

The EU Settlement Scheme is intended to protect the rights of EU citizens, citizens of European Free Trade Association (EFTA) countries (Norway, Iceland, Lichtenstein and Switzerland), and their family members resident in the UK. However, many of those affected are likely to be concerned about what this means for them. These FAQs are intended to answer your employees' immediate questions on Brexit and we will continue to update them as matters develop.

What Are the Key Points of the Settlement Scheme?

- EU and EFTA citizens and their families (including those from outside the EU and EFTA) living in the UK by 31 December 2020 should apply for status under the Settlement Scheme to continue living in the UK after 30 June 2021.
- In most cases, EU and EFTA citizens and their families who arrive by 31 December 2020 and who have been continuously resident in the UK for five years will be allowed to stay indefinitely by obtaining "**settled status**" which is also referred to as "indefinite leave to remain".
- EU and EFTA citizens and their families who arrive by 31 December 2020 but have not been in the UK for five years will be eligible for "**pre-settled status**" (also referred to as "limited leave to remain"), enabling them to stay in the UK until they have been here for five years, at which point they will be able to apply for settled status.
- EU and EFTA citizens living in the UK by 31 December 2020 can be joined indefinitely by certain close family members (spouses, civil and unmarried partners, dependent children and grandchildren and dependent parents and grandparents), who will then be eligible to apply for pre-settled or settled status, providing that the EU/EFTA citizen has either settled or pre-settled status, the relationship existed on or before 31 December 2020 and continues to exist on their arrival in the UK (other than in the case of children born or adopted after that date).
- EU and EFTA citizens and their families with settled status or pre-settled status will have the same rights to work in the UK as they currently do, as well as access to public services such as healthcare and schools, public funds and pensions.

What Happens if the UK Does Not Agree a Free Trade Deal With the EU?

If the UK does not agree a free trade deal with the EU, this will not affect the immigration status of EU/EFTA citizens and their families living in the UK by 31 December 2020. The Settlement Scheme is based on the citizens' rights section of the UK's [Withdrawal Agreement](#) with the EU. The Withdrawal Agreement was ratified and entered into force on 31 January 2020, and the UK left the EU on that date. Leaving the EU "with a deal" in this way marked the start of a transition period during which there is no change to EU/EFTA citizens' ability to enter, reside and work in the UK at least until 31 December 2020. Whether or not the UK agrees a free trade deal with the EU, those living in the UK by this cut-off date will be eligible to apply under the Settlement Scheme for pre-settled or settled status and the deadline for applying will be 30 June 2021.

The UK government's Internal Market Bill which aims to ensure that the UK's own internal market is legally ready after the transition period is currently being considered and voted on by the UK parliament. The bill states that ministers would have the power to override international law, including parts of the Withdrawal Agreement, but not those parts dealing with rights of EU/EFTA citizens living in the UK (or British citizens living in the EU).

EU and EFTA citizens and their families arriving in the UK from 1 January 2021 without prior UK residence will not be eligible to apply under the Settlement Scheme (unless they are joining certain close EU/EFTA family members already resident in the UK before the cut-off date). They will be able to enter the UK as visitors unless they are intending to work in the UK in which case they should apply under a new UK immigration system expected to be in place from 1 January 2021 prior to travelling to the UK. The UK government's current guidance outlining its plans for the new system and our commentary can be found [here](#).

What Is the Qualifying Criteria for Settled and Pre-settled Status?

The Home Office guidance provides that, subject to identity and criminality checks, EU and EFTA citizens and their family members will be eligible for settled status if they have been resident in the UK for a continuous five-year period.

It is significant that, to obtain settled status, EU and EFTA citizens and their family members are not required to demonstrate that they have been **working, studying or economically self-sufficient for five years** (as is currently the case to acquire permanent residence). Applicants will merely have to show that they have been **resident** in the UK for a continuous five-year period.

Subject to identity and criminality checks, EU and EFTA citizens and their family members who have been resident in the UK for less than five years will be granted five years' pre-settled status but will be eligible for settled status as soon as they have completed five years' continuous residence.

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Who Should Apply?

With limited exceptions, the following groups of people resident in the UK should apply under Settlement Scheme:

- EU and EFTA citizens
- Family members of EU and EFTA citizens who are not themselves EU and EFTA citizens

EU and EFTA citizens and their family members should apply even if they:

- Were born in the UK and are not a British citizen
- Have a UK permanent residence document
- Are a family member of an EU or EFTA citizen who does not need to apply – including if they are from Ireland
- Have a British citizen family member

Those with indefinite leave to enter the UK or indefinite leave to remain in the UK or British or Irish citizenship do not need to apply under the Settlement Scheme.

What Will the Process Be to Obtain Settled or Pre-settled Status?

In summary, EU and EFTA citizens and their family members in the UK will need to:

- Prove their identity, in most cases, by scanning their EU or EFTA passport (or UK residence card with a biometric chip for non-EU/EFTA family members), and taking a digital scan, then a photo of their face. Applicants can use the EU Exit: ID Document Check app, which can be downloaded on to newer models of Android smartphones or iPhones (further details on suitable models and how to use the app can be found [here](#)). Alternatively, applicants can attend one of a number of different ID document [scanner locations](#) or submit their documents to the Home Office by post.
- Complete a short online application using any computer, tablet or smartphone (this does not have to be the smartphone used for the first stage).
- Confirm their residence in the UK by providing their National Insurance number or alternative prescribed documents.
- Declare any criminal convictions.

An applicant's National Insurance number will be used by the Home Office to confirm whether or not they have five years' continuous residence in the UK through an automated check of tax and benefits records (the results of this check are usually provided to applicants straightaway).

Those without a National Insurance number or whose tax or benefits records do not automatically confirm their residence will be able to upload photos or scans of prescribed [alternative documents](#) (including but not limited to bank statements, employer letters, P60s, P45s, utility bills, passport stamps and travel tickets).

Those who make a valid application under the Settlement Scheme should be granted either settled (indefinite leave to remain) or five years' pre-settled status (limited leave to remain) unless they:

- Were not resident in the UK by 31 December 2020; or
- Are refused on the grounds of a serious or persistent criminality, or other public policy grounds.

What Does "Continuous Residence" Mean for the Purpose of Qualifying for Settled Status?

"Continuous residence" generally means that the applicant must not have been absent from the UK for more than six months in total in any 12-month period. There is no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period.

There are some exceptions:

- A single period of absence of more than six months but which does not exceed 12 months is permitted, where this is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting; and
- Any period of absence on compulsory military service.

Further advice should be sought where residence in the UK has material gaps outside these exceptions.

When Should EU and EFTA Citizens Apply for Settled or Pre-settled Status?

EU and EFTA citizens and their family members in the UK should apply before the deadline of 30 June 2021.

There is, therefore, plenty of time in which to apply for status but it would be sensible not to put off applying until the last minute.

Those who have not yet been in the UK for five years but will have been by 30 June 2021 may want to consider waiting until they have been here for five years before applying for settled status. In that case, there will be no need to apply for pre-settled status first, although many may want confirmation of some form of status at the earliest stage and, therefore, choose to apply in any event.

Can Applications of the Spouse/Partner and Children of an EU or EFTA Citizen be Considered Together?

Yes. Applicants will be given a "Unique Application Number" so that subsequent family applications can, where necessary, be linked to the first one and considered together. EU and EFTA family members will be able to apply for status in their own right as set out above.

In addition to identity, residence and criminality checks, non-EU/EFTA family members will need to provide evidence of their relationship with the EU and EFTA citizen and, unless that citizen has already been granted settled status, their valid passport or national identity card.

Non-EU/EFTA family members should, therefore, apply once their EU/EFTA family member has been granted settled status, as this is likely to make their application easier and quicker to approve.

Children of an EU or EFTA citizen (or of their spouse or civil partner) under the age of 21 will be eligible for settled status even if they have less than five years' continuous residence in the UK if the parent is or has been granted settled status.

Will the Home Office Be Able to Reject an Application for a Simple Mistake?

Home Office guidance indicates that caseworkers will help applicants to avoid errors or omissions that may affect the outcome of an application. Caseworkers should contact applicants and give them a reasonable opportunity to submit additional evidence or correct simple errors or omissions.

The guidance currently indicates that applicants can apply for an administrative review of their application if it is refused or if they were granted pre-settled status but believe they qualify for settled status. Applicants can also make a new application under the Settlement Scheme at any point.

What Will It Cost to Apply for Settled Status or Pre-Settled Status?

There is no fee for applying under the Settlement Scheme. Those who were required to pay a fee during an earlier test phase are entitled to a refund.

How Long Will It Take for a Settled or Pre-settled Status Application to Be Approved?

The current estimated processing time for complete applications is around 5 working days if no further information is required, but it can take up to a month. Further details are published on the [Home Office website](#).

How Will EU and EFTA Citizens Prove Their Status to Future Employers?

Proof of settled or pre-settled status will be provided to EU and EFTA citizens, their family members and employers through an online service only; no physical document will be issued to them. Non-EU/EFTA family members in the UK granted status under the Settlement Scheme will be issued with a biometric residence document.

The Home Office's current [guidance](#) states that employers will need to check a job applicant's right to work in the same way as now until 30 June 2021 and that they cannot require EU and EFTA citizens to show their status under the Settlement Scheme until after 30 June 2021. As a new immigration system will apply to EU/EFTA job applicants relocating to the UK from January 2021 but employers are not able to check status under the Settlement Scheme until 30 June 2021, this raises the question of whether and, if so, how employers will be required to check that an EU/EFTA applicant arrived in the UK before or after the cut-off date of 31 December 2020. There is currently no guidance on this point, and we will continue to update these FAQs as matters develop. Additional Home Office [guidance](#) also states that employers will not need to carry out retrospective checks for existing employees (i.e. those whose employment began before 30 June 2021).

Can Status Be Lost Once It Has Been Granted?

Holders of settled status can be absent from the UK for any reason for a period of five consecutive years without losing their status.

Holders of pre-settled status will be able to spend up to two continuous years outside the UK without losing their status but will need to maintain their continuous residence over five years if they want to qualify for settled status.

Will Those Who Have Already Acquired Permanent Residence Still Need to Apply for Settled Status?

EU and EFTA citizens and their family members with a permanent residence document will still need to apply for settled status before 30 June 2021, unless they have applied for and been granted British citizenship. Their application for settled status will be granted subject to an identity and criminality check, as well as confirmation of their ongoing residence in the UK and that they have not been absent from the UK, according to current Home Office guidance, for a continuous period of five years since acquiring permanent residence.

Can EU and EFTA Citizens Still Apply for a Permanent Residence Document?

Yes, if they are eligible, but they should first consider if they have a specific need to do so given that they will still have to apply for settled status before 30 June 2021.

The [current online application for a permanent residence document](#) can be used by most applicants and is more straightforward than the previous paper form. Those who have not spent more than six months outside the UK in any 12-month period of the relevant five-year period are no longer required to list all of their absences from the UK.

Having a document confirming permanent residence or holding settled status is a prerequisite for those who intend to apply to naturalise as a British citizen. For those who want to naturalise as soon as possible, obtaining a permanent residence document now, rather than settled status, may save them time. This is because they will need to wait for 12 months from the date they are granted settled status before applying to naturalise as a British citizen. By contrast, those who have a permanent residence document can apply 12 months after the date on which it is confirmed that they acquired the right of permanent residence which, in some cases, may be earlier than the date on which the document was actually issued. The spouse of a British citizen who has lived in the UK for a continuous period of three years will be eligible to naturalise immediately if they hold a permanent residence document.

What Are the Criteria for a Permanent Residence Document?

EU and EFTA citizens who have been in the UK for five continuous years in a qualifying status (i.e. as a worker, a student or self-sufficient or self-employed person) and their co-habiting family members resident in the UK for the same period, will already have acquired permanent residence and will be eligible to apply for a permanent residence document.

Under the current rules, any time spent in the UK as a self-sufficient person or as a student also requires the applicant to have held comprehensive sickness insurance during that period (which, for practical purposes, generally means private medical insurance or a European Health Insurance Card). Students and the self-sufficient who did not hold comprehensive sickness insurance or an EHIC card during the relevant period may want to seek further advice before applying, given that this will not be a requirement for settled status.

What Is the Difference Between Permanent Residence, Settled Status and Indefinite Leave to Remain?

The three concepts are very similar in that, in each case, the holder is not subject to immigration control and can reside and work in the UK without restriction, has access to public funds and services, and can go on to apply for British citizenship. However, under current EU law, **permanent residence** is acquired automatically by EU and EFTA citizens who have spent five lawful, continuous years in the UK, regardless of whether the holder applies for a document to confirm that status.

By contrast, **settled status** is a form of indefinite leave to remain that will only be granted under the Settlement Scheme and the conditions set out above. **Indefinite leave to remain** can also be granted (subject to an application under UK immigration law) to non-EU/EFTA citizens seeking to settle in the UK after five years' continuous residence in the UK in specific immigration categories but with more onerous criteria (largely relating to income).

What Are the Key Criteria for British Citizenship?

Those with settled status will be able to apply to naturalise as a British citizen:

- Immediately if they have lived in the UK for a continuous period of three years and are the spouse or civil partner of a British citizen, or
- 12 months after the date on which they were granted settled status.

Alternatively, those who have a permanent residence document can apply 12 months after the date on which it is confirmed that they acquired the right of permanent residence which, in some cases, may be earlier than the date on which the document was actually issued.

There are additional qualifying criteria for British citizenship, including but not limited to stricter UK absence rules than those for acquiring permanent residence or settled status and a requirement to pass a "Life in the UK" and English language test.

Non-EU/EFTA nationals with non-EU/EFTA dependent family members with them in the UK should seek further advice before applying for British citizenship, as this may affect the rights of those non-EU/EFTA dependent family members who do not already have settled status or a permanent residence document. For now, this risk is mitigated by the case of *Toufik Lounes v Secretary of State for the Home Department*.

In that case, the European Court of Justice held that an EU citizen who becomes a national of another EU country retains the right for their non-EU/EFTA spouse to live with them in that country. The current relevant UK legislation has recently been amended to reflect this judgment enabling dual nationals in the UK to rely on it providing they exercised EU Treaty rights in the UK before naturalising as British citizens but this may be rescinded from January 2021.

Applicants should also check first whether their home country will allow dual nationality – some do, but others do not, and acquiring British citizenship could lead to them forfeiting their nationality of origin.

What About British Citizens Living in Other EU and EFTA Countries?

The citizens' rights section of the UK government's revised [Withdrawal Agreement](#) sets out the key provisions intended to protect British citizens and their family members lawfully residing in another EU country on 31 December 2020, including (but not limited to):

- British citizens and their family members will be able to stay in the EU country where they are living
- A time-limited transition period that will last until 31 December 2020, during which British citizens and their family members can work, reside and travel in the EU, as they do now

The UK government has also reached agreements with the EFTA countries (Iceland, Lichtenstein, Norway and Switzerland) to protect the rights of UK citizens living in those countries.

Each of those countries can and may put in place their own residence criteria and procedures similar to the Settlement Scheme. Many of those countries have begun to indicate what steps UK citizens should take to regularise their immigration status but comprehensive procedural guidance for each country is not yet widely available. In the meantime, further information can be found [here](#).

What About Irish Citizens?

The Home Office has said that Irish citizens enjoy a right of residence in the UK that is not reliant on the UK's membership of the EU. Irish citizens will not, therefore, be required to apply for status under the scheme (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) will be able to obtain status under the scheme without the Irish citizen doing so.

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