BRIEFING: THE EU SETTLED STATUS SCHEME AND CHILDREN IN CONFLICT WITH THE LAW

Kathryn Hollingsworth¹ and Helen Stalford²

This briefing examines the implications of the Government’s EU Settled Status Scheme (EUSS) for children from other European Economic Area (EEA) States³ who have been or who are involved in the criminal justice system. It complements other briefings produced by members of the Brexit and Children Coalition relating to the impact of Brexit on different areas of children’s lives.⁴

The briefing will:

- Examine the qualifying conditions under the EUSS and how they might affect children with criminal convictions
- Consider the available data to identify how many children might be affected by those conditions
- Identify gaps in training, personnel and data that might affect the level of support available to children with criminal convictions who will need to obtain settled status
- Consider the potential impact of the EUSS on children whose EU parents or carers have criminal convictions. how parents

EU Settled Status

The EUSS was launched fully on 30th March 2019 to provide nationals from other EEA Member States with a right to remain in the UK. It provides an alternative immigration status to the current EU free movement provisions which will no longer be operable following the UK’s departure from the EU. Those who obtain settled status will continue to enjoy most of the benefits available under the free movement provisions, including:

- Access to public services on the same basis as nationals (such as schools, healthcare, leisure facilities and transport)

---

¹ Professor of Law, Newcastle University
² Professor of Law, University of Liverpool
³ EEA includes all other 27 EU Member States (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden) as well those countries to whom the EU's single market has been extended, namely Iceland, Norway, and Liechtenstein. Switzerland is neither an EU nor EEA member but is part of the single market meaning that Swiss nationals have the same rights to live and work in the UK as other EEA nationals.
⁴ See in particular Coram Children’s Legal Centre Briefing ‘Uncertain futures: the EU settlement scheme and children and young people’s right to remain in the UK’ (March 2019); Coram Children’s Legal Centre ‘The EU Settlement scheme – Concerns and Recommendations’ (Aug 2018) and The Brexit and Children Coalition Report ‘Making Brexit Work for Children: The Impact of Brexit on Children and Young People’.
Access to public funds, such as social welfare assistance

To qualify for settled status (leave to remain), all applications must be made by June 2021. If the UK leaves the EU without a deal, applications for leave to remain will have to be made by 31 December 2020. Some extensions will be granted in limited, exceptional circumstances (relating, for instance, to vulnerable groups such as children).

**Eligibility Criteria**
There are three basic criteria for eligibility for the EUSS.

1. **EEA Nationality:** The child must be an EEA national or the child of an EEA national. A ‘child’ for the purposes of the EUSS is defined as:
   a. anyone under the age of 21
   b. the direct descendant of the relevant EEA citizen or of his/her spouse or civil partner. This includes a grandchild or great-grandchild.
   Or
   c. An adopted child, a child born through legally recognised surrogacy, a child subject to guardianship orders.
   Or
   d. A child over the age of 21 who is the direct descendant of the relevant EEA citizen or their spouse/civil partner.

   The applicant will need to provide proof of their relationship when they apply. A child of 16 years and above can apply on his or her own behalf, or the parent can apply on behalf of the child.

2. **UK Residence:** The child must have been resident in the UK by 31 December 2020. Those resident in the UK for 5 years at the time of the application will be eligible for settled status (meaning they will have indefinite leave to remain, with no time limit on how long they can stay in the UK). Those who have accumulated less than 5 years of residence in the UK at the time of the application will be eligible for pre-settled status. Once they have accrued five years in the UK they can ‘upgrade’ to settled status. If a child has accrued less than 5 years residence he/she will be entitled to settled status under the EUSS (condition 2, rule EU11) by virtue of their relationship with a relevant EEA citizen who has acquired settled status/Indefinite leave to remain.

3. **Criminality:** anyone of 10 years and above will be subject to a criminality check against the Police National Computer (PNC) and Warnings Index (WI). Applicants aged 18 or over have to explicitly declare if they have been convicted of a criminal offence or if they have been arrested or charged with an offence for which they are awaiting trial, either in the UK

---

5 Irish nationals need not apply for EUSS as they have an automatic right of residence in the UK.
6 Condition 7 of Rule EU11
7 ‘Dependency’ is determined by reference to relevant financial, social or health conditions, such that the applicant cannot meet their essential living needs without the financial or material support of the relevant EEA citizen or his/her spouse/civil partner.
8 To be eligible for settled status, you usually need to have lived in the UK, the Channel Islands or the Isle of Man for at least 6 months in any 12 month period for 5 consecutive years.
or overseas. Only ‘serious or persistent criminality’ will affect an application. Whether to grant settled or pre-settled status to those who have a history of serious or persistent criminality is determined on a discretionary case-by-case basis (see below).

Applicants do not need to declare any of the following:

- convictions that do not need to be disclosed (‘spent convictions’)
- warnings (‘cautions’)
- alternatives to prosecution, such as speeding fines

If the applicant has been to prison, he/she will usually need 5 years’ continuous residence from the day they were released to be considered for settled status.

**The best interests of the child**

In all immigration decisions affecting children, the authorities have a duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child. This should be interpreted in accordance with Article 3 of the UN Convention on the Rights of the Child, meaning that consideration of the child’s best interests must be a primary consideration in immigration decisions affecting them. Home Office guidance states as follows:

> Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child.

**Summary of Concerns**

We have particular concerns around how the suitability criteria relating to criminal convictions will apply to children, and how the best interests obligations under s.55 will inform decisions in this regard. Many children (defined as those aged 10-17 years) come into conflict with the law at some time in their life, and most ‘grow out’ of crime. In England and Wales in 2017-18, for example, there were:

- 14,400 first time entrants (12% of all FTEs);
- 65,833 arrests of children;
- **26,700 children received either a caution or a sentence**;
- **894 children in custody during this period**

All cautions and convictions, including those received during childhood, are recorded on the police national computer, and other information (including non-conviction information such as arrests) is held on local police records and the Police National Database.

---

9 EU Settlement Scheme: Suitability Requirements, at p.4
We identify four key areas of concern relating to the impact of the EUSS on children in conflict with the law:

**Issue 1: The extent to which children with criminal convictions will fall foul of the suitability criteria for EU settled status.**

Applications for EU settled status may be refused on suitability grounds, particularly in cases of ‘serious or persistent’ criminality.\textsuperscript{10} Whilst the requirement to explicitly declare criminal convictions is limited to applicants of 18 or over, there are still some concerns relating to children:

- All applicants, including children who are above the age of criminal responsibility (10), are subject to criminality checks under the EUSS. Specifically, UK Visas and Immigration are obliged to refer a case (including cases involving children) to Immigration Enforcement for ‘case by case consideration of the individual’s conduct’ where the results of PNC and WI checks indicate one of the following (the first three are of particular relevance to children in conflict with the law):
  - the applicant has, in the last 5 years, received a conviction which resulted in their imprisonment
  - the applicant has, at any time, received a conviction which resulted in their imprisonment for 12 months or more as a result of a single offence (it must not be an aggregate sentence or consecutive sentences)
  - the applicant has, in the last 3 years, received 3 or more convictions (including non-custodial sentences) unless they have lived in the UK for 5 years or more
  - the case is of interest to Criminal Casework in respect of deportation or exclusion, for example where the applicant is in prison and the case is awaiting deportation consideration
  - the applicant has entered, attempted to enter or assisted another person to enter or attempt to enter into a sham marriage, sham civil partnership or durable partnership of convenience (or IE is pursuing action because of this conduct)
  - the applicant has fraudulently obtained, attempted to obtain or assisted another person to obtain or attempt to obtain a right to reside in the UK under the EEA Regulations 2016 (or IE is pursuing action because of this conduct)
  - the applicant has participated in conduct that has resulted in them being deprived of British citizenship

- Applicants aged 18 and above are subject to a specific requirement to declare previous criminal convictions in the UK and overseas. The reference to ‘past criminal convictions that appear in a criminal record’ implies that even convictions are relevant to the determination of eligibility. Mistakes made in childhood may, therefore, have life-long implications.

\textsuperscript{10} See further EU Settlement Scheme: suitability requirements
immigration implications for EU nationals following Brexit. Such issues are dealt with in Unlock’s policy briefing, which should be read alongside this briefing.11

**Key Questions**

- Can children in detention apply for EU Settled Status?
- Will children in detention be assessed according to the same suitability criteria as adults?
- How will best interests inform such assessments in concrete terms (procedurally and substantively, what measures will be put in place to ensure that best interests remains a primary consideration in conducting such assessments)?
- Are childhood convictions which are still on a person’s criminal record relevant to the assessment of suitability?
- Can children who turn 18 in detention apply for settled status whilst in detention (and before they turn 18 and have to declare criminal convictions).
- Although the eligibility guidance states that children do not have to declare criminal convictions on their criminal record, if checks against the Police National Computer and Warnings Index reveal a criminal record, can that be used in the eligibility criteria for children?

[KH to include here brief outline of childhood cautions and convictions on criminal records; ref to Claire Sands report for SCY] and also the Supreme court decision in March 2019 (R (on the application of P, G and W) v SSHD [2019] UKSC 3]

**Issue 2: Defining ‘Serious’ and ‘Persistent’ in relation to offences committed during childhood.**

The guidance states that only ‘serious or persistent’ offending will affect applications under the EUSS, but offers no clear guidance on how those terms are defined. Note also that the guidance refers to ‘serious or persistent’ – the terms are not cumulative; they are framed as alternatives. This implies that you could have been convicted of a series of relatively minor offences but still qualify as a *persistent* offender, and therefore fall foul of the scheme.

**What does ‘Serious’ mean?**

In determining whether an offence qualifies as ‘serious’ for the purposes of the EUSS, we know that the thresholds for criminal activity has been lowered in relation to immigration/deportation decision-making more generally. This raises questions as to whether the same (relatively low thresholds) will be applied in the context of determining suitability under the EUSS. See p.22 of the HO staff guidance (1 April 2019):

- prior to 1 April 2009, Home Office policy was to consider whether to deport an EU citizen (or their family member) where they had received a single custodial sentence of 24 months or more

11 include ref to the one that will be published – nb the one Chris sent us has not been published.
on 1 April 2009, this was reduced to 12 months for sexual, violent or drug-related convictions
on 14 January 2014, the 12-month criterion was applied to all other convictions, and a further criterion was included of 6 or more custodial sentences for any offence in the last 3 years
this was further amended on 27 January 2014 to a custodial sentence of 12 months or more for any offence and 4 or more custodial sentences for any offence in the last 3 years
on 1 April 2015, the criterion of a single offence resulting in a custodial sentence of 12 months or more was retained, and the low level persistent offending criterion was reduced to 3 convictions in the last 3 years
from 6 October 2015, the sentencing criterion was removed for all EU cases and since then, HM Prison and Probation Service (HMPPS) have referred all EU and non-EU citizen foreign national offenders to the Home Office for deportation consideration

Key Questions

- How is ‘serious’ to be defined and will ‘serious’ be defined in the same way for offending committed during childhood as offending committed during adulthood.
- Will the same definition be given as is adopted in [2012 immigration Act] or will the definition used for sentencing children to detention (which is for serious crimes under section 91 PCC (S) Act etc?
- Child specific context: of the 70,300 proven offences committed by children in 2017-18, the main offences were: violence against the person (29%); theft and handling stolen goods (11%); criminal damage (11%); 11% ‘other’ (vehicle theft or TWOC); 10% motoring offences; 8% drugs; 7% public order; 4% burglary; 3% robbery; 2% sexual offences. Prima facie (without more details), many of these are ‘serious’ (but check these figures – stats in youth justice stats re sentences is different I think)

What does ‘Persistent’ mean?
Persistence is not a legally defined term. However, it is a term which has some legal significance for children. Children aged 12-14 can only be sentenced to a Detention and Training Order or, if under 15, a Youth Rehabilitation Order (YRO) with intensive surveillance or intensive supervision or with intensive fostering if they are a ‘persistent’ offender.12 However, the Sentencing Council in the Sentencing Youths – Overarching principles13 note that:

“The term persistent offender is not defined in statute but has been considered by the Court of Appeal. In general it is expected that the child or young person would have had previous contact with

---

12 See section 100(2)(a) Powers of the Criminal Courts (sentencing) Act 2000 and section 1(4)(c) Criminal Justice and Immigration act 2008 respectively
authority as a result of criminal behaviour. This includes previous findings of guilt as well as admissions of guilt such as restorative justice disposals and conditional cautions.’’

However, beyond that there is no clear definition. The sentencing council goes on to remark that:

“6.6 A child or young person who has committed one previous offence cannot reasonably be classed as a persistent offender, and a child or young person who has committed two or more previous offences should not necessarily be assumed to be one. To determine if the behaviour is persistent the nature of the previous offences and the lapse of time between the offences would need to be considered.

6.7 If there have been three findings of guilt in the past 12 months for imprisonable offences of a comparable nature (or the child or young person has been made the subject of orders as detailed above in relation to an imprisonable offence) then the court could certainly justify classing the child or young person as a persistent offender.

NB the guidelines go on to give more detail. What we can conclude is that (i) this is determined by courts, who have experience and who are considering persistence on the basis of a pre-sentence report and other information provided to the court about the child, and with experience of childhood offending patterns. The same cannot be said of an administrator who will be processing applications for settled status.

Key Questions

- Are offences committed by children likely to be regarded as ‘persistent’ for the purposes of the EUSS?
- Does the definition of persistence reflect that used for children aged 12-14 who are sentenced to DTO?
- Do offences committed during childhood count towards ‘persistence’ for a person over the age of 18?
- Do cautions for childhood offending count towards ‘persistence’?

Recommendations

- Childhood offending is usually temporary and children ‘grow out’ of crime. For this reason, and because of children’s immaturity and capacity for rehabilitation, the primary aim of the Youth Justice System is to prevent children’s future offending, and special measures are taken throughout the system to ensure that mistakes made in childhood do not
have a prolonged detrimental effect. Removing from children the possibility of EU settled status because of offending committed during childhood – particularly given the low age of criminal responsibility which is below that considered ‘internationally acceptable’ constitutes a secondary punishment that is likely to be particularly harshly felt by children than adults. It is clear from case law that the best interests of the child requires that children be treated differently in relation to their criminal offending. For this reason, we suggest that **childhood offending should be explicitly excluded from the eligibility criteria.**

- If childhood offending is to be included within the definition of ‘serious and persistent’ for the purposes of the eligibility criteria then in order to be compatible with the obligations under Article 8 ECHR, as interpreted in accordance with Article 3 of the UNCRC (best interests as a primary consideration), there must be differential criteria for children and adults. That is, there should be a narrower definition of serious offending that occurred during childhood, and more must be required before the threshold for ‘persistence’ is crossed. For legal certainty and compliance with the rule of law, these terms should be defined in policy guidance.

- For example, ‘serious’ crimes should be defined only as crimes for which a child has received a custodial sentence under sections 90 or 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 or sections 226/226B of the Criminal Justice Act 2003.

- Potential removal or restriction to access EU settled status based on childhood offending explicitly (by definition) contravenes the obligation under Article 40 UNCRC to secure children’s ‘reintegration’ into society and to prevent offending (section 37 crime and disorder act 1998 and UNCRC art 40); it removes from children citizenship rights they previously enjoyed and it makes their status in the UK and access to services more precarious, heightening potential for re-offending.

- The guidance of 29th March 2019, p 56 states that: ‘Applicants (aged 18 or over) are required to provide information about previous criminal convictions in the UK and overseas, and are only required to declare past criminal convictions which appear in their **criminal record in accordance with the law of the State of conviction at the time of the application**’. Could note here that UK has particularly harsh approach to criminal records compared to other countries (see Claire sands’ report for SCYJ on differences between different countries); and also many EU countries have higher minimum age of criminal responsibility than the uk. So might have situation where a person commits criminal offence in UK when (eg) 13 and is

---

14 For example, there are special protections in place to protect the privacy of children during proceedings, and their convictions are ‘spent’ more quickly (ref supremme court case). See Article 40 UNCRC, GC No 10 and revised 24 and check Beijing Rules for relevant para.

convicted and has a criminal record and affects their eligibility but another person committing the same offence at same age in another EU country where MACR is higher or criminal records wiped at 18 would not. CHECK THIS POINT and more detail and ask Christopher Stacey his thoughts??

- **Important issue?** Also an issue about potential discrimination between children in different parts of the UK: there is a different minimum age of prosecution in Scotland (12) compared to E&W (10) and northern Ireland (10). There are also proposals to increase the minimum age of criminal responsibility in Scotland to 12 to match minimum age of prosecution. Depending on how ‘serious’ and ‘persistent’ offending is measured, this may mean that children in England and Wales and NI will have offending at the ages of 10 and 11 ‘count’ whereas children in Scotland will not. So **at the least, only offending that takes place ABOVE a certain age (and at a minimum 12 so alignment between nations but would suggest 14 which in line with UNCRC recommendation in new draft GC 24)**

- The point unlock make vis a vis difficulty for people in knowing whether they have to disclose offences (or whether they are ‘spent’ etc) and thus whether they have been ‘open and honest’ applies with force for childhood convictions

- **Also issue re** race discrimination – black children are four times more likely to be arrested than white children and are vastly over-represented in detention (47% I think); at least in part due to discrimination experienced during the CJS processes. We don’t know how many BAME children are EU nationals but if EU settled status removed it compounds the discriminatory effects.

- **Consider issue that children may be deterred from applying for settled status because of concerns about impact of offending and thus remain undocumented etc.**

---

**Issue 3: Identifying EU children involved in criminal justice system**

There is currently no available, centrally held data on the nationality or immigration status of children who are involved in the criminal justice system, including EU national children in places of detention. For example, AssetPlus – the primary assessment tool used to identify the needs, risks and support necessary for children in conflict with the law – does not require the collection of nationality or immigration status as part of its mandatory data requirements.16

Some local authorities may collect this data on their own case management systems (for example, on ‘childview’17).

---

16 The Asset plus framework ‘is used jointly by community and custodial youth justice services to support assessment and the delivery of targeted interventions to young people.

17 See email from Cheshire YOT (Gareth and Tom)
The lack of criminal data disaggregated by nationality/immigration status makes it very difficult to identify, advise and assist EU national children who are currently in places of detention on their post Brexit immigration status (see issue 3 below) nor ensure specialist immigration advice is provided to children on the potential impact of their criminal offending on their immigration status (see issue 1 above).

**Data-Related Questions**

- How many EU national children are currently receiving services from Youth Offender Teams across the UK?
- How many EU national children are currently held in places of detention across the UK?
- How can EU national children who come into contact with the criminal justice system be identified (for the purposes of providing advice and support) in future?
- How many EU national children who are no longer involved in the criminal justice system have criminal records? How can these children be identified in order to provide advice and support for the purposes of the EUSS?

**Data-Related Recommendations**

- Immediate steps should be taken to establish whether children currently in detention may be subject to the EUSS.
- Nationality data should be recorded for all children referred to a Youth Offender Team for immigration/EUSS purposes. For example, Assetplus could be amended to include ‘nationality’ as mandatory data requirement.
- Any data on nationality and immigration status should not be disclosed to any other Government department or agency except in anonymised form.

**Issue 4: Protecting the rights of EU children in custody**

Some children may be remanded or sentenced to detention. In 2017-18, in England and Wales, the average monthly population of children in youth custody was 894. Of these children, approximately 24% are on remand (the remainder

---

18 We do not have figures on the numbers of EU national children in prison. Data on ‘prisoners’ (which includes children aged 15-17 in YOIs but not those in other institutions) is available here: July 2018 https://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf This is disaggregated by nationality; and by age; but not by age and nationality together.
19 See chapter 3 of Legal Aid, Sentencing and Punishment of Offenders Act 2012.
20 Available sentences are: Detention and Training Order (section 100 Crime and Disorder Act 1998) (maximum of two years, half of which is served in detention and the other half in the community); Section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 for a ‘serious’ offence; detention at her majesty’s pleasure (section 90 of the Powers of the Criminal Courts (Sentencing) Act 2000); Detention for Public Protection (section 226), or Extended Determinate Sentence (section 226B).
21 Youth Justice Annual statistics. The monthly report for January 2019 was 812.
were sentenced to custody); and 24% were aged 10-14 years old. Detained children are placed in one of three types of institution: secure children’s homes; secure training centres; and Young Offenders Institutions.

Add here Scottish and NI context

Children who are remanded or sentenced to custody have been compulsorily removed from their parents and carers and many are, by virtue of that parental and familial separation, under-supported and acutely vulnerable. Children in custody are proportionately more likely to be subject to a care order or to have experienced time in care. Many children in custody are placed at considerable distance from their parents or carers and may have few or infrequent visits. Many children are inadequately supported when they leave custody. In short, many children in or leaving custody are likely to have inadequate parental or family support to make an application for EU settled status. This is likely to be a particular difficulty for children serving long sentences.

For this reason, children in detention have a heightened need for support to apply for EU settled status. This need is heightened because if a child fails to apply before s/he turns 18, she will then have to declare childhood offending in an application for settled status, and her/his eligibility may then be at risk (see issue 3 below).

Who has responsibility to advise and support?
Children in custody are supported by their ‘personal officer’, the person responsible for their wellbeing. In addition, someone from the Youth Offending Team (YOT) should stay in touch with the child during their placement in detention. This is in addition to any contact the child may have with their family. In addition, ‘designated local authorities’ have further obligations to certain categories of children whilst they are in custodial detention or when they leave detention. These obligations can (should) include support vis-à-vis the impact of their convictions and detention upon their eligibility under the EUSS.

The links between children in care and children in the youth justice system
The HO has already acknowledged and provided tailored EUSS guidance and concessions for children who are in care (provide link here). Such provision, however, does not currently accommodate the specific, additional needs of children in care who are also involved in the criminal justice system. [Include some data on this here – ask Barry Goldson]. The following should be noted in this respect:

---

22 Youth Justice Statistics 2017-18 England and Wales Youth Justice Board / Ministry of Justice, Jan 2019
23 Over half of the children in custody have been in care at some point in their lives. See Lord Laming (2016) In Care, Out of Trouble How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system An independent review chaired by Lord Laming (Prison Reform Trust).
24 Dedicated authority is the LA determined by the court as having overall responsibility for the young person
25 The asset plus framework says that this is inevitably delegated to the ‘home’ YOT for the duration of the delegation.
• All children who are subject to a care order under section 31 of the Children Act 1989 retain that status whilst in detention;
• Children who have been accommodated under section 20 of the Children Act 1989 lose their 'looked after' status upon entering custody.
• However, children who are 16 or 17, and are no longer looked after but who, before leaving care were an 'eligible child' (that is, they were 'looked after' for 13 weeks or more between their 14th birthday and ending after their 16th birthday), become a 'relevant child'. This means that the local authority still has obligations towards them as care-leavers, including a duty to keep in touch, to put in place a pathway plan, and to appoint a personal advisor. It also includes obligations for planning the support the child will receive when he/she leaves detention, something which may be affected by whether or not they have EU settled status.
• Children who lose their ‘looked after’ status but are not a relevant child (because they will leave custody when they are under 16 or they have been looked after for less than 13 weeks) are still entitled to some support. In such cases, the local authority must appoint a ‘representative’ to visit the child and assess his/her needs. The representative must make recommendations about any appropriate advice, support and assistance needed by the young person (including upon their release). Such advice should/could include advice vis a vis EU settled status and/or impact of detention on eligibility.
• Children on remand (in custody pending trial) are to be 'treated as looked after' under section 104 Legal Aid, Sentencing and Punishment of Offenders Act 2012.
• If children are remanded for longer than 13 weeks, and they are released between the ages of 14 and ending after they turn 16, they will become a relevant child and entitled to care-leaver support (that is, they may acquire ‘relevant child’ status by virtue of their time spent on remand).
• LAs also have to comply with the seven corporate parenting principles vis-à-vis children in care or relevant children.

The above framework indicates that the legal status of children in custody is a complex matrix made up of differing levels of support and obligation depending upon the legal category they fit within. This means that there are potentially a number of agencies – the personal officer, the YOT, or - in the case of children to whom a ‘designated local authority’ has obligations under the Children Act 1989

---

26 Section 23A Children Act 1989
27 Section 23ZA Children Act 1989 double check still applies as ‘prescribed circumstances’ under provision
28 Children and Social Work Act 2017, section 1(1): (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people; (b) to encourage those children and young people to express their views, wishes and feelings; (c) to take into account the views, wishes and feelings of those children and young people; (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners; (e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people; (f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work; (g) to prepare those children and young people for adulthood and independent living
(as a looked after child, former looked after child or relevant child) – children’s services who potentially have a duty to advise and support children about their rights to remain post Brexit. **However, none of these criminal justice professionals are likely to have the level of specialist immigration knowledge or clearance necessary to adequately advise the children for whom they are responsible. Their role should therefore be to identify children who are or may be EU national children and refer them to suitable support.**

Children who are serving long sentences and/or who have entered detention without applying for settled status and who will turn 18 whilst in detention are a particular priority for support. Should they leave custody after the age of 18 without settled status then their childhood offending (will?) affect the determination by a case worker of their eligibility for EU settled status (whereas if they applied before the age of 18 it would not).

**Key Questions**

- **Which agency/key worker** should have responsibility for identifying EU national children and referring them to specialist immigration support (to avoid overlap and to ensure no child falls through the gap)?
- **What** immigration advice and support is and could be made available to EU national children to enable them to secure EU settlement or alternative status;
- **When** do any obligations to support EU national children arise. For example, does it apply only when a child is in detention or as part of the resettlement/care-leaver obligations that are/may be triggered when a child leaves custody?
- What steps can be taken to ensure that children in detention affected by the EUSS can access appropriately tailored advice and support at the earliest opportunity?

**Recommendations**

- All youth detention institutions (YOIs, STCs, secure children’s homes) should have access to a specialist immigration advisor.
- Training should be available to relevant youth justice professionals to ensure early identification of children affected by the EUSS and to facilitate referral to appropriate/specialist (immigration) support. Specifically, YOTs or personal advisors should receive training on the EUSS, the potential impact of offending on that status, and information on appropriate referrals for immigration advice/representation.
- YOTs or personal advisors should be under an obligation to identify all EU national children in their care, inform them of their right to apply for status and refer them to specialist immigration advice.
- A concordat/agreement should be in place for children in custody who are subject to a care order or who are a ‘former looked after child’ in order to designate who has responsibility for advising and assisting the child through the EUSS.
Summary of Main Recommendations

- Gather more accurate and comprehensive data on children in the young justice system, disaggregated by nationality.
- Exempt all under 18s from the criminality eligibility criteria under the EUSS.
- Exempt all under 18s who have spent a period in custody from the requirement that they accumulate 5 years of residence from the date of their release to secure settled status.
- Exempt adults applying for EUSS from the requirement to declare past criminal convictions if they occurred during the applicant’s childhood.
- Create an EUSS applications pathway (similar to the children in care and care leavers pathway developed as part of the LA and HSCT Guidance) for children who are involved in the criminal justice system. This would allow for the creation of clear referral routes to immigration specialists for children with more complex criminal and immigration histories to ensure that they achieve the best immigration advice and status possible.
- Provide training to youth justice professionals to ensure that they can identify and support children in the criminal justice system through the EUSS.
- Identify EEA adults in prison who have children, to ensure that there is appropriate support and advice for them and their children in relation to the EUSS.