

## 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 your **family members**. A 'family member' is someone who is a member of your family and not an EU citizen, and whose right to live in the UK is derived in EU law from their relationship with you and your EU citizenship.<sup>1</sup>

This factsheet covers your rights now (during the **Brexit transition period**) and also after the transition period ends. The transition period is due to end on 31 December 2020, but this date may change if the transition period is extended.

EU citizens have the right to live in Scotland under EU law during the Brexit transition period. After the end of the transition period, EU law will no longer apply. EU citizens and their family members who wish to stay in Scotland after the end of the transition period must apply under the EU Settlement Scheme for either **Settled Status** (indefinite leave to remain) or **Pre-Settled Status** (limited leave to remain for 5 years), before 30 June 2021.

## Do I have the right to access benefits in Scotland?

### All EU Citizens

All EU citizens and their family members can only access Department of Work and Pensions (DWP) benefits in Scotland if they pass the **habitual residence test**, which includes proving they have a **right to reside** in the UK. This test applies for a range of benefits including:

- ▶ Universal Credit
- ▶ Income Support
- ▶ Income-related Jobseekers' Allowance (JSA)
- ▶ Income-related Employment Support Allowance (ESA)
- ▶ Pension Credit
- ▶ Housing Benefit

Child Benefit and Child Tax Credit are also only available for people who have a right to reside.

For benefits other than Universal Credit, you can **prove your right to reside** under EU law by showing you are a:

- ▶ Worker or self-employed worker (doing a sufficient amount of paid work)
- ▶ Jobseeker
- ▶ Former worker<sup>2</sup> or a retired person<sup>3</sup>

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).

2. An EU citizen who has ceased work may be considered to have retained worker status if he/she is temporarily unable to work as a result of accident or illness, is involuntarily unemployed, is starting vocational training, is heavily pregnant, or has recently given birth. An EU citizen who has become permanently incapacitated may be able to immediately apply for 'permanent residence.'

3. An EU citizen who has reached the state retirement age and then has retired after either living continuously in the UK for 3 years, or working in the UK for 1 year, can immediately apply for 'permanent residence.'

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- ▶ Student (who is 'self-sufficient')
- ▶ A family member of an EU citizen engaged in one of the above activities<sup>4</sup>

For Universal Credit, being a jobseeker or a family member of a jobseeker does not count.

The other part of the habitual residence test involves proving you have been in the UK long enough for it to be your 'habitual residence'. This is fixed at three months for some benefits, but may be established sooner for others.

The Scottish government also administers some benefits, in addition to DWP benefits. Access to some of these benefits depends on whether you already receive DWP benefits. Other benefits are available to all people in Scotland regardless of your migration status (for example, the free baby box scheme and the young carer's grant).

### EU Citizens who have Settled Status

If you hold Settled Status, you automatically satisfy the **right to reside** test. You have the right to access DWP benefits in Scotland, on the same terms as a British person would have.

### EU Citizens who have Pre-Settled Status

If you hold Pre-Settled Status, you must satisfy the **right to reside** test in order to claim DWP benefits in Scotland.<sup>5</sup> The Scottish government also administers some benefits for which you do not have to pass the right to reside test, for example, the free baby box scheme and the young carer's grant.

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

### All EU Citizens

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 their 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.

4. Other family members may have a 'derivative' right to reside, if they are the 'primary carer' of an EU citizen's child who is in education, where the EU citizen is a worker or former worker.

5. Some advisors believe that EU citizens who hold Pre-Settled Status should also automatically satisfy the right to reside test. The Child Poverty Action Group brought a legal case in the High Court in England to challenge this rule, but they were unsuccessful in April 2020. They are now asking for permission to appeal this ruling, so the rule may change in the future. If you hold Pre-Settled Status and have been refused access to benefits, you should seek further help and advice.

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

### Do my rights change after the Brexit transition period?

**Your right to access DWP benefits** is decided by the UK government. The future relationship between the UK and the EU is being negotiated by the UK government. Under the current rules, you may require to hold Settled Status, in order to retain eligibility for benefits after the Brexit transition period. However, these rules are currently being legally challenged and may change over the coming months.

**Your right to access Scottish government benefits** is decided by the Scottish government. Access to some of these benefits depend on whether you already receive DWP benefits. Other benefits are available to all people in Scotland, regardless of your migration status.

**Your right to access social work support** from the local authority is decided by the Scottish government, and will not change after the Brexit transition period.

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

### Where can I get more advice or support?

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 to Friday, 9am to 5pm) – or you can find your local advice bureau at: <https://www.cas.org.uk/bureaux>
- ▶ Read factsheets on access to benefits in Scotland, and details of the welfare rights advice line, at **Child Poverty Action Group Scotland**: <http://www.cpag.org.uk/scotland/factsheets>
- ▶ Read guidance to local authorities on access to social work support at **COSLA Migration Scotland**: <http://www.migrationscotland.org.uk/migrants-rights-entitlements/>

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