

The UK government has now launched a public test phase of the Settlement Scheme open to EU citizens and their families who hold a valid EU passport or biometric residence card. We are told that the Settlement Scheme will be fully open for applications from 30 March 2019, including from European Economic Area (EEA) nationals, but many of those affected remain uncertain about whether they will qualify for settled status or how and when to apply. These FAQs are intended to answer your affected 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 citizens and their families (including those from outside the EU) 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**" also referred to as "indefinite leave to remain".
- 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**" (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 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 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 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 Settlement Scheme is based on the citizens' rights section of the UK government's [Withdrawal Agreement](#) with the EU. However, following the House of Commons' rejection of Prime Minister Theresa May's Brexit deal on 15 January 2019, leaving the EU outside the terms of this Withdrawal Agreement (including its guarantees for affected citizens) cannot be ruled out.

However, the [Department for Exiting the EU has confirmed](#) 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 on that date will still be able to stay by applying under broadly the same terms of the current Settlement Scheme providing they do so by 31 December 2020 (instead of 30 June 2021).

In the event the UK leaves the EU without concluding a deal, the UK government has confirmed that it will enact the Immigration and Social Security Co-ordination (EU Withdrawal) Bill to bring free movement to an end as soon as possible. This means that EU citizens and their family members arriving in the UK from 30 March 2019 will be subject to temporary transitional arrangements until 31 December 2020. Under these arrangements, those coming to the UK for short visits (work related or otherwise) will be able to enter the UK as they can now, and stay for up to three months for each entry. EU citizens who wish to stay for longer will need to apply to the Home Office for leave to remain within three months of arrival. Subject to identity, criminality and security checks, leave to remain will be granted for 36 months, which will include permission to work and study. Those who wish to stay beyond this period will need to apply under the UK's future immigration system, which is expected to be introduced from January 2021.

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

The Home Office's [Statement of Intent](#) explains that, subject to identity and criminality checks, EU 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, 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 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.

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?

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

- Prove their identity, in most cases, by scanning their EU passport (or UK residence card with a biometric chip for non-EU family members), using an app on an Android device with a near-field communication function and uploading a digital photo of themselves (documents can also be submitted by post).
- Complete a short online application using any computer, tablet or smartphone (this does not have to be the Android device 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 can usually be provided to applicants straight away). Those without a National Insurance number or whose tax or benefits records do not confirm their residence will be prompted 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).

According to the Statement of Intent, those who make a valid application under the Settlement Scheme will 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.

In the event of a "no-deal" scenario, EU citizens and their family members would need to be resident in the UK by 29 March 2019 (rather than 31 December 2020) to be eligible to apply under the Settlement Scheme.

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 I Apply for Settled or Pre-settled Status?

A public test phase of the Settlement Scheme is currently open to EU citizens and their families who hold a valid EU passport or biometric residence card. We are told that the Settlement Scheme will be fully open for applications from 30 March 2019. 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 (or 31 December 2020 in the event of no-deal).

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 (or 31 December 2020 in the event of no-deal) 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 the Spouse/Partner and Children of an EU Citizen Apply for Settled or Pre-settled Status at the Same Time?

Yes. Applications made by families at the same time will be considered together. EU 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 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 parent is or has been granted settled status.

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

The Statement of Intent indicates that Home Office 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.

Applicants who apply on or before 29 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 29 March 2019 may have a statutory right of appeal before an independent judge (although this is still subject to approval by the UK parliament). Anyone refused settled or pre-settled status will also be able to reapply before 30 June 2021 (or 31 December 2020 in the event of no-deal).

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

The UK government has recently announced that there will no longer be a fee for applying under the Settlement Scheme. However, for now, applicants will still have to pay a fee of £65 per person (£32.50 for children), which will then be refunded.

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

The Statement of Intent makes no commitment in relation to processing times, but we are aware of applicants participating in the live trials who have been granted status in a matter of 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 EU Citizens Prove Their Status to Future Employers?

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

The Home Office has not yet clarified how right to work checks for EU citizens and their families will be carried out after the transition period ends on 31 December 2020. It has indicated that those living in the UK before 31 December 2020 will not 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.

Can Status Be Lost Once It Has Been Granted?

The Statement of Intent indicates that 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 (although this is still subject to approval by the UK parliament).

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 if they want to qualify for settled status.

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

EU citizens with a permanent residence document will still need to apply for settled status before 30 June 2021 (or 31 December 2020 in the event of no-deal). Their application 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 for a continuous period of five years since acquiring permanent residence.

Can EEA Nationals Still Apply for a Permanent Residence Document Now?

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 (or 31 December 2020 in the event of no-deal). Nonetheless, 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 the Settlement Scheme is not currently open to all.

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. 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 is also a prerequisite for those who intend to apply to naturalise as a British citizen before being able to apply for settled status. For those who 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 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?

EEA nationals 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 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).

What Are the 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 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.

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.

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

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.

On 20 December 2018, the UK government confirmed it had reached agreements with Iceland, Liechtenstein and Norway, and with Switzerland, to address separation issues, including protecting the rights of EEA and Swiss citizens and their family members living in the UK. We are told that citizens of those countries will be able to apply under the Settlement Scheme from 30 March 2019 in the same way as EU citizens. The Home Office guidance relating to the Settlement Scheme has not yet been updated to reflect this.

What About UK Citizens Living in Other EU Countries?

As part of the 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 criteria and procedures similar to the Settlement Scheme. Some of those EU countries, including the Netherlands, Germany and Poland, have begun to indicate what steps UK citizens should take to regularise their immigration status, including in the event of the UK leaving the EU without a deal, but comprehensive procedural guidance for each EU country is not yet available. We will continue to update our guidance on this point as matters develop.

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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