

Benefits Bulletin

Brexit, Benefits and More...

21st October 2020 **REVISED**

Issue **6** [2020]

1. Introduction

This Benefits Bulletin is designed to provide information on Brexit and examine the impact it may have on the rights of EEA Nationals living in Wolverhampton (or elsewhere in the country) to claim Social Security benefits, housing assistance and social housing.

In particular, we hope to provide answers to the following questions:

1. In what circumstances may EEA Nationals be able to claim Social Security benefits post 31st December 2020?
2. What will happen to the benefit rights of those people who have been getting Social Security benefits post 31st December 2020?

We should say at this point that the information provided is based upon what we know now and what we understand will happen in the future.

However, we must acknowledge that things could change. New legislation could be introduced which could impact on the information provided here. We will provide information about any developments in future Bulletins.



2. Background

In a United Kingdom referendum held on 23rd June 2016, 52% of the British public voted to leave the European Union, whilst 48% voted to remain.

By invoking Article 50 of the *Treaty on European Union* on 29th March 2017, the United Kingdom Government notified the European Union of its intention to withdraw. Following several delays, the United Kingdom left the European Union on 31st January 2020. This means that the United Kingdom is no longer part of the European Union's political bodies or institutions, including the EEA.

Leaving the European Union triggered a 'transition period' during which the United Kingdom and European Union continue to negotiate their future relationship.

During this transition period, the United Kingdom remains part of the single market and the European Union Customs Union. The transition period is due to end on 31st December 2020.

At the time of writing, there is no withdrawal agreement in place.

The Timeline...

23rd June 2016: 52% voted in favour of leaving the European Union

29th March 2017: Article 50 of Treaty on European Union was invoked

31st January 2020: United Kingdom left the European Union (transition period began) - European Union / EEA Nationals can still exercise their Treaty Rights

1st July 2020: Deadline for extending the transition period expired

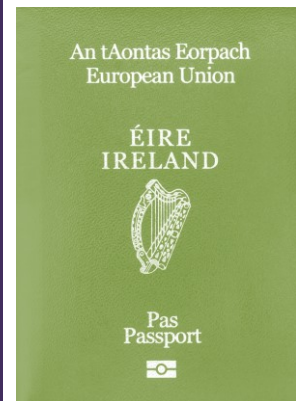
31st December 2020: Treaty Rights / freedom of movement due to end

The **European Union** is a political and economic union of 27 member states comprising of: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland*, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.



In addition to the above, citizens of Switzerland are also treated as European Union Citizens in respect of claiming Social Security benefits in the United Kingdom.

* Please note that Irish citizens living in the United Kingdom will still be able to claim Social Security benefits after Brexit. This is because Ireland is part of the Common Travel Area.



The European Union represents a European Single Market that guarantees the free movement of goods, capital, services and labour - the so-called 'FOUR FREEDOMS'. These 'freedoms' are laid out in the Treaty for the Functioning of the European Union. When an EEA National comes to live and work in the United Kingdom, they are exercising treaty rights - their right of free movement.

The **European Economic Area** comprises of the European Union countries as well as Iceland, Liechtenstein and Norway.

3. Freedom of Movement...

EEA Nationals have a right to move around the European Economic Area for, amongst other things, the purpose of working and studying. EEA Nationals who fall into the following categories are classed as exercising their treaty rights and currently have a right to reside in the United Kingdom:

- workers
- self-employed individuals
- jobseekers
- students
- self-sufficient individuals
- individuals who have been granted a permanent right of residence
- family members of individuals who fall within one of these groups.

EEA Nationals who fall into one of these groups can currently live and work in the United Kingdom by virtue of their treaty rights.

Some can claim income related benefits (such as Universal Credit) and access housing assistance and social housing, whilst others cannot.

A **Zambrano Carer** has a 'derivative right' (not a 'treaty right') to reside in the United Kingdom. A Zambrano carer is a person who is a Non-EEA National whose presence is required in the United Kingdom because they are the primary carer of a British child (aged under 18) or a British dependent adult and, but for their presence in the United Kingdom, the child or dependent adult would be unable to continue living in the United Kingdom.

A **Teixera Carer** or **Ibrahim Carer** has a 'derivative right' (not a 'treaty right') to reside in the United Kingdom. A Teixeira carer / Ibrahim carer is a person who is either an EEA National or a Non-EEA National whose presence is required in the United Kingdom because they are the primary carer of a child (aged under 18) who is an EEA National who is now in education in the United Kingdom and who has a parent who is an EEA National who has worked in the United Kingdom when the child has lived in the United Kingdom or who has lived in the United Kingdom whilst the child has been in education.

Under existing EEA rules, a 'treaty right' is different to a 'derivative right'. A 'treaty right' may count towards a person becoming eligible for the right to remain living permanently in the United Kingdom as a 'qualified person'. Whereas, a 'derivative right' does not count in the same way.



4. Transition Period Ends...

As previously stated, the 'transition period' is the period during which the United Kingdom and European Union continue to negotiate their future, post Brexit, relationship.

As things stand, when the transition period ends on **31st December 2020**, EEA Nationals who are currently exercising their treaty rights in the United Kingdom will no longer be able to do so. This means that EEA Nationals will no longer have an automatic right to live, work and study in the United Kingdom. Those EEA Nationals who wish to remain in the United Kingdom beyond the transition period will need to rely on other provisions. See Section 5. European Union Settlement Scheme below.

5. European Union Settlement Scheme...

The European Union Settlement Scheme has been introduced to allow certain groups of people to apply for permission (leave) to remain living in the United Kingdom. The people that can apply under the scheme includes:

- anyone who is an EEA National
- anyone who is a family member of an EEA National
- anyone who formerly had an EEA National family member living in the United Kingdom, but that person has since separated from them or that family member has died
- anyone who is a family member of a British citizen who has lived together with them outside of the United Kingdom in a European Economic Area country

- anyone who is a family member of a British citizen who also has EEA citizenship and who lived in the United Kingdom as an EEA citizen before getting British citizenship.

Zambrano Carers: A person can also apply if they are a Non-EEA National who is the 'primary carer' of a British or EEA National.

Teixeira and Ibrahim Carers: A person can also apply if they are the 'primary carer' of an EEA National child (aged under 18) who is in education in the United Kingdom and who has a parent who is an EEA national who has worked in the United Kingdom when the child has lived in the United Kingdom or who has lived in the United Kingdom whilst the child has been in education.

Primary Carer: To count as 'primary carer' here the person must be responsible (or at least have shared responsibility) for the person's day-to-day care (including responsible for making decisions about their education, health, and finances) and be a family member (or legal guardian) of that person.

Please go to [PEOPLE WHO MAY APPLY](#) to see the full list of people who may apply under the European Union Settlement Scheme for permission to remain living in the United Kingdom.

Note: A person does not need to apply if they already have [Indefinite Leave to Enter](#) the United Kingdom or [Indefinite Leave to Remain](#) in the United Kingdom or they are a British or Irish citizen (including those with 'dual citizenship').

The deadline for applications to the European Union Settlement Scheme is not certain and may be affected by ongoing Brexit negotiations. According to gov.uk, the deadline is **30th June 2021**.



However, some prominent observers have stated the deadline may be 31st December 2020 if the United Kingdom leaves the European Economic Area without a deal.



When the deadline for applying to the European Union Settlement Scheme is reached, EEA Nationals who have failed to apply may be unlawfully present and subject to removal from the United Kingdom.

Successful applicants to the European Union Settlement Scheme will be granted either **'SETTLED STATUS'** or **'PRE-SETTLED STATUS'**.



SETTLED STATUS: Will normally be given to people who have lived in the United Kingdom for 5 or more years. Successful applicants will be given indefinite leave to remain (live and work) in the United Kingdom indefinitely.

PRE-SETTLED STATUS: Will normally be given to people who have lived in the United Kingdom for less than 5 years. Successful applicants will be given limited leave to remain (live and work) in the United Kingdom for a period of up to five years.

Once a person with Pre-settled Status has lived in the United Kingdom for five years (including any period of residency before they gain pre-settled status), they will need to apply for Settled Status if they wish to continue to live in the United Kingdom.



6. What Does this Mean for EEA Nationals Living in the UK?

EEA Nationals who have been awarded **SETTLED STATUS** will have indefinite leave to remain in the United Kingdom.

They will no longer need to rely on treaty rights to be able to live and work in the United Kingdom. Moreover, because they have indefinite leave to remain, they will be able to access Social Security benefits in the same way as British citizens. This will be the case as long as SETTLED STATUS has been granted to them either before or after 31st December 2020.



However, things will be different for those EEA Nationals who have been awarded **PRE-SETTLED STATUS**. They will only have limited leave to remain in the United Kingdom. This means that whilst they will have a right to live and work in the United Kingdom, their access to Social Security benefits will be limited.

From **31st December 2020** those EEA Nationals with PRE-SETTLED STATUS will not be entitled to receive the following benefits:

- Universal Credit
- Income-based JSA
- Income-related ESA

- Income Support
- Housing Benefit
- Pension Credit
- Child Benefit

This is because, post 31st December 2020, those with PRE-SETTLED STATUS will no longer be able to rely on treaty rights to secure Social Security benefit entitlement. At present, to be entitled to the above benefits an EEA National must at least show that they have a 'right to reside' by virtue of exercising their treaty rights.

After 31st December 2020 there will no longer be any treaty rights. There will only be SETTLED STATUS and PRE-SETTLED STATUS.

However, post 31st December 2020, those with PRE-SETTLED STATUS will still, as now, be entitled to the following benefits providing they meet (continue to meet) the basic rules of entitlement:

- Personal Independence Payment
- Attendance Allowance
- Disability Living Allowance
- Carer's Allowance
- New Style JSA
- New Style ESA
- Maternity Allowance
- Industrial Injuries Benefit

This is because entitlement to these benefits is not dependent upon a strict 'right to reside' test. Instead, all that is needed is that the person be physically present and living in the United Kingdom. Whereas, in other cases, there is the additional requirement of 'habitual residence' and/or a period of actual residence.



Tax Credits: People with PRE-SETTLED STATUS will no longer be entitled to **Child Tax Credit** post 31st December 2020. However, as things stand, those with PRE-SETTLED STATUS will be able to continue to receive **Working Tax Credit** post 31st December 2020 providing it was already in payment prior to this date.

To understand this, you must understand that to be eligible for Child Tax Credit a person must be living in the United Kingdom and have a right to reside in the United Kingdom.

New rules mean that post 31st December 2020 those with PRE-SETTLED STATUS will, for Child Tax Credit purposes, be treated as though they do not have a right to reside in the United Kingdom even though they legitimately will have by virtue of their PRE-SETTLED STATUS. Whereas, for Working Tax Credits, a person need only be working (in so called 'remunerative work') and lawfully living in the United Kingdom to qualify. So far, no new rule has been introduced to remove Working Tax Credit from those with PRE-SETTLED STATUS post 31st December 2020.

Note: Please be aware that Child Tax Credit and Working Tax Credit are now 'legacy benefits' following the introduction of Universal Credit. They may only be available to new claimants/for the first time in limited circumstances. For example, a person who is now getting Working Tax Credit can apply for Child Tax Credit if they were to have a child. Similarly, if someone were to be getting Child Tax Credit and then got a job, they could apply for Working Tax Credit.

Council Tax Support: As things stand, post 31st December 2020, EEA Nationals with SETTLED STATUS will be able to apply for Council Tax Support whereas those with PRE-SETTLED STATUS will not.

EEA Nationals with SETTLED STATUS will be able to receive housing assistance and apply for social housing. Those with PRE-SETTLED STATUS will not.

This will, unless new legislation is introduced, likely place those with only **PRE-SETTLED STATUS** and their families in difficult and potentially vulnerable situations.

Although this group of people will be able to live, work and study in the United Kingdom, they will not be entitled to the key benefits that they may have been receiving prior to the end of the transition period. Even those who are working, but in part-time or low paid employment, will not be able to rely on Universal Credit to top up their earnings.



By our understanding, unless new legislation is introduced, at 31st December 2020 those with only **PRE-SETTLED STATUS** who are getting the above key benefits will lose their entitlement to them.

Having said this, we are unsure how the Department for Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) will go about withdrawing any existing entitlements.



How will the DWP and HMRC know, post 31st December 2020, which EEA Nationals have **SETTLED STATUS** or **PRE-SETTLED STATUS**?

7. Case Studies...

The following case studies are designed to underline how, by our understanding, the Social Security benefit rules apply now and how they will apply post 31st December 2020.

Case Study 1: Albert

Albert is a 27-year-old EEA National (from Germany) living in Wolverhampton. He arrived in the United Kingdom on 15th July 2018 and lives in a privately rented flat.

He works as an industrial cleaner. However, he is low paid and he struggles to meet his day-to-day living costs and rent.

Can Albert claim Universal Credit now?

As of the date of this Benefits Bulletin, Albert is able claim Universal Credit to top up his income and assist with his housing costs. This is because Albert is exercising his treaty rights as a 'worker' and so meets the right to reside conditions for Universal Credit.

Albert applied to the European Union Settlement Scheme and was subsequently awarded **PRE-SETTLED STATUS** because he had only lived in the United Kingdom for 2 years.



Will Albert be able to claim Universal Credit in the future?

As things stand, from **1st January 2021**, Albert will no longer be able to rely on his treaty rights to meet the right to reside conditions for Universal Credit.

This is because the transition period will end on **31st December 2020**. Albert only holds **PRE-SETTLED STATUS**, and this does not allow him to meet the right to reside conditions for Universal Credit. Because of this, the Department for Work and Pensions may stop his Universal Credit.

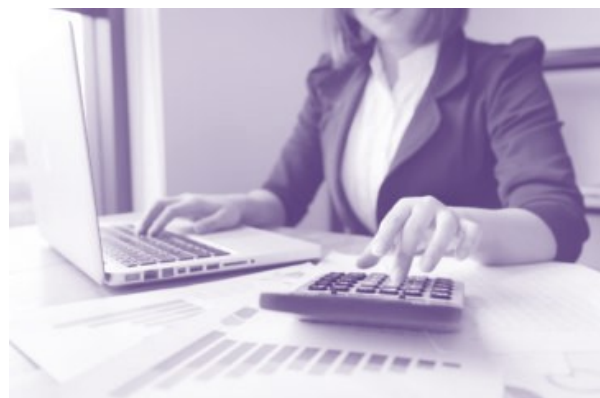
If Albert's Universal Credit is stopped, his future in the United Kingdom will be uncertain. Although he has leave to remain in the United Kingdom by virtue of his **PRE-SETTLED STATUS** for a period of 5 years, how is he going to manage financially without Universal Credit?

Case Study 2: Henrika and Markus

Henrika and Markus are EEA Nationals (from Latvia) living in Wolverhampton. They arrived in the United Kingdom on 4th December 2017. They live in a two-bedroom house that they rent from Wolverhampton Homes. They have two young children - Arturs (aged 6, who is severely disabled) and Emils (aged 4).

Henrika is an accountant. She used to work full-time, but her employer has recently reduced the number of hours she works. Markus does not work; he is Artus's full-time carer.

The couple's benefit income consists of Disability Living Allowance (for Artur), Carer's Allowance and Child Benefit.



Since Henrika's hours have been reduced, the couple have struggled financially. They cannot afford to pay their rent and household bills.

Can Henrika and Markus claim Universal Credit now?

As things are at present, Henrika and Markus are able claim Universal Credit to top up their income and assist with their rent.

This is because Henrika is exercising her treaty rights to live in the United Kingdom as a 'worker' and so she meets the right to reside conditions for Universal Credit.

Because Markus, Arturs and Emils are part of Henrika's family, they also have a right to reside in the United Kingdom.

The family receive Child Benefit and Disability Living Allowance because they are living in the United Kingdom and meet the rules of entitlement for these benefits.

The couple applied to the European Union Settlement Scheme and were subsequently awarded **PRE-SETTLED STATUS** because they have lived in the United Kingdom for less than 5 years.

Will Henrika and Markus be able to claim Universal Credit, Child Benefit and Disability Living Allowance in the future?

As things stand, from **1st January 2021**, Henrika and Markus will no longer be able to rely on their treaty rights to meet the right to reside conditions for Universal Credit or Child Benefit. This is because the transition period will end on **31st December 2020**. From **1st January 2021** the couple will only hold **PRE-SETTLED STATUS**, and this does not allow them to meet the right to reside conditions for Universal Credit or Child Benefit. Because of this, their entitlement to these benefits may be stopped. However, the family will be able to continue claim Disability Living Allowance and Carer's Allowance remains unchanged, as these benefits are not affected by the new regulations.

If their Universal Credit and Child Benefit is stopped, the couple's only income will be Henrika's earnings from part-time employment, Disability Living Allowance and Carer's Allowance.



Case Study 3: Nadia

Nadia is an EEA National (from Poland). She has been living and working in Wolverhampton since she arrived in the United Kingdom on 10th June 2014.

Nadia's most recent employment has been as a Packing Officer in a local warehouse. However, her employer has recently made her redundant.



Nadia is now worried about how she is going to make ends meet - pay her gas/electric bills and rent.

Nadia has not applied to the European Settlement Scheme as she is not aware of its existence.

Can Nadia claim Universal Credit now?

At the present time Nadia can claim Universal Credit. This is because she was exercising her treaty rights as a 'worker' and was made involuntarily unemployed. Providing she looks for alternate employment (registers as a jobseeker), she can be deemed to have retain her 'worker' status.

Note: Nadia could also apply for New Style JSA for up to six months providing she meets the National Insurance contributions conditions for payment. If she were entitled to the any New Style JSA then this would be taken into account in the calculation of her Universal Credit entitlement.

Will Nadia be able to claim Universal Credit in the future?

As things stand, from **1st January 2021** Nadia will no longer be able to rely on her treaty rights to meet the right to reside conditions for Universal Credit purposes. This is because the transition period will end on **31st December 2020**. Moreover, because she has not applied to the European Settlement Scheme, she will not have leave to remain in the United Kingdom beyond this date. This means that she will not be entitled to Universal Credit beyond 31st December 2020.

As things stand, Nadia must apply to the European Union Settlement Scheme by **30th June 2021**. If she is able to prove that she's lived in the United Kingdom for five years (which she has), she should be granted **SETTLED STATUS**. Once she is granted **SETTLED STATUS**, she will be able to get Universal Credit in the same way as British citizens (and it will continue after the end of the transition period).

PRE-SETTLED STATUS: If Nadia had been living in the United Kingdom for less than 5 years and applied to the European Union Settlement Scheme, she would be granted **PRE-SETTLED STATUS** (not **SETTLED STATUS**). This would mean that post 31st December 2020 she would not have any entitlement to Universal Credit because she would no longer be able to rely on her treaty rights to meet the right to reside conditions for Universal Credit purposes.

SICKNESS: If, instead of being made redundant, Nadia had recently become temporarily too sick to work then providing that she could get a Med3 Fit Note from her GP, she would be able to apply for Universal Credit on grounds that she was exercising her treaty rights and had retained her 'worker' status.

Depending upon her earnings, she might also have entitlement to Statutory Sick Pay. She might also qualify for New Style ESA providing she was able to meet the National Insurance contributions conditions for payment and pass the Work Capability Assessment.



However, the problem is that Nadia would not be entitled to Universal Credit post 31st December 2020 unless she applied to the European Union Settlement Scheme and was granted **SETTLED STATUS**.

PREGNANCY: If Nadia had to refrain from work due to the later stages of pregnancy or childbirth then she may, of course depending on her earnings and length of service, be entitled to Statutory Maternity Pay from her employer or Maternity Allowance from the DWP. However, she would also be able to apply for Universal Credit during this period on grounds that she was exercising her treaty rights and retained her 'worker' status.



The problem is, as things stand, she would not be able to apply for Universal Credit post 31st December 2020 unless she applied to the European Union Settlement Scheme and was granted **SETTLED STATUS**.

8. Getting the Correct Advice...

The Welfare Rights Service provides advice on Social Security benefit entitlements. We are neither accredited to nor able to provide advice on immigration matters.



This Benefits Bulletin is designed to provide information on the Social Security benefit rights of EEA Nationals, both now and after the end of the transition period. If you want to know the circumstances in which EEA Nationals can claim Social Security benefits currently, please see our [Fact Sheet 7: Benefits and People from Abroad](#).

Furthermore, anyone interested in applying for PRE-SETTLED STATUS or SETTLED STATUS can go to this link to find out more about the [European Union Settlement Scheme](#). If someone then believes that they are in need of immigration advice then they can go to this [LINK](#) to locate an immigration advisor near them.



At the time of writing, the United Kingdom is still yet to reach a deal with the European Union. If a deal were to be reached, then things could look different. In the meantime, we would encourage EEA Nationals living in Wolverhampton (indeed living anywhere in the United Kingdom) to, at the very least, find out more about the European Union Settlement Scheme and seek immigration information and advice as necessary.

Further Information and Advice: If you need further information or advice on any of the points raised in this Benefits Bulletin then do get in touch with our Specialist Support Team. You can email them at wrs@wolverhampton.gov.uk or ring them on (01902) 555351.

Welfare Rights Service
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