
- The scheme relies on simple residence, not 'right to reside', for example, there will be no need for students or the self-sufficient to provide evidence of health insurance.
- People with EU settled status can live outside the UK for up to five years and retain their status (unlike people with indefinite leave to remain who lose it after two years' absence).
- Applications are to be made online, via an app, or on paper for some exceptional cases. Applicants will need a valid passport or ID card and proof of residence. After March 29, there is no fee; those who apply beforehand can have the fee refunded.

Settled and pre-settled status will not be subject to any bar on recourse to public funds. The government is looking to ensure that people have the same rights to benefits and housing as under current rights to reside, probably via eligibility regulations.

The proposed legislation also enshrines the rights of **all Irish citizens** to enter and remain in the UK, unless subject to a deportation order, exclusion order or an international travel ban. In other words, it makes them not subject to immigration control.

What if there is 'no deal'? – what it means for housing and other entitlements

At the time of writing, many MPs are trying to prevent a 'no deal' exit from the EU but the prime minister has refused to rule it out. If it did happen, how would it affect EU migrants? There is a clear difference between those already here and those who might arrive after the UK leaves the EU. The former should be largely protected by the arrangements above, if they have passed through the EU settlement scheme. But under the withdrawal agreement, similar protection is promised to all those who arrive from the EU up to December 2020. If the withdrawal agreement isn't signed, what happens? Both those EU nationals including the ones already here with unresolved status and the new arrivals from April this year onwards could be in limbo. The [Free Movement blog](#) clarifies their position.

Legislation is already passing through parliament to remove 'free movement' for EU nationals to the UK, in the form of the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) which is intended to come into force from the start of 2021. In the meantime both groups of EU nationals with uncertain status should be protected by the existing EEA Regulations from 2016, which should remain in force. One snag is that this protection will exist only under domestic law, without the possibility of a claim under European law itself, once Britain leaves the EU.



Will the status of these EU nationals be the same when it comes to claiming housing assistance or applying for a private tenancy? Yes. For example, while landlords should ask all private tenants for proof of their immigration status, once they show a UK passport (or equivalent) or an EU passport or ID card, the applicant shows they have an automatic right to rent the property. This should continue, even if there is no withdrawal agreement.

The only proviso to this is that if the Bill mentioned above is passed, it will automatically extinguish the old regulations. Government would have to ensure that part of the legislation is not commenced until the replacement rules are in place. Given that this will take time, it may want to stick to its original plan of having them in operation by early 2021. Of course, it is these rules which protect the rights of existing EU residents too, so the government must be careful to ensure this protection is not interrupted.

However, as Free Movement points out, none of this resolves the long-term position of EU nationals who arrive after Brexit. Once the new legislation and



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replacement rules are in force, any new EU arrivals afterwards will be treated no differently to migrants arriving from outside the EU (or at least, that's the government's current plan). There is every likelihood that this middle group of EU nationals – those who arrive after Brexit but before the new rules are put in place – will have no right of residence, as they won't have the time to build up the three-year residency requirement. So their protected status as EU nationals will eventually disappear, unless there is some sort of exceptional treatment. This is still a possibility, as the government had already agreed to separate treatment for EU migrants arriving after Brexit day but before the end of the transition period – but this, of course, was part of the withdrawal agreement. We simply don't know if the government will keep this promise if the withdrawal agreement remains unsigned.

In the meantime the government has published [advice for EU citizens](#) about benefits and pensions in the UK in the event of a no-deal Brexit. It is very brief and does not clarify the position of EU nationals arriving after 29 March. It reveals that the government is 'still looking at different options'.

Changes introduced on 20 December – EU household members can apply for settled status

In appendix EU of the Immigrations Rules, the definition of 'family member' [has been amended](#) to include members of an EU national's household. This allows EU citizens and their family members living in the UK to remain after Brexit. The change is explained in the [Free Movement blog](#).

EU settlement scheme – grant funding

Voluntary sector groups can [apply for funding](#) to support EU settlement scheme applications from vulnerable or at-risk EU citizens and their families. Organisations will have until 1 February to put in their bid. Potentially this helps a range of groups working with vulnerable groups, such as older or disabled people, and others. As an example of the issues faced, [The Independent](#) recently report on the problems faced by Roma communities in regularising their paperwork.

Brexit and EU citizens – some resources

There are now some useful guides produced by expert lawyers, available free online:

- [Free movement](#)
- The [Here for Good's guide](#)
- A list of resources from [Seraphus solicitors](#)
- Information about [applying for settled status](#) from expert lawyers
- Government guidance on applying for settled status www.gov.uk/settled-status-eu-citizens-families



Post-Brexit immigration policy: a 'skills-based' immigration system

Shortly before Christmas Sajid Javid [announced](#) his planned post-Brexit immigration policy. His [white paper](#) proposes a 'fair and humane' immigration system. It reflects the government's insistence on focussing on skilled migrants in higher income groups. There will be a year-long consultation around the proposals, which include scrapping the current cap on the number of skilled workers such as doctors or engineers from the EU and elsewhere. The government plans to impose a minimum salary requirement of around £30,000 for skilled migrants seeking five-year visas while 'low-skilled' workers from certain countries including the EU will be able to apply for work visas of up to a year. The intention is to phase in the new system from 2021.



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An assessment suggests that the policy could reduce EEA migrant inflows by 80 per cent, to between only 10,000 and 25,000 annually in the first five years, and that there will be between 200,000 and 400,000 fewer long-term EEA workers in the UK by 2025.



Meanwhile the Migrants' Resource Centre (MRC) published its own plan for a [Comprehensive National Migration Strategy](#), to provide 'a basis for discussion on the future of immigration policy in the UK'. It attempts to reconcile a number of objectives: ensuring the conditions are in place for migrants and the communities they settle in to thrive, rebuilding public trust in the effective functioning of the immigration system and ensuring that the overall benefits of migration, including economic benefits, are maintained.

Asylum accommodation - Home Office goes ahead and issues new contracts

Campaigners were disappointed but perhaps not surprised when the Home Office [announced](#) immediately after the New Year break that it had awarded new contracts for housing asylum seekers that will cost around £4 billion and last for 10 years. G4S was the big loser, with its seven regional contracts all going to Mears Group, Serco and Clearsprings Ready Homes. One change was that Serco lost the contract in Scotland, which now goes to Mears Group after criticism of Serco making eviction threats against occupants under its existing contract.

Migrant Help have been awarded the contract for the Advice, Issue Reporting and Eligibility Assistance services (AIRE) again. The new contracts begin in September 2019.

In awarding the new contracts, the government ignored or underplayed most of the recommendations of [a report from the Home Affairs Committee](#), which came out in December. The committee found that nearly two years after their previous report, little had improved and mistrust by local authorities of central government had deepened. The government's handling of the new contracts led authorities to consider withdrawal from participation in the dispersal scheme. The committee recommended that authorities be closely involved in developing the arrangements and have a partnership role in making decisions under the new contracts and overseeing their implementation. As a first step, the government should consult local authorities on the full details of the contracts before finalising them. The government claims to have consulted 'extensively' and that the contracts also 'require accommodation providers to develop and maintain close working relationships with local authorities'.

The committee report also followed [a damning report](#) by the Chief Inspector on asylum accommodation. He says:

'In 69 property visits spread across 12 towns and cities, inspectors saw examples of accommodation that had various visible defects (leaks, damp, broken equipment), poor quality furnishings and fittings, and were dirty. Inspectors also saw examples (fewer) of pleasant, well-maintained properties.'





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The move-on period for new refugees is still an ordeal

In 2014, the Red Cross published a report that showed the 28-day move-on period from asylum accommodation was an ordeal for new refugees, who often ended up homeless. Four years on, despite some positive policy changes, it remains an ordeal. A new Red Cross report, [Still an ordeal: The move-on period for new refugees](#), examines the experiences of people who use [British Red Cross refugee services](#). Their stories help explain why many new refugees fall into poverty so soon after getting a positive decision on their asylum application.

The Red Cross calls for the period to be extended to at least 56 days and for more help to be provided, especially to allow refugees to apply for universal credit. Unfortunately, this is hardly the first such demand to extend the 28-day period, although the need to do so is even more urgent with the roll-out of universal credit, and its longer waiting times, across the UK.



Right to rent latest

Landlords are increasingly reluctant to rent property to foreign nationals, research by the Residential Landlords Association (RLA) shows. The Independent [reported](#) the RLA survey, which shows that 44% of landlords say they are less likely to take on a tenant who does not have a British passport, up from 42% in 2017, with 20% now saying they would be nervous about renting to EU citizens due to Brexit.

The survey was carried out as part of the build-up to the judicial review of Right to Rent by the Joint Council for the Welfare of Immigrants, which was heard by the court in December. Chai Patel of the JCWI criticised the home secretary, Sajid Javid, for defending the Right to Rent: 'Not only is he ignoring our evidence, he is fighting us in court to stop the Home Office from being required to do its own evaluation into whether the scheme is harming ethnic minorities and foreign nationals with every right to rent property.'

'No recourse to public funds' households - new duty to refer to a housing authority

On 1 October 2018, it became a legal requirement for social services in England to make a direct referral to a housing authority for assistance under the Housing Act 1996 when a person they are supporting is homeless or is threatened with homelessness within 56 days. The new duty to refer is set out in the Homelessness Reduction Act 2017, with information about implementing it included in the [Homelessness code of guidance](#) and the [guide to the duty to refer](#).

The duty applies when a family or person with NRPF has been provided with accommodation under section 17 of the Children Act 1989, or the Care Act 2014, and becomes eligible for homelessness assistance. This may happen when they are granted leave to remain with recourse to public funds, or when an EEA national starts working and establishes a right to reside. At that point, the social worker or NRPF caseworker will usually issue the person with a notice that their temporary accommodation is due to end and must also make a direct referral to a housing authority.

More details can be found on the [NRPF Network website](#).



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New publications

Immigration advice and the OISC

The Office of the Immigration Services Commissioner (OISC) has published a [guide](#) setting out what assistance individuals and organisations may provide to people who have queries about their immigration position or need advice and assistance with an immigration matter. This is a big problem for many smaller agencies working with migrants, if you have not got accreditation to provide immigration advice, e.g. for the EU settlement scheme.

Free Movement has concerns about the guidance as they said:

'If it is illegal for a community support group to advise an individual and it is illegal to advise someone whether their documents are adequate to make an application, how are people going to get help with applying under the scheme? There just aren't enough regulated advisers out there to provide the scale of work needed.'

Discrimination in the private rented sector

Rent Smart Wales has produced [two excellent guides](#) for those needing to challenge discrimination in private lettings.

New guide for Polish victims of domestic abuse

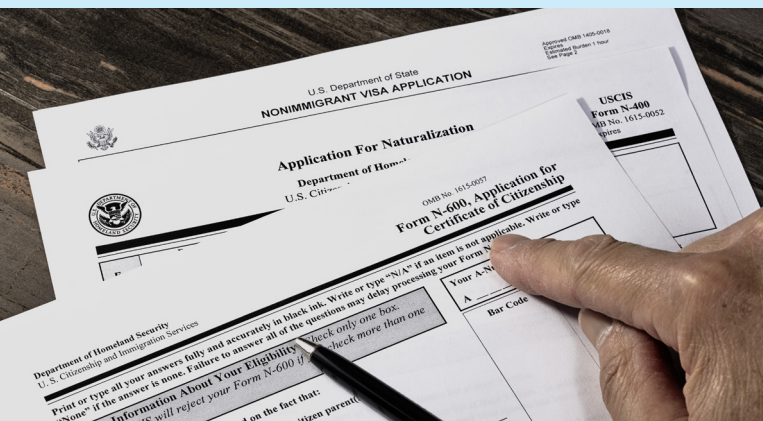
[Vesta](#), the organisation that supports Polish families in England and Wales, has published a new guide for professionals advising Polish victims of domestic abuse about their housing rights - [Getting and paying for housing](#). The guide was written by our own housing rights website author, Sue Lukes, and is available in Polish and English.

Allocation and Homelessness Eligibility rules (England)

Finally, amended eligibility rules were issued in November, and (as ever) the housing rights website provides you with a fully consolidated and up-to-date version of the rules, as a pdf. Download it [here](#).

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 newsletter?

Send them to policyandpractice@cih.org

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