

RIGHTS OF EU CITIZENS IN SCOTLAND

EU Citizens and Your Right to Access Benefits and Social Work Support

This factsheet provides a brief summary of your right to access benefits and social work support as an **EU citizen** in Scotland. In this factsheet, 'EU citizens' includes citizens of the EU member states, as well as citizens of the EEA states (Norway, Iceland and Liechtenstein), and citizens of Switzerland.

This factsheet also covers the rights of **family members** who are not themselves EU citizens, and whose right to live in the UK is derived from their relationship with an EU citizen.¹

Following the UK's exit from the European Union (**Brexit**), the rights of EU citizens in Scotland have changed in some important ways:

EU Citizens who were living in the UK on 31 December 2020

- ▶ EU citizens and their family members who were living in the UK on 31 December 2020 may have applied to the EU Settlement Scheme (EUSS) and been granted either **Settled Status** (indefinite leave to remain) or **Pre-Settled Status** (limited leave to remain for five years). Irish citizens and people with indefinite leave to remain did not have to apply.
- ▶ If you do not currently have leave to remain, you may be able to make a late application to the EUSS. You should urgently seek legal advice if you wish to stay in Scotland.
- ▶ If you have made an application to the EUSS and are waiting for a decision (a '**pending application**'), you will be given a **Certificate of Application** as proof of having made this application. You have the right to remain in the UK until your application has been decided.

If it is refused, you have the right to remain in the UK until it is no longer possible to appeal the decision. You will hold a **Certificate of Application** as proof of having made this application.

EU Citizens who arrived on or after 1 January 2021

EU citizens and their family members who arrived in the UK for the first time on or after 1 January 2021 cannot apply for Settled or Pre-Settled Status.

You may have arrived as a **Short Term Visitor**. If you wish to remain in the UK for more than six months, you must apply for a **Long Term Visa** (for example, to study, or work, or join a family member).

Non-EU family members of EU citizens can enter the UK if they hold an EUSS family permit or a UK-issued biometric residence card. Once they have entered the UK, they should apply to the EUSS within three months.

1. 'Family members' can include: your spouse or civil partner, your children, grandchildren and great-grandchildren under age 21, your dependent children over age 21, your dependent parents, grandparents and great-grandparents, and some unmarried partners and other dependent relatives (where the Home Office has issued an 'extended family member' registration certificate).

EU Citizens and Your Right to Access Benefits and Social Work Support continued

Do I have the right to access benefits in Scotland?

The following EU citizens may have a right to access benefits:

EU Citizens who have Settled Status

If you have Settled Status, you can access any benefits that you meet the entitlement criteria for, in the same way that a UK citizen can.

EU Citizens who have Pre-Settled Status

If you have Pre-Settled Status or a Certificate of Application, this does not of itself give you access to benefits.

However, you may be eligible for some means-tested benefits, such as Universal Credit, Housing Benefit (and Child Benefit, if you have one or more dependent child) if you are doing a sufficient amount of paid work at the time of your benefit application.

Alternatively, you might have “retained worker status” since finishing paid work, while:

- ▶ Looking for new work,
- ▶ Temporarily unable to work, due to health problems, or
- ▶ On the equivalent of maternity leave

This is because the ‘**right to reside test**’² still applies for people with Pre-Settled Status.³

Under it, you might also have a right to reside as a family member of someone who is working, or who has retained worker status.

EU Citizens who have a Certificate of Application

If you have applied to the EUSS and are awaiting a decision, you may be eligible to access means-tested benefits if you meet the “right to reside test” at the time of your application, and you can also prove that you were exercising a right to reside on 31 December 2020.

You remain eligible to do so until you are granted Settled Status or Pre-Settled Status (or until you are no longer able to appeal a refusal of your application).

The following EU citizens do not have a right to access benefits:

EU Citizens who were lawfully residing in the UK on 31 December 2020 and have not yet applied to the EUSS

From 1 July 2021, you no longer have leave to remain in the UK and are therefore subject to a condition of ‘no recourse to public funds’ (NRPF). This means you are not eligible for most benefits in Scotland.

However, you may have the right to make a late application to the EUSS. If you now wish to stay in the UK, you should seek urgent legal advice.

EU Citizens who arrived on or after 1 January 2021 for the first time

EU citizens and their family members arriving either as Short Term Visitors or as Long Term Visa holders after 1 January 2021, are subject to a condition of “no recourse to public funds” (NRPF) and cannot therefore access most benefits in Scotland.

You may, however, be able to seek help, including financial support or housing, from your local authority (see below).

2. As European free movement no longer applies in the UK, your immigration status no longer depends on whether you have the right to reside. However, the right to reside continues to be relevant in determining eligibility for means-tested benefits – and here, the test will be considered in line with the Immigration (European Economic Area) Regulations 2016, as in force on 31 December 2020, subject to any amendments.

3. There are other circumstances in which you might pass the right to reside test, and other benefits you might have access to. If these don't apply, you should seek specialist benefits advice, for example from a Citizens' Advice Bureau.

Last updated 1 January 2023

EU Citizens and Your Right to Access Benefits and Social Work Support continued

Do I have the right to access social work support in Scotland?

All EU Citizens (regardless of whether you hold Settled Status, Pre-Settled Status, or are without status)

You may have the right to access other forms of help, including financial support or housing, from your local authority if you:

- ▶ Are under age 18 and living alone
- ▶ Are under age 18 and at risk of harm or abuse, poverty or homelessness
- ▶ Are a care leaver or are about to leave care
- ▶ Are a carer for someone else in your family
- ▶ Have children and are at risk of harm, poverty or homelessness
- ▶ Are an adult at risk of harm or abuse
- ▶ Require additional support because of a disability, your mental health, your age, or some other vulnerability (such as pregnancy)

Everyone living in Scotland has a right to ask your local authority for help, no matter what your migration status is, and no matter how long you have lived here.

The local authority has a duty to consider your request, and if necessary, to make a written assessment of whether or not they must provide you with help and support. If you require urgent help and support – for example, if you are not safe where you are staying, or if you are destitute and homeless, the local authority may have a duty to provide you with temporary support and accommodation whilst they investigate your circumstances.

However, once the assessment has been completed, whether or not you have a **right to reside** may affect whether and how the local authority can provide you with the help and support you need.

If the local authority decides you are not eligible for financial support or housing, they must provide you with a written decision. If they do not provide you with a written decision, or if you disagree with their decision, you should seek help and advice to challenge this decision.

Where can I get more advice or support?

If you are unsure about your current or future right to claim benefits or access social work support or homelessness assistance in Scotland, you should seek advice and support for your individual case.

For more information about your right to access benefits and social work support in Scotland, or if you need more help understanding your rights, you can:

- ▶ Call the **EU Citizens Support Service** helpline at Citizens Advice Scotland on **0800 916 9847** (Monday 9am-1pm, Wednesday 1pm-5pm and Friday 9am-1pm. You can call the number out of these hours and leave a voicemail) – or you can find your local advice bureau at: <https://www.cas.org.uk/bureaux>
- ▶ Read factsheets on access to benefits in Scotland at:
 - **Citizens' Rights Project:** <https://citizensrightsproject.org/2022/05/30/learn-about-your-rights-as-a-migrant-in-the-uk-with-our-new-multilingual-factsheets/>
 - **Child Poverty Action Group Scotland:** <http://www.cpag.org.uk/scotland/factsheets>
- ▶ Read guidance for local authorities in Scotland on Assisting EEA Nationals: entitlements and support options at **COSLA Migration Scotland:** <https://www.migrationscotland.org.uk/eea-factsheet-local-authorities>

Last updated 1 July 2021