**SIs affecting the entitlements of those with pre-settled status**

Procedural details:

* On 16 April 2019 three made negative SIs were laid:
  + The [Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019](https://sitracker.hansardsociety.org.uk/statutory-instruments/instrument/social-security-income-related-benefits-updating-and-amendment-eu-exit-regulations-2019);
  + The [Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019](https://sitracker.hansardsociety.org.uk/statutory-instruments/instrument/child-benefit-and-child-tax-credit-amendment-eu-exit-regulations-2019); and
  + The [Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019](https://sitracker.hansardsociety.org.uk/statutory-instruments/instrument/allocation-of-housing-and-homelessness-eligibility-england-amendment-eu-exit-regulations-2019).
* These SIs all come into force on 7 May 2019.
* They were made using the negative resolution procedure and can be prayed against until 1 June 2019 when the scrutiny period for them ends.

In summary what they do:

* These SIs change the legal entitlements for those with pre-settled status. In order for an individual with pre-settled status to access certain types of benefits and tax credits, as well as housing assistance, they now require an additional EU right to reside in the UK, in addition to the limited leave to remain they obtain under pre-settled status.
* The explanatory notes to the SIs restate that Zambrano carers require an additional EU right to reside in order to be eligible for any benefits or tax credits.
* Essentially the three SIs operate by creating an extra exclusion which is that pre-settled status does not confer a right to reside in the UK for the purpose of the below described benefits.
* This is potentially problematic given the disproportionate impact of the right to reside requirements on people with children, disabilities and the elderly.

Consequences after the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill

* The Immigration and Social Security Co-ordination (EU Withdrawal) Bill (currently before Parliament) will revoke EU free movement law as it applies in the UK.
* This will mean that if passed, and when it is brought into force, those with pre-settled status in the UK will not have access to benefits because they will not possess an EU right to reside **in addition** to their pre settled status.
* We assume the Government will make regulations under the new Immigration and Social Security Co-ordination (EU Withdrawal) Act once passed, to give those individuals access to these benefits in the same circumstances in which they currently access them but that is by no means certain.

[The Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019](http://www.legislation.gov.uk/uksi/2019/867/made)

* Under these regulations those with pre-settled status in the UK but no other separate right to reside in the UK are treated as not in Great Britain and therefore not eligible to claim the child benefit or child tax credit.
* Under The Child Benefit (General) Regulations 2006 and the Tax Credits (Residence) Regulations 2003, in order to qualify for the child benefit or a child tax credit, the person claiming the benefit or credit must be in Great Britain.
* A person who does not have a right to reside in the UK or a person that only has a right to reside as a Zambrano carer is treated as not being in Great Britain for the purposes of the 2006 Regulations and the 2003 Regulations.
* The 2019 Regulations insert a third category of claimant who shall be treated as not being in Great Britain for the purposes of the Regulations which is a person who has “limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971(7) which has been granted by virtue of Appendix EU to the immigration rules”.
* Therefore those who do not have a right to reside in the UK other than through their pre-settled status or as a Zambrano carer cannot claim child benefits or child tax credits.

[Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019](http://www.legislation.gov.uk/uksi/2019/861/introduction/made)

* Regulations 4 and 6 of The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 exclude those not subject to immigration control from accessing homelessness assistance or a housing allocation if they are not habitually/ordinarily resident in the UK or only have a right to reside in the UK as a job seeker, or only have an initial three month right to reside in the UK under the EEA Regulations, or only have a right to reside in the UK as a Zambrano carer.
* The 2019 Housing Regulations amend regulations 4 and 6 of 2006 Regulations to state that pre-settled status should be disregarded when determining if someone not subject to immigration control, is eligible for homelessness assistance or a housing allocation.
* Therefore if an applicant is ineligible for homelessness assistance or a housing allocation on the basis of their job seeker status or as a Zambrano carer, pre-settled status will not assist them in an application for housing assistance once these regulations come into force on 7 May.
* However, regulations 4 and 6 only exclude an individual from assistance if their “only right to reside” is as a job seeker, or a Zambrano carer or an initial three month right.
* Therefore if individuals in these categories who have been granted pre-settled status apply for homelessness assistance or a housing allocation before 7 May 2019 they will be eligible as they will have **two rights to reside** e.g. one as a job seeker and one derived through pre settled status and therefore they will no longer be subject to regulation 4 which only makes a job seeker ineligible if their “**only right to reside”** in the UK is as a job seeker.
* However, on 7 May 2019 when the regulations come into force, any applicants trying to make an application on the basis of their pre settled status and another excluded right to reside (or who do not have another right to reside), will become ineligible because from 7 May 2019 pre-settled status will be disregarded as a right to reside for the purposes of the regulations.
* These Regulations include a transitional provision which means that the exclusion of people whose only right to reside is pre-settled status does not apply to applications for assistance made before 7 May 2019.

[The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019](http://www.legislation.gov.uk/uksi/2019/872/contents/made)

* Eligibility for income-related benefits depends on being habitually resident in the UK, and individuals are deemed as not being habitually resident in the UK or the common travel area for the purposes of accessing income and social security related benefits if they do not have a certain type of right to reside in the UK. These regulations will include pre-settled status from 7 May as a type of disqualifying right to reside.
* The Regulations at issue provide[[1]](#footnote-1) that an individual who does not have a right to reside, or who has a right to reside only by virtue of their initial three months’ right to reside, their right to reside as a jobseeker, or their right to reside as a Zambrano carer, is not treated as being habitually resident within the UK.
* The 2019 Regulations deem pre-settled status to not be a qualifying right to reside under the Income Support regulations, and several other types of social security benefit listed in the 2019 regulations.[[2]](#footnote-2)
* However, as with the housing regulations discussed above, until 7 May 2019 an individual with pre-settled status can apply for benefits; unlike the housing regulations, however, there are no transitional provisions.
* Until 7 May 2019 an applicant who has been granted pre-settled status will have a right to reside **other than an excluded right to reside** as pre-settled status only becomes an excluded right on 7 May 2019.

1. Regulation 21AA of the Income Support (General) Regulations 1987, Regulation 85A of the Jobseeker’s Allowance Regulations 1996, Regulation 10 of the Housing Benefit Regulations 2006, Regulation 70 of the Employment and Support Allowance Regulations 2008 and Regulation 9 of the Universal Credit Regulations 2013. [↑](#footnote-ref-1)
2. Regulation 21AA of the Income Support (General) Regulations 1987, Regulation 85A of the Jobseeker’s Allowance Regulations 1996, Regulation 10 of the Housing Benefit Regulations 2006, Regulation 70 of the Employment and Support Allowance Regulations 2008 and Regulation 9 of the Universal Credit Regulations 2013. [↑](#footnote-ref-2)