

The EU Settlement Scheme is intended to protect the rights of EU citizens, nationals of the European Economic Area (“EEA”) and citizens of Switzerland (for the purpose of this guidance referred to as “EEA nationals”) resident in the UK by 31 December 2020 and their family members. 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?

- EEA nationals and their families (including those who are not EEA nationals) living in the UK by 11pm on 31 December 2020 should apply for status under the Settlement Scheme to be able to continue living in the UK after 30 June 2021.
- In most cases, EEA nationals and their families who arrived in the UK by 11pm on 31 December 2020 and who have been continuously resident for five years will be allowed to stay indefinitely by obtaining “**settled status**” which is also referred to as “indefinite leave to remain”.
- EEA nationals and their families who arrived in the UK by 11pm on 31 December 2020 but who have been continuously resident for less than five years will be eligible for “**pre-settled status**” (also referred to as “limited leave to remain”), enabling them to stay in the UK for up to five years and to apply for settled status as soon as they have completed five years’ continuous residence.
- EEA nationals living in the UK by 11pm on 31 December 2020 can be joined after that date by certain close family members, who will be eligible to apply under the Settlement Scheme, subject to meeting specific conditions.
- EEA nationals and their families with settled status or pre-settled status will have the immigration status they need to continue to live, work and study in the UK beyond 30 June 2021, as well as access to public services such as healthcare and schools, public funds and pensions.
- EEA nationals and their families arriving in the UK from 11pm on 31 December 2020 without prior UK residence will not be eligible to apply under the Settlement Scheme (unless they are joining certain EEA family members already resident in the UK by 11pm on 31 December 2020). 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 the UK’s new points-based immigration system prior to travelling to the UK, further details of which can be found [here](#).

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

In summary, subject to identity and criminality checks, EEA nationals and their family members living in the UK by 11pm on 31 December 2020 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, EEA nationals and their family members are not required to demonstrate that they have been **working, studying or economically self-sufficient for five years** (as is the case to acquire permanent residence in many European countries). Applicants merely have to show that they have been **resident** in the UK for a continuous five-year period.

Subject to identity and criminality checks, EEA nationals 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.

Who Should Apply?

With limited exceptions, the following groups of people resident in the UK by 11pm on 31 December 2020 should apply under Settlement Scheme:

- EEA nationals
- Family members of EEA nationals who are not themselves EEA nationals.

For this purpose, with limited exceptions, ‘family member’ includes: spouse or civil partner; durable partner (unmarried partnership akin to marriage or civil partnership); child, grandchild or great-grandchild (including of the spouse or civil partner); dependent parent, grandparent or great-grandparent (including of the spouse or civil partner); dependent relative (including, in some cases, of the spouse or civil partner).

It should be noted that each type of family member may be subject to additional and differing criteria to evidence their relationship to the EEA citizen when applying under the Settlement Scheme.

EEA nationals and their family members resident in the UK by 11pm on 31 December 2020 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 EEA national 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 is the Process to Obtain Settled or Pre-settled Status?

In summary, EEA nationals and their family members need to:

Prove their identity, in most cases, by scanning their EEA passport (or UK residence card with a biometric chip for non-EEA 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 11 pm on 31 December 2020 (other than eligible family members joining EEA nationals); 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 EEA nationals Apply for Settled or Pre-settled Status?

EEA nationals and their family members living in the UK by 11pm on 31 December 2020 must apply before the deadline of 30 June 2021. There are differing application deadlines for family members joining EEA nationals in the UK after that date.

Can Applications of the Spouse/Partner and Children of an EEA national 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. EEA 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-EEA family members will need to provide evidence of their relationship with the EEA national and, unless that person has already been granted settled status, their valid passport or national identity card.

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

Children of an EEA national (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 where an applicant needs to provide more information or evidence of their eligibility for pre-settled or settle status, the caseworker must attempt to contact the applicant and give them a reasonable opportunity in which to provide this before a decision is made on their application. Applicants can apply for an administrative review and/or an appeal of their application if it is refused or if they were granted pre-settled status but believe they qualify for settled status.

What Does 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 Does it Take for a Settled or Pre-settled Status Application to Be Approved?

The [Home Office website](#) indicates that it usually takes around 5 working days for complete applications to be processed if no further information is required, but that it can take up to a month. In practice, we are aware that some applications are taking far longer than this to be processed.

How Will EEA Nationals Prove Their Status to Future Employers?

Proof of settled or pre-settled status will be provided to EEA nationals, their family members and employers through an [online service](#) only; no physical document will be issued to them. Non-EEA family members in the UK granted status under the Settlement Scheme will be issued with a biometric residence document.

The Home Office's recently updated [guidance](#) states that:

- Right to work checks for EEA nationals will not change until after 30 June 2021. Until then, EEA nationals can use their passport or national identity card to evidence their right to work.
- Employers are not expected to differentiate between EEA nationals who arrived before the end of the transition period (31 December 2020) and those arriving after that date in the grace period from 1 January to 30 June 2021.
- The Home Office recognises that employers may wish to ensure the stability of their workforce during the grace period and are able to provide help and support to prospective and existing employees to obtain the immigration status they need beyond 30 June 2021. Employers may therefore invite those who already have status under the Settlement Scheme, or status under the points-based immigration system, to evidence their right to work using the Home Office online service.
- However, employers cannot insist that EEA nationals use the online service or discriminate against those who wish to use their passport or national identity card during the grace period.
- There is no mandatory requirement for retrospective checks to be carried out on EEA nationals who were employed on or before 30 June 2021. Employers will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work check was undertaken in line with the Home Office's guidance. Employers who choose to carry out retrospective checks, must ensure that they do so in a non-discriminatory manner.
- From 1 July 2021 all EEA nationals will be required to demonstrate they have a right to work through evidence of their immigration status, rather than their nationality, using the online service. There will be a small number of exceptions and these will be detailed in further Home Office guidance due to be published before 1 July 2021.

In light of this Home Office guidance our recommendation is that employers should not try to establish whether EEA national candidates arrived in the UK before or after 1 January 2021 not least because their arrival date will not, in all cases, be determinative of their eligibility under the Settlement Scheme. Employers may (and should) still ask EEA candidates if they have the right to work in the UK (without *requiring* them to provide evidence of or eligibility for pre-settled or settled status).

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?

EEA nationals 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.

What Are the Key Criteria for British Citizenship?

Those with settled status may 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.

EEA nationals with non-EEA 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-EEA family members who do not already have settled status or a permanent residence document.

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 EEA Countries or Switzerland?

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.

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 has put in place their own residence criteria and procedures similar to the Settlement Scheme. Further information can be found [here](#).

What About Irish Citizens?

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.

Contacts

Annabel Mace

Partner and Head of UK Business Immigration, London

T +44 20 7655 1487

E annabel.mace@squirepb.com