The EU Settlement Scheme is now open for applications from EU citizens, citizens of European Economic Area (EEA) countries (Norway, Iceland, and Lichtenstein) and Switzerland, and their family members in the UK. However, many of those affected by Brexit remain uncertain about whether they will qualify for settled status or how and when to apply. 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, EEA and Swiss citizens and their families (including those from outside the EU, EEA and Switzerland) 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, EEA and Swiss 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, EEA and Swiss 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, EEA and Swiss 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).

- The UK government has said that EU, EEA and Swiss citizens and their families with settled status or pre-settled status will have broadly the same access as they currently do to public services such as healthcare and schools, public funds and pensions.

**What is the Effect of a Delayed Brexit and What if the UK Leaves the EU Without a Deal?**

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’ repeated rejection of Prime Minister Theresa May’s Brexit deal, leaving the EU outside the terms of this Withdrawal Agreement (including its guarantees for affected citizens) cannot be ruled out. In addition, the UK’s departure from the EU has now been delayed until 31 October 2019 or earlier if Theresa May can secure the support of the House of Commons for her Withdrawal Agreement before that date. In light of this, the UK government has confirmed that, in the event the UK leaves the EU in a “no-deal” scenario, those already resident in the UK on “exit day” 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 meantime, the EU Settlement Scheme website states “You will need to be living in the UK before it leaves the EU to apply. The deadline for applying will be 31 December 2020”.

In the event the UK leaves the EU without concluding a deal, the UK government’s Immigration Bill in its current form would enable it, amongst other things, to bring free movement to an end. This would mean that EU, EEA and Swiss citizens and their family members arriving in the UK between the UK’s exit date and 31 December 2020 would be subject to temporary transitional arrangements. Under these arrangements, those coming to the UK for short visits (work related or otherwise) would be able to enter the UK as they can now and stay for up to three months for each entry. EU, EEA and Swiss citizens who wished to stay for longer would need to apply to the Home Office for EU temporary leave to remain within three months of arrival giving 36 months’ permission to live, work and study in the UK. Those who wished to stay beyond this period would then need to apply under the UK’s future immigration system which is expected to be introduced from January 2021. The same Immigration Bill has recently been criticised in a report by the parliamentary Joint Committee on Human Rights (JCHR) for creating uncertainty for EU citizens and their families after Brexit in relation to housing, social security and other free movement rights. The JCHR has therefore proposed amendments to the Immigration Bill with the aim of ensuring that such rights are protected by primary legislation rather than through statutory instruments to be approved by ministers at a later date.

Irrespective of the date on which the UK leaves the EU, we expect the Settlement Scheme to remain open for applications. We do not yet know how a delay to the UK’s departure from the EU will affect the deadline for applying under the Settlement Scheme.
What Will the Qualifying Criteria Be for Settled and Pre-settled Status?

The Home Office guidance explains that, subject to identity and criminality checks, EU, EEA and Swiss 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, EEA and Swiss 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, EEA and Swiss 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.

Who Should Apply?

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

- EU, EEA and Swiss citizens
- Family members of EU, EEA and Swiss citizens who are not themselves EU, EEA or Swiss citizens
- EU, EEA and Swiss citizens and their family members who 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, EEA or Swiss 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, EEA and Swiss citizens and their family members in the UK will need to:

- Prove their identity, in most cases, by scanning their EU, EEA or Swiss passport (or UK residence card with a biometric chip for non-EU, EEA and Swiss family members), using the EU Exit: ID Document Check 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 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).

According to the Home Office, 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, EEA and Swiss citizens and their family members would need to be resident in the UK by the date on which it exits the EU (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 EU, EEA and Swiss Citizens Apply for Settled or Pre-settled Status?

EU, EEA and Swiss citizens and their family members in the UK should 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-year period, 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 (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.

In the event of a no-deal scenario, EU, EEA and Swiss citizens and their family members would need to be resident in the UK by the date on which it exits the EU (rather than 31 December 2020) to be eligible to apply under the Settlement Scheme.
Can Applications of the Spouse/Partner and Children of an EU, EEA and Swiss 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, EEA and Swiss 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, EEA and Swiss family members will need to provide evidence of their relationship with the EU, EEA or Swiss citizen and, unless that citizen has already been granted settled status, their valid passport or national identity card. Non-EU, EEA and Swiss family members may, therefore, prefer to apply once the relevant citizen has been granted settled status, as this is likely to make their application easier and quicker to approve.

Children of an EU, EEA and Swiss 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 Home Office has made no commitment in relation to processing times, but we are aware of applicants participating in the public test phase who have been granted status within the same day. 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, EEA and Swiss Citizens Prove Their Status to Future Employers?

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

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 two or (subject to approval by the UK parliament) 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, EEA and Swiss citizens and their family members 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), 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, EEA and Swiss Citizens 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).

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 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, 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, EEA and Swiss 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, EEA and Swiss 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, EEA and Swiss 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 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. EU, EEA and Swiss nationals with non-EU, EEA and Swiss 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, EEA and Swiss dependent family members who do not already have settled status or a permanent residence document. Until the UK leaves the EU, this risk is mitigated by the recent case of Toufik Loures 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, EEA and Swiss 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.

What About UK Citizens Living in Other EU and EFTA 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. The UK government has also reached agreements with 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. Some of those countries 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 country is not yet 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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