

In June 2018, the Home Office issued a [Statement of Intent](#) setting out how EU citizens and their families will be able to continue living in the UK after Brexit under an EU Settlement Scheme. We understand that the Settlement Scheme will be open for applications towards the end of 2018, but many European Economic Area (EEA) nationals in the UK remain uncertain about whether they will qualify for settled status or how and when to apply. These FAQs are intended to answer your immediate questions on the effects of Brexit and we will continue to update them as matters develop.

## What Are the Key Points of the Settlement Scheme?

- EU citizens and their families living in the UK by 31 December 2020 will have until 30 June 2021 to make an application for status under the Settlement Scheme.
- In most cases, EU citizens and their families who have been continuously resident in the UK for five years will be allowed to stay indefinitely by obtaining “**settled status**”.
- EU 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**”, 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 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 (other than in the case of children born or adopted after that date) the relationship existed on or before 31 December 2020 and continues to exist on their arrival in the UK.
- EU citizens and their families with settled status or pre-settled status will have the same access as they currently do to public services such as healthcare and schools, public funds and pensions.

## What If the UK Leaves the EU Without a Deal on 29 March 2019?

The full Settlement Scheme is not set in stone. It is yet to be incorporated into UK law, although a managed live trial is currently underway for 4,000 volunteer applicants working at 12 NHS Trusts, and students and staff from three Liverpool universities.

In addition, of course, the Settlement Scheme is based on the UK government’s agreement with the EU on citizens’ rights detailed in the [draft Withdrawal Agreement](#), which is still subject to negotiation on issues such as the Irish border. However, the UK government is expected to confirm shortly that, in the event the UK leaves the EU without concluding a deal by 29 March 2019, EU citizens and their family members already in the UK at that point will still be eligible to stay in the UK under the Settlement Scheme. If, for any reason, the Settlement Scheme is not brought into effect before 29 March 2019, the main provisions of EU law on freedom of movement will remain in force, as these have been incorporated into UK law by the European Union (Withdrawal) Act 2018. In practice, this means that the current rights of EEA citizens to live and work in the UK would broadly continue until the UK government or Parliament introduces new law to change those rights.

## What Will the Qualifying Criteria Be for Settled and Pre-settled Status?

The Statement of Intent explains that the settled status process for EU citizens and their family members will involve three simple stages:

- Proving their identity
- Proving five years’ continuous residence in the UK
- Checking they are not a serious or persistent criminal

It is significant that, to obtain settled status, the Home Office will **not** now require EU citizens to demonstrate that they have been **working, studying or economically self-sufficient** for five years (as is currently the case for permanent residence). EU citizens 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 citizens and their family members who have been continuously 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 in the UK.

The Statement of Intent has also clarified that EU citizens who have been studying or economically self-sufficient in the UK during any part of their five years in the UK will not be required to show that they had comprehensive sickness insurance during those periods as a condition of their ability to obtain settled status (which is a requirement for those particular groups of EU citizen to be able to acquire permanent residence under current rules).

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

The Home Office has said that the process will be a “streamlined and user friendly” digital application. As part of the process, EU citizens and their families will need to prove their identity and nationality through a valid passport, national identity card and, in the case of non-EU family members, a valid biometric residence permit. We are told that applicants will be able to scan their identity document via an online application accessible via computer, tablet or smartphone. In addition, applicants will need to enrol their facial image by uploading a passport photo. Those who cannot upload their documents, will be able to send them to the Home Office by post. Applicants will be asked to confirm whether or not they have any criminal convictions and the Home Office will conduct checks against UK and overseas criminality and security databases, as appropriate.

To confirm residence in the UK, applicants will be asked to provide their National Insurance number so that the Home Office can use existing government data to evidence employment or receipt of benefits, for example, HM Revenue & Customs (HMRC) and Department of Work and Pensions (DWP) records. The Statement of Intent also includes a draft list of alternative documents that can be used to demonstrate five years’ residence (such as bank statements, P60s and employer letters) where this cannot be demonstrated through HMRC or DWP records.

According to the Statement of Intent, those who make a valid application under the Settlement Scheme will be granted either settled or five years’ pre-settled status unless they:

- Were not resident in the UK by 31 December 2020; or
- Are refused on the grounds of a serious or persistent criminality, for security reasons or for fraud.

## What Does “Continuous Residence” Mean for the Purpose of Qualifying for Settled Status?

“Continuous residence” generally means that you have not 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 is permitted.

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

When using the online application for a permanent residence document under current rules, applicants are simply required to declare that they have not have had absences from the UK of six months or more in a 12-month period without having to list each absence during the relevant five-year period. We anticipate that the Home Office will adopt a similar approach to confirm continuous residence when it comes to settled status.

## When Should I Apply for Settled or Pre-settled Status?

We are told that the Settlement Scheme will be phased in towards the end of 2018 and fully open by the end of March 2019. This implies that some applicants will not be able to apply until then. Once the system is up and running, every EU citizen and their family members in the UK will need to apply before the deadline of 30 June 2021.

There is, therefore, plenty of time in which to apply for status. That said, given that we do not know how the new system will cope with millions of applications over a two-and-a-half-year period, it would be sensible not to put off applying until the last minute.

EU citizens and their family members who have not been in the UK for five years by the time the process goes live but will have been by 30 June 2021 should wait until they have been here for five years before applying for settled status (there is no need to apply for pre-settled status before then).

Close family members joining an EU citizen in the UK after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021).

## Can My Spouse/Partner and Children Apply for Settled or Pre-settled Status at the Same Time as I Do?

Yes. Applications made by families at the same time will be considered together. EU family members will be able to apply for status on their own account as set out above.

In addition to identity, residence and criminality checks, non-EU family members will need to provide evidence of their relationship with the EU citizen and, unless that EU citizen has already been granted settled status, their valid passport or national identity card. Non-EU family members may, therefore, prefer to apply once the relevant EU citizen has been granted settled status, as this is likely to make their application easier and quicker to approve.

Children of an EU 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 EU citizen (or their spouse or civil partner) is or has been granted settled status.

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

The Statement of Intent indicates that Home Office case workers 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.

Applicants who apply before 30 March 2019 and are refused settled or pre-settled status should be able to ask the Home Office to check the decision (known as “administrative review”). Those who apply and are refused after 30 March 2019 will have a statutory right of appeal before an independent judge. Anyone refused settled or pre-settled status will also be able to reapply before 30 June 2021.

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

An application under the Settlement Scheme will cost £65 (the same as the current fee for a permanent residence document). For children under the age of 16, the fee will be £32.50.

Where an applicant has been granted pre-settled status, from April 2019, there will be no fee when they apply for settled status. Applications will also be free of charge for those previously issued a permanent residence document.

Applicants under the Settlement Scheme will not be required to pay the Immigration Health Charge.

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

The Statement of Intent makes no commitment in relation to processing times, but the Home Office is understood to have informally indicated that the majority of straightforward applications should be decided within a few days. More complex applications will clearly take longer. The Home Office has said it intends to publish current waiting times to give applicants an indication of how long they will have to wait at any given time.

## How Will I Prove That I Have Settled Status to Future Employers?

We are told that evidence of settled or pre-settled status will be given to EU citizens in digital form; no physical document will be issued to them. Non-EU family members in the UK granted status under the Settlement Scheme will also be issued with a biometric residence document.

The Home Office has not yet indicated how right to work checks for EU citizens and their families will be carried out after the implementation period ends on 31 December 2020. We do not believe that those living and working in the UK before 31 December 2020 should need to demonstrate their right to work again whilst they remain with their pre-31 December 2020 employer. However, an eligible EU citizen (or non-EU family member) who has not obtained pre-settled or settled status and is moving to a new job from 1 January 2021 may need to do so before they start work (and in any event, before 30 June 2021).

## Can I Lose My Settled Status Once I Have Acquired It?

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

## If I Have Already Acquired Permanent Residence, Will This Mean That I Am Automatically Granted Settled Status?

EU citizens with a permanent residence document will be able to swap this for settled status free of charge, 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 for a continuous period of five years since acquiring permanent residence.

## Can I Still Apply for a Permanent Residence Document Now?

Yes, if you are eligible but you should first consider if you have a specific need to do so. Many EEA nationals will find it useful and reassuring to have a formal record of their continuous residence in the UK in a qualifying status given that we do not know for sure when the Settlement Scheme will open. As stated above, having a document confirming permanent residence is also likely to facilitate the process of obtaining settled status.

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

Having a document confirming permanent residence is also a prerequisite if you intend to apply to naturalise as a British citizen before being able to apply for and obtain settled status. If you want to naturalise as soon as possible, obtaining a permanent residence document now, rather than waiting for the settled status process to open, should save you time. This is because you will need to wait for 12 months from the date you are granted settled status before applying to naturalise as a British citizen. By contrast, if you have a permanent residence document, you can apply 12 months after the date on which it is confirmed that you acquired the right of permanent residence which, in some cases, may be earlier than the date on which the document was actually issued. If you are the spouse of a British citizen and have lived in the UK for a continuous period of three years, you will be eligible to naturalise immediately if you hold a permanent residence document.

## How Will I Know If I Am Eligible for a Permanent Residence Document?

If you are an EEA national who has 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) or a co-habiting family member thereof, you 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 you to have held comprehensive sickness insurance during that period (which, for practical purposes, generally means private medical insurance or a European Health Insurance Card). If this applies to you, but you did not hold comprehensive sickness insurance during the relevant period, then, given that this will not be a requirement for settled status, you may want to seek further advice before applying. You may be better off waiting for the Settlement Scheme to open, rather than have your application for permanent residence formally rejected.

## 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 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-EEA nationals 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).

## Can I Apply for British Citizenship?

If you have settled status, you will be able to apply to naturalise as a British citizen:

- Immediately if you 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 you were granted settled status.

Alternatively, if you have a permanent residence document, you can apply 12 months after the date on which it is confirmed that you 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 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 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-EEA dependent family members. Until we leave the EU, this risk is mitigated by the recent 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 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.

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

## Most of the Available Information Refers Specifically to EU Citizens, but What About Those of Us in the UK From the Other EEA (Non-EU) Member States and Switzerland?

The UK government has said that it is in discussions with Iceland, Liechtenstein, Norway and Switzerland about securing the status of their citizens who are resident in the UK and UK citizens resident in those countries. The Statement of Intent indicates that talks with all four countries are progressing well and, pending final agreement being reached with each on the detail, the arrangements described above will be open to citizens of the other EEA (non-EU) member states and Switzerland (and their family members) on a similar basis as for EU citizens.

Throughout this note, we have used "EU citizens" when referring to the arrangements under the Settlement Scheme, but "EEA nationals" when discussing the current law and practice relating to the wider group of EU, EEA and Swiss nationals.

## What About UK Citizens Living in Other EU Countries?

As part of the draft Withdrawal Agreement, the EU and the UK government have agreed that equivalent arrangements to those set out above for EU citizens and their families in the UK will apply to UK citizens and their families living in the EU, including the unrestricted ability to move to and work in other EU countries until 31 December 2020.

Each of those other EU countries can and may put in place their own residence procedures similar to the Settlement Scheme but, at present, we have no further guidance on what those might be. The Statement of Intent merely says, "the Government continues to press for further details from our EU partners of the arrangements that will be in place for UK nationals."

## What About Irish Citizens?

The Statement of Intent says 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 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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