



# **Briefing on the Implications for EU families with Children Who Fail to Apply to the EU Settlement Scheme**

**Children's Law Centre  
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## Introduction

This note is designed to set out the potential implications for children, where either:

- Their parents/carers have not applied to the EUSS by the deadline, or
- The parents have applied to the EUSS for their own status but have inadvertently not applied for the child/ren's status.

General information on the EU Settlement Scheme can be found on the Children's Law Centre's [website](#).

### **How many EU nationals with children in Northern Ireland have not yet applied to the EUSS?**

There is no way of knowing the answer to this question. There is no reliable data to say how many EU nationals (and their non-EU family members) are living in Northern Ireland, or the UK<sup>1</sup>. All figures are estimates only. We know from the most recent statistics that there have been over 86,000 applications from EU nationals living in Northern Ireland<sup>2</sup>. However, any data that records the amount of people who have applied, will not indicate how many eligible people have not yet applied.

### **How many EU children in Northern Ireland have not yet applied to the EUSS?**

This is the same answer as above. We do not know how many EU national children live in Northern Ireland. The data is not captured anywhere.

We do know that there has been a higher number of EU children's applications from Northern Ireland than from other regions across the UK. A total of 19% of all applications from Northern Ireland have been in respect of children, compared to 15% for all the other regions.<sup>3</sup> This may indicate that knowledge is more widespread in Northern Ireland, in terms of the need to make applications for children. However, it is more likely to be that there is a higher proportion of EU children, per general EU population, living in Northern Ireland. Northern Ireland has more than three times the number of Lithuanian nationals (14%) compared to the average of 4% across all the other regions, while the biggest group of EU nationals in NI is Polish. Statistics show that Polish and Lithuanian nationals

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<sup>1</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/eu-migration-to-and-from-the-uk/>

<sup>2</sup> <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2021/eu-settlement-scheme-quarterly-statistics-march-2021>

<sup>3</sup> See n2 above

tend to be younger than other EU migrants. They are much more likely to be children or have children in the family unit<sup>4</sup>.

**Are there concerns that there are gaps in terms of those needing to apply but who have not applied?**

Yes. The Migration Observatory has been warning for some time that children may fall through the gaps in the EUSS, in the following way:

*“Children whose parents do not themselves apply, **do not realise that children need to apply, or mistakenly believe that their UK-born children are automatically UK citizens.** There are more than 900,000 children of non-Irish EU citizen parents living in the UK, born either here or abroad. This includes an estimated 239,000 UK-born children whose parents report that they are UK citizens, but available data suggest that tens of thousands of these children may not be<sup>5</sup>”.*

Anecdotally and by example, CLC understands that some parents hold misconceptions that children born in the UK do not need to apply; or that their own EUSS status also covers their children.

CLC also shares the concerns of others that vulnerable parents are less likely to have applied for themselves and/or their children. Families where there is a history of domestic violence, disability, lack of language skills, lack of paid employment etc are more likely to miss the deadline. For reasons set out below this will simply compound their difficulties and vulnerabilities.

**Are there any difficulties specific to Northern Ireland, that might mean a higher level of unregistered parents and children, than in other UK regions?**

Yes. It is relatively straightforward to apply to the EUSS, using the Home Office App, if someone has a valid ID Card or passport. The difficulty is where a national document has expired. EU states require the personal attendance of the applicant at an Embassy to make an application for a passport or ID Card. Almost no EU states have consular facilities in Northern Ireland that permit an application for a national ID to be made here.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/livingabroad/migrationbetweenbritainandtheeu8>

<sup>5</sup> <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

Securing a valid document for those living in Northern Ireland usually means a trip to an Embassy in England. The Covid-19 pandemic made this almost impossible. Anyone without a valid biometric passport or ID Card had to apply by post, using an individualised form. The Home Office had a process in place to secure a paper application form by way of a permission application. They ran a triage system before granting permission to release an individualised application form. CLC's experience is that these paper forms were difficult to obtain.

### **What is the legal status of parents and children who miss the deadline?**

Any EU national (or EU family member) living in Northern Ireland on 1 July, who has not applied to the EUSS, will be living in Northern Ireland illegally from that point. They will be considered to be an "illegal immigrant".

### **What are the effects of not holding legal residence status after 30 June 2021?**

Those who remain living in Northern Ireland will be subject to the hostile environment. The hostile environment refers to a set of administrative and legislative measures to make life impossible for those who are non-nationals and who do not have immigration permission to live in the UK. They will be subject to all of the laws, restrictions and criminalising provisions contained in Home Office policy, The 2014 Immigration Act and The 2016 Immigration Act.

They will be barred from taking **employment**; barred from **accessing benefits**; barred from **public housing**; barred from receiving **homelessness assistance**; barred from operating **bank accounts**; barred from holding **driving licenses**; barred from all **post-secondary education**; barred from accessing free **NHS medical treatment** (except at an A&E and in respect of certain communicable diseases). They will be unable to leave the country, as they will be certain to be excluded from return.

Those who continue to work will be doing so illegally and will be subject to **fines** and or **custodial sentences**. Their **employers** will also be fined (up to £10,000). Employers are being advised to check EU nationals' status post 01 July to make sure they either hold status or have applied and not yet received status. All those who are residing without status will be **subject to removal** from the UK.

**Is there a difference if the parents have made an application for status but they have inadvertently not made an application for their child/ren's status?**

Yes. It is less serious. However, there will still be consequences. The child will lose the right to **free NHS treatment**, including **dental treatment** and **eye care**. No **benefits** will be paid in respect of the child. If the child is approaching 16, they will not get allocated a **National Insurance Number** (NINO). If the child is past statutory school leaving age, they will not be entitled to study in **post-secondary education**. They cannot apply for a **provisional driving license**. Not making an application for a child / children is easier to rectify (see below). Due to it not risking the loss of employment, a portion of benefits and housing of the parents, it is less likely to plunge a family into destitution. It is also less likely to result in any form of enforcement action, such as removal from the country.

### **Are there any provisions to make late applications?**

The Home Office has published details of provisions relating to late applications; stating that they will accept “a late application to the scheme where, in light of all the circumstances and reasons, there are reasonable grounds for their failure to meet the deadline applicable to them”<sup>6</sup>.

The Home Office has confirmed that children will be given favourable treatment and will not have to show reasonable grounds. However, their parents and carers will. **It is not guaranteed that their late applications will be allowed**. Therefore, any benefit to the child, whose late application is accepted, is likely to be lost by the fact that their carer is not able to secure status (and the accompanying right to employment, benefits, housing etc). The making of a late application will not remove a person’s “illegal” status, whilst the application is being decided. Their status will only change to “legally resident” after it is granted. The effect of this is that even in the interim period, employment, housing, benefits, access to healthcare etc will be lost. It also means a **break in the continuity of lawful residence**. This will affect future applications for citizenship. The usual position is that any period of unlawful residence has to have expired by **a period of 10 years** in order for citizenship to be granted.

### **What will happen to families with children in the event that they lose access to employment, benefits and housing?**

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/988540/main-euss-guidance-v12.0-gov-uk.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/988540/main-euss-guidance-v12.0-gov-uk.pdf) (Page 27 onwards)

The potential loss of these rights risks a consequential loss of rights in relation to Articles 3 & 8 of the ECHR and in relation to CRC.

This matter has been previously examined by the UK Courts in a series of cases, examining whether No Recourse to Public Funds, in respect of both lawfully and unlawfully residing migrants, is a breach of fundamental rights and also equality provisions. In those cases, the Home Office argued and the Court held that the provisions of Section 17 of the Children Act (Article 18 of The Children (Northern Ireland) Order 1995) acted to prevent any potential state breach and that the safety net of social services was in place to prevent children's rights being breached<sup>7</sup>.

It is now well established that the **duties owed under Article 18 of The Children (Northern Ireland) Order 1995, apply to all children**, irrespective of the immigration status of them or their parents.

### **What will it mean for Health & Social Care Trusts across Northern Ireland, if families with children have missed the deadline?**

HSCTs already support a number of migrant families across NI who are attempting to secure lawful residence status. The missing of the deadline and the consequent loss of employment, benefits and housing, for EU national families, alongside the duties of HSCTs under Article 18 of The Children (Northern Ireland) Order 1995, may place a considerable pressure on children's services in Northern Ireland, as they struggle to meet the needs of unregistered EU families with children; many of whom have lived in NI for many years and many of whom have children of the family who were born in NI and have lived here their whole lives.

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<sup>7</sup> See *Saneh & Ors v SHHD* <https://www.judiciary.uk/wp-content/uploads/2015/02/sanneh-others-v-secretary-of-state.pdf> See also *R (on the application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents)* <https://www.supremecourt.uk/cases/docs/uksc-2015-0215-judgment.pdf> See also *R (C) v London Borough of Southwark* [2016] EWCA Civ 707; [2016] HLR 36 <https://www.bailii.org/ew/cases/EWCA/Civ/2016/707.html>