



## Rights of EU Citizens in Wales

# Right to Access Benefits and Social Work Support for EU citizens' in Wales

This factsheet provides a brief summary of an EU citizens' right to access benefits and social work support as an EU citizen in Wales. 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.\*

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 and their family members who were living in the UK on 31 December 2020 and who wished to stay in Wales, must have applied to the **EU Settlement Scheme (EUSS)** for either **Settled Status** (indefinite leave to remain) or

**Pre-Settled Status** (limited leave to remain for 5 years) before 30 June 2021. Irish citizens and people with indefinite leave to remain did not have to apply. EU citizens and their family members who did not apply to the EUSS before the 30 June 2021 deadline, do not have the right to remain in the UK after 1 July 2021, and should seek urgent legal advice if they now wish to stay in Wales.

EU citizens who arrived in the UK for the first time on or after 1 January 2021 cannot apply for **Settled Status** or **Pre-Settled Status**. They arrive as Short Term Visitors. If they wish to remain for more than a short visit of up to 6 months, they 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 only enter the UK after 1 January 2021 if they already have an EUSS family permit, a UK-issued EEA family permit or a UK-issued biometric residence card.

\* 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).

## Do EU citizens' have the right to access benefits in Wales?

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

### **EU Citizens who have Settled Status**

EU citizens' with Settled Status, can access any benefits that they meet the entitlement criteria for, in the same way that a UK citizen can.

### **EU Citizens who have Pre-Settled Status**

Pre-Settled Status, does not grant EU citizens' access to benefits.<sup>\*\*</sup> However, those with pre-settled can access Universal Credit (and Child Benefit, if they have one or more dependent child) if they are doing a sufficient amount of paid work.

Alternatively, those with pre-settled status 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' still applies for people with Pre-Settled Status.<sup>\*\*\*</sup> Under it, EU citizens' 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 were lawfully residing in the UK on 31 December 2020 and applied to the EUSS before the 30 June 2021 deadline**

For EU citizens' who have applied to the EUSS before the 30 June 2021 deadline and are awaiting a decision, the "right to reside test" is also still applicable until they are granted Settled Status or Pre-Settled Status (or until they are no longer able to appeal a refusal of your application).

This means EU citizens' can access Universal Credit (and Child Benefit) if they are working, have retained worker status, or are a family member thereof.

**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 did not apply to the EUSS before 30 June 2021**

From 1 July 2021, EU citizens' 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 they are not eligible for most benefits in Wales.

### **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 Wales. They may be able to seek help, including financial support or housing, from their local authority.

## Do EU citizens' have the right to access social work support in Wales?

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

EU citizens' may have the right to access other forms of help, including financial support or housing, from their local authority if they:

- 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

<sup>\*\*</sup> This has been legally challenged, and the relevant legislation was found to be unlawful by the Court of Appeal. However, the Secretary of State for Work and Pensions (SSWP) has appealed that decision to the Supreme Court and the case is unlikely to be heard until later this year. If you have Pre-Settled Status and have been refused access to benefits, please seek specialist benefits advice, for example, from a Citizens' Advice Bureau.

<sup>\*\*\*</sup> 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.

- Are an adult at risk of harm or abuse
- Require additional support because of a disability, their mental health, their age, or some other vulnerability (such as pregnancy).

Everyone living in Wales has a right to ask their local authority for help, no matter what their migration status is, and no matter how long they have lived here. The local authority has a duty to consider their request, and if necessary, to make a written assessment of whether or not they must provide help and support.

If EU citizens' require urgent help and support – for example, if they are not safe where they are staying, or if they are destitute and homeless,

the local authority may have a duty to provide them with temporary support and accommodation whilst they investigate the circumstances.

However, once the assessment has been completed, whether or not an EU citizen has a right to reside may affect whether and how the local authority can provide them with the help and support they need.

If the local authority decides they are not eligible for financial support or housing, they must provide them with a written decision. If they do not provide a written decision, or if the decision is disagreed with, EU citizens' should seek help and advice to challenge this decision.

## More advice and support

**If an EU citizen is are unsure about their current or future right to claim benefits or access social work support or homelessness assistance in Wales, they should seek advice and support for their individual case.**

For more information about EU citizens' right to access benefits and social work support in Wales, or if they need more help understanding their rights, they can:

**Call the EU Citizens Rights Service on 0300 3309 059 or visit**

<https://www.citizensadvice.org.uk/about-us/our-work/advice-partnerships/eu-citizens-rights-service/>

## Frequently Asked Questions Regarding the Employment of EU Citizens

### **I applied for Settled Status before the deadline of 30th June 2021 but I have not received a decision yet – what will happen with my benefits?**

DWP has confirmed that if you are receiving benefits, your entitlement will continue until you get a decision on your application. A pre-existing benefit claim should continue whilst your EU Settlement Scheme application is pending, so long as you continue to qualify for the benefit in question. You should talk to DWP if you are concerned or need more help with benefits.

### **I was living in the UK by 31 December 2020 but I haven't applied to the EU Settlement Scheme**

If you are already receiving benefits, you will receive reminders from the Home Office and DWP to make a late application to the EU Settlement Scheme. If you do not take action within the timeframes that are given then you risk having your benefits stopped. You will not be able to make new claims to benefits.

### **I applied for Settled Status after the 1st July, what will happen to my benefits?**

You may not immediately lose access to the benefits you are on now – you need to speak to DWP as soon as you can so they can advise you. You will not be eligible to make a new claim to means tested benefits.

### **I have received a letter from DWP about my benefits advising me I need to apply for Settled Status, I am worried that I will stop receiving benefits**

You should contact DWP as soon as you can, they will advise you about the best course of action you need to take. If you need help applying for Settled Status you can get free help and support from Citizens Advice, who can also advise you on your benefits.

### **DWP have advised me I have failed the Habitual Residency Test (HRT) – what does this mean?**

The Habitual residency test means you must prove you have a right to reside - this means showing you have a right to claim benefits in the UK.

DWP will tell you the reason for failing the HRT – it could be for one or more of these reasons

1. You're not a 'qualified person' – this means you haven't shown you're working, looking for work or have enough money to support yourself.
2. You're not a family member of a qualified person – this means you haven't shown you're related to the person who's qualified, or you haven't shown they're a qualified person.
3. You're 'a person who must be treated as not in Great Britain' or 'not habitually resident' – this means you haven't shown the UK, Ireland, Channel Islands or Isle of Man is your home and you plan to stay.

### **I need to leave the UK for a period of time, will I stop receiving benefits?**

You should contact DWP as soon as you can and ask them to explain to you about what impact your absence will have on your benefit.

### **I am now out of work but have no proof I have been working, will I be refused benefits?**

You might still be able to prove you were working – even if you didn't get an employment contract or payslips.

Put as much information as you can in your benefit claim form about the work you've done, for example:

- who you've been working for
- your tasks and responsibilities
- when you started the job
- how often you work
- how much you earn

If you've been putting the money you earn into a bank account you should include copies of your bank statement with your benefits application. This will help prove you've been getting a regular wage.

### **What benefits can I get?**

What benefits you are eligible to receive depend on your immigration status, you should contact DWP or Citizens Advice who will be able to help you.