Refugee & Migrant Children's Consortium

EU Settlement Scheme – European looked after children and care leavers

The Immigration and Social Security Coordination (EU Withdrawal) Bill aims to end free movement rights with the EU, making EEA and Swiss nationals subject to immigration control. This means that once these provisions are implemented, European children, young people and families already living here, and any future migrants, will need to have permission to remain in the UK as non-EEA nationals currently do. This includes thousands of children and young people, who are currently looked after by local authorities, children who are support by authorities as children in need and young people who are care leavers. Combined data from the four nations highlights that there were over 95,000 looked after children in UK local authorities in 2017.[1] While the government does not currently collect and publish data centrally on looked after children's nationality, only their ethnicity, a recent parliamentary response highlighted that the Home Office has estimated that there **are 5,000 EU looked-after children currently in the UK[2], not including care leavers or children classified as 'in need**'. No publically available data exists which may help us to better understand the settlement needs of European national children such as their care status and which local authorities they are supported by and accommodated in. There is no centrally collected and publicly available data on European national care leavers.

Yet we know that most local authorities are **corporate parents to collectively thousands of European children and care leavers** who will become subject to immigration control under this Bill and as any parent would, local authorities will need to help secure their children's status or citizenship. A series of Freedom of Information (FOI) requests made by Coram Children's Legal Centre (CCLC) to English local authorities for data from 2016, revealed that **only ten local authorities in England did not have any known European national children in care**, but that one in three local authorities did not know how many children in their care may be directly affected by Brexit[3]. The research also showed that of the European national children and young people for whom local authorities hold centralised records, there are at least 1,526 under the age of 16. The most common nationalities held by children were Polish, Czech, Portuguese, Lithuanian and Irish.

The data from the FOIs provides limited information given the lack of information held by local authorities at the time, however, that in of itself is an important gap: if local authorities are unaware of this cohort and do not have systems in place to collect relevant information about the children in their care and care leavers, the RMCC is concerned that many of these children may not be supported to secure EU Settled Status or citizenship before the deadline.

What is most alarming is the guidance provided to all local authorities and health and social trusts following the nationally roll-out of the EU Settlement Scheme just last week suggests that local authorities should make applications on behalf of children with section 31 care orders only. Children with section 20 care orders (or shared caring arrangements) are only being signposted to Scheme. Similarly Care Leavers will not automatically be granted assistance for regularising their immigration status through the EU Settlement Scheme. This is not in keeping with your Department's own statutory guidance on unaccompanied children which states that they need to be making sure that children are able to resolve and settle their status.

Problems with documentation

RMCC members have repeatedly highlighted cases where children may be eligible for the settlement scheme but are unable to prove this entitlement because they do not have evidence of either their nationality or their length of residence. This is particularly the case for looked after children.[4]

The second testing phase of the EU Settlement Scheme, which was also piloted in five local authorities - Kent County Council, Lincolnshire County Council, London Borough of Haringey, London Borough of Waltham Forest and Sheffield City Council – highlighted that children's identity documents will be the first serious hurdle for local authorities. The Home Office's interim report stated that *"The Local Authorities taking part in PB2 found that not all their cohort of 'looked after' EU citizen children had a passport and were therefore unable to take part in PB2."* This was reiterated in oral evidence given to the Home Affairs Select Committee by Abigail Adieze, from Waltham Forest Borough Council indicating that the process was not simple: *"we have encountered a lot of difficulties in terms of making the application, but also the criteria for making the application for looked after children… The ID document that is required to make the application, a lot of our young people have no IDs at all and, for those who have, it is not cheap."*[5]

The Home Office PB2 report provided very limited information including no information on the numbers of European children looked after in the five pilot authorities, the criteria of children selected for the pilots or the success rate for their applications. Through written parliamentary questions, the Home Office revealed that 19 applications had been made for looked-after children across the 5 pilot sites[6] with 16 receiving settled status during the testing phase and 3 received pre-settled status. However, without any baseline information on how many European national children are in those local authorities, how many encountered problems with identification, documentation or other issues, it is impossible to make a judgement around the effectiveness of the testing process or what can done to support local authorities.

The Immigration Minister has stated that individuals will be able to apply for settled status with '*alternative evidence of their identity and nationality where they are unable to provide a passport or national identity card*' due to circumstances outside of their control, or for compelling practical or compassionate reasons. We would urge Parliamentarians to make representations to the Home Office to ensure a system exists that would allow children in the care of local authorities and care-leavers are granted settled status without having to meet the requirements of the EU settlement scheme. It is unrealistic to expect stretched local authorities, with limited resources and without the legal expertise to assist on complex cases that shall arise from children within their care and care leavers.

Citizenship rights and fees

The majority of European children in care will have been born here and depending on the status and citizenship of their parents or how long they have been in the UK, many are likely to have either automatic rights to British citizenship or rights to register as British citizens. The government's focus for European nationals is to process their applications through the EU Settlement Scheme[7], however, for many children this will not necessarily be in their best interests: it will be in their interest to secure British citizenship, for example, by applying for a passport or registering as a British citizen where they are eligible. If they are able to apply for dual citizenship, that may be in their best interests. So as corporate parents who need to act in the best interests of the children in their care, local authorities may need to apply for British citizenship. The problem that many local authorities are likely to face is around costs: the cost of a citizenship registration application is currently £1,012 per child[8] and this will likely act as a disincentive for local authorities to act in the best interests of children in their care.

At this stage of the EU Withdrawal process, the Home Office are still estimating how many children in local authority care would need to regularise their status. Not only is the lack of data concerning, but

it is an indication that the Home Office see this is a local government issue, therefore shifting responsibility and costs at the feet of local authorities. This begs the question, if the corporate parent cannot regularise the immigration status of children within their care, then how can the Government expect the 1.2 million EU parents[9] currently in the UK to do so.

Legal advice for children in care and care leavers

The RMCC is particularly concerned about the support that may or may not be provided to children who are looked after by children's services and young care leavers. For children in care, guidance to local authorities states that:

'The Office of the Immigration Services Commission (OISC) has confirmed that where there is a care order giving the local authority or health and social care trust parental responsibility, that authority or trust can advise and act for the child in relation to an application under the EU Settlement Scheme without the need for such advice and services to be regulated by the OISC or another designated qualifying regulator."[10]

However, we are concerned that social workers will almost certainly lack the specialist knowledge needed to do identify potential legal complexities. Looked after children and care leavers will also need advice on nationality routes as well as their rights as European nationals or family members, and may have complex cases that fall outside the competency of an adviser accredited to the basic level introduced by OISC for this scheme.

During Private Beta 2, every application Coram Children's Legal Centre (CCLC) made on behalf a child in care or care leaver included detailed nationality advice, and several included advice on the suitability criteria. If looked after children are completing settlement scheme applications without legal advice, they will also not be fully aware of their options. This could result in an incorrect grant of pre-settled status, being refused outright or potentially missing another legal avenue available to them, such as applying for British citizenship.

There need not be any risk of social workers making EU settlement scheme applications on behalf of looked after children, as those children's immigration cases were brought back into the scope of free legal support funded by central government last year. As such, local authorities do not need to shoulder the financial burden of seeking legal advice and assistance for them.

In July 2018 the Ministry of Justice announced the reintroduction of legal aid for separated children with immigration issues, including European national children. Although the regulations bringing this change into force have not yet been laid, the Legal Aid Agency is operating a presumption in favour of granting exceptional case funding (ECF – legal aid outside of scope) for all looked after children. Unlike applications to the EU settlement scheme, applications for ECF are not regulated work, so social workers can make these applications. There is also no reason why local authorities should not also seek to apply for ECF on behalf of care leavers in need of more detailed advice.

Care leavers

Whilst we know worryingly little about the children currently in local authority care, we know even less about EEA and Swiss national care leavers. This cohort of young people will need targeted assistance similar to that of children within local authority care. Yet the problems of identifying these young people, and assisting them financially and legally to regularise their status (with regards to applying for documentation) will be harder. We would encourage the Home Office to use their £9 million grant funding provided to charities and community groups to specifically target this cohort.

Consequences of becoming undocumented

Where looked after children and care leavers are not effectively supported to secure settled status or citizenship, they may become undocumented and become subjected to the same hostile immigration laws and rules. This will be particularly problematic for young people as they transition to adulthood and are no longer able to access. The current immigration provisions mean that young adults who are found to be unlawfully in the UK have no recourse to public funds, are liable for immigration detention and are barred from accessing local authority support meaning they would be left destitute and homeless. RMCC members have spent many years raising concerns about undocumented care leavers and unless effective safeguards are put in place, we can look forward to many more young people becoming undocumented in the coming years.

Case study

Greta came to the UK in 2011 with her parents aged 6. Her father, an electrician, was working intermittently. However, the family situation was volatile and abusive and Greta was taken into care under an interim care order aged 7. A full care order was made some months later, and Greta settled into a long-term foster placement. She is now 13 and has been in the UK for more than half her life. She is doing well in school and sees herself as British. She has no contact with her parents. Greta no longer speaks Lithuanian. Greta's social worker does not know if Greta's parents are still in the UK. If they are, and are working, Greta may already have Permanent Residence through them, but she will need assistance in order to demonstrate this to a satisfactory standard for the Home Office. Greta's social worker cannot help her to prepare the application, and unless the local authority has any information about her parents' whereabouts, Greta will struggle to demonstrate her nationality in order to complete the application.

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[1] The statistics for each nation are collected slightly differently and we have given a rough overall figure of over 95,000 children. There were 72,670 looked after children in English authorities and 5,943 looked after children in Welsh authorities at the end of March 2017. There were 14,897 looked after children in Scottish authorities at the end of July 2017 and at the end of September 2017, 2,325 children and young people had been in care continuously for 12 months or longer in Northern Ireland. England data: https://www.gov.uk/government/collections/statistics-looked-after-children; Scotland data: https://www.gov.scot/publications/childrens-social-work-statistics-2016-17/pages/3/; Wales data: https://gov.wales/statistics-and-research/children-looked-after-local-authorities/?lang=en; NI data: https://www.health-ni.gov.uk/publications/children-care-northern-ireland-201617

[2] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=222791

[3] CCLC submitted FOI requests to the 152 children's services department in England requesting data from the year 2016. Of those that replied 111 responded with full or partial data, while 39 said they were unable to do so. In 21 cases this was due to cost of collating the data. For the remaining 18 local authorities the information simply was not collected in the first place. The FOI requests revealed that there are between 1,899 and 2,023 European national children under 18 in care, and between 476 and 538 care leavers between 18 and 25 years of age. The government's estimate of around 5,000 looked after children highlights that.

[4] Coram Children's Legal Centre, *Uncertain Futures,* March 2019 at https://www.barrowcadbury.org.uk/wp-content/uploads/2019/03/CORAM-EUSS-briefing_Mar2019_FINAL.pdf

[5] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/eu-settlement-scheme/oral/96447.pdf

[6] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=222793

[7] https://www.gov.uk/settled-status-eu-citizens-families

[8] https://www.gov.uk/government/publications/fees-for-citizenship-applications/fees-for-citizenship-applications-and-the-right-of-abode-from-6-april-2018

[9] https://migrationobservatory.ox.ac.uk/non-irish-eu-nationals-by-position-in-family-unit-2017/

[10] Home Office, EU Settlement Scheme – Looked after children and care-leavers, local authority and health and social care trusts guidance, April 2019