

# Guidance for EU workers on applying for settled status

January 2019

# I. Introduction

## I.1 Brexit and EU workers<sup>1</sup>

The right of freedom of movement dates back to the Treaty of Rome, which established the European Economic Community, in 1957. The Treaty of Rome established four fundamental freedoms of the common market: free movement of goods, services, capital and workers.

Currently, EU workers and their family members have extensive rights of free movement within the EU. They are able to move freely between all EU countries and the various national immigration laws do not apply to them.

The Office for National Statistics (ONS) has estimated, based on the Annual Population Survey in 2017, that there were 3.8 million EU nationals resident in the UK in 2017. This figure is for all EU nationals including those who are unemployed or economically inactive. The ONS estimate of the number of EU nationals working in the UK during the period July to September 2018, based on the Labour Force Survey, is 2.25 million.

At present, it is not possible to say with certainty what the effect of Brexit will be on EU workers. This guidance explains the current legal rights of EU workers in the UK, the possible rights which might be conferred if the Withdrawal Agreement is ratified, the Government's current plans for EU nationals and their families to have the right to apply for 'settled status' and the Government's proposed changes to the settled status scheme in the event of a no-deal Brexit (i.e. where the UK leaves the EU without any agreement on the terms of its withdrawal). It also looks briefly at the Government's proposed new immigration system.

## I.2 Countries where freedom of movement applies

The right of freedom of movement extends to nationals of those countries which are not part of the EU but are part of the European Economic Area (EEA): Iceland, Liechtenstein and Norway.

Switzerland is not a member of the EEA but the EU has concluded a separate agreement with Switzerland giving freedom of movement rights to Swiss nationals similar to those of other EEA states.

This means that, at present, nationals from the following countries have the right of freedom of movement:

*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.*

<sup>1</sup> This note is a summary of the position as it stands in mid-January 2019. It focusses on the position of workers and is not intended for use by students and self-sufficient persons.

The (non-legally binding<sup>2</sup>) Common Travel Area arrangements between the UK and Ireland allow Irish nationals to move freely into the UK from Ireland. Section 1(3) of the Immigration Act 1971 provides that arrival in the United Kingdom on a local journey from the Republic of Ireland shall not be subject to control under the Act but section 2 of the Act, which establishes rights of residence (abode) in the UK, does not mention Irish nationals. The UK Government has given assurances that Irish nationals will have a right of residence in the UK and that they will not be required to apply for settled status.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill includes a right for Irish citizens to be free to enter and remain in the UK without restriction (unless they are subject to a deportation order, exclusion order or international travel ban). Therefore, if the Bill is passed by parliament there should be no need for Irish citizens to apply for settled status (see also 2.8).

### **1.3 Current (pre-Brexit) legal rights of EU and EEA workers in the UK**

The relevant EU Directive is Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member states.

The UK has implemented the Directive into UK law in the form of the Immigration (European Economic Area) Regulations 2016, which also apply to Swiss nationals.

An EU/EEA national who is a 'qualified person' currently has a right to reside in the United Kingdom for as long as they remain a qualified person. In broad terms, for current purposes, a qualified person means:

- A worker – i.e. a person who has a job in the UK
- A self-employed person working in the UK
- A job seeker – i.e. a person who is genuinely looking for work in the UK and has a realistic chance of getting it
- A worker who is temporarily unable to work as the result of an illness or accident
- A worker who has become involuntarily unemployed (if the worker has not worked in UK for 12 months then he/she must have registered as a jobseeker or embarked on vocational training)
- A worker who has voluntarily ceased work and embarked on vocational training related to his/her previous employment
- A retired worker, subject to certain conditions.

After living in the UK for five years, EU/EEA nationals can currently acquire the right to reside in the United Kingdom permanently. This right applies to people in the following categories:

- An EU/EEA national who has lived in the UK, under the regulations, for a continuous period of five years
- A family member who has lived in the UK with an EU/EEA national, who is a qualified person, for a continuous period of five years
- A family member of an EU/EEA national who has died and who resided with the EU/EEA national immediately before the death provided that the EU/EEA national was a qualified person and had either resided continuously in the UK for at least two years before their death or died as a result of an accident at work or an occupational disease
- A person who has lived in the UK under the regulations for a continuous period of five years and was, at the end of that period, a family member who has retained the right of residence.

<sup>2</sup> Paragraph 8 of the 'Joint Statement Regarding Co-operation on Measures to Secure the Common Travel Area Border', made by the UK and Irish governments in December 2011, says 'This joint statement embodies the understanding of the participants. It is not intended to create legally binding obligations not to create or confer any right, privilege or benefit on any person or party, private or public'.

A family member means:

- A spouse, civil partner or a partner in a durable relationship
- Direct descendants i.e. children, grandchildren, great grandchildren etc. (of either the EU/EEA national or their spouse/civil partner) who are aged under 21 or parents, grandparents, great grandparents etc. who are dependent
- Extended family members who are dependent on the EU/EEA national (or their spouse or civil partner).

The right of permanent residence is lost if the person is then absent from the United Kingdom for more than two years.

#### **1.4 Brexit legislation: European Union (Withdrawal) Act 2018**

The Immigration (European Economic Area) Regulations 2016 were made under powers conferred by both section 2 (2) of the European Communities Act 1972 and section 109 of the Nationality, Immigration and Asylum Act 2002.

The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 with effect from 29 March 2019. However, section 2 of the European Union (Withdrawal) Act 2018 provides that any enactment (which is defined in section 20 to include regulations) made under section 2(2) of the European Communities Act 1972 is not affected by the repeal.

Therefore, the rights contained in The Immigration (European Economic Area) Regulations 2016 will remain in place after Brexit, unless and until the Government legislates to remove or alter them (see 1.8).

#### **1.5 EU Withdrawal Agreement**

The Withdrawal Agreement published by the Government on 14 November 2018 was approved by the EU on 25 November 2018. However, on 15 January 2019, the UK parliament voted overwhelmingly against accepting the Withdrawal Agreement.

Under the Withdrawal Agreement, there would be a transitional period, which would last until 31 December 2020 (and could be extended). During this period, EU law would still apply in the UK.

Section 13 of the European Union (Withdrawal) Act 2018 provides that the Withdrawal Agreement may be ratified only if an Act of parliament is passed containing provision for the implementation of the Withdrawal Agreement.

**Therefore, if parliament does not approve the Withdrawal Agreement, this section will no longer apply.**

Part Two of the Withdrawal Agreement deals with citizens' rights. It applies to all EU citizens and their family members lawfully residing in the UK by 31 December 2020. Family members means: spouses, civil and unmarried partners, dependent children, grandchildren etc. and dependent parents, grandparents, great grandparents etc.

EU citizens who have been living in the UK continuously and lawfully for five years by 31 December 2020 would have the right to reside permanently in the UK. Their family members would have the same rights. Family members not living in the UK on 31 December 2020 could join a person with settled status in the UK after that date, if the family relationship existed on 31 December 2020 and still exists. At present, it is likely that such family members would have to apply for settled status within three months of arrival in the UK.

EU citizens who have not yet resided continuously and lawfully for five years in the UK by 31 December 2020 would be able to stay until they reach the five year threshold, at which point they would have the right to reside permanently (subject to the UK's right to restrict the rights of serious or persistent criminals or those who seek to abuse or defraud the system).

EU citizens and their family members can apply for residence status through the EU Settlement Scheme. The right to reside permanently in the UK could only be lost through an absence from the country of more than five years unless it is restricted due to a person's conduct.

Under the terms of the Withdrawal Agreement, the UK would agree that:

- The application process adopted by the UK will be short, simple and user-friendly
- Applicants will not be required to present supporting documents that go beyond what is strictly necessary and proportionate
- Applicants will be helped to prove their eligibility and to avoid any errors in their applications
- Applicants will be given the opportunity to produce supplementary evidence and to correct any errors in their applications
- The Government will establish an independent monitoring authority to oversee the implementation and application of citizens' rights.

The Political Declaration setting out the framework for the future relationship between the EU and the UK says that the UK has decided that the principle of free movement of persons between the EU and the UK will no longer apply (see also section 1.8). However, the Government would need to legislate to change current UK law (see section 1.3). Any such change to UK law could not be made until after EU law no longer applies in the UK which is likely to be on 30 March 2019, if the Withdrawal Agreement is not approved, or on 1 January 2021 (subject to any agreed extension) if it is approved.

## **1.6 The Government's current plans: the EU Settlement Scheme**

On 21 June 2018, the Government published a document entitled '*EU Settlement Scheme Statement of Intent*' ([www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent](http://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent)) which set out details of the intended scheme. A pilot scheme took place in 2018. The public test phase of the scheme opened on 21 January 2019 and is expected to remain open until approximately 29 March 2019, but only for people in certain categories (see 3.3).

The EU Settlement Scheme will enable EU citizens and their families to apply for settled and pre-settled status.

**If the EU Withdrawal Agreement is not approved by parliament, then the Government intends to make some changes to the EU Settlement Scheme. Details of these proposed changes are set out in section 1.7.**

A person granted settled status can stay in the UK for as long as he or she likes and any children born in the UK, after the grant of settled status, will automatically be British citizens. Leaving the UK for a period of five continuous years would result in the loss of settled status.

Pre-settled status means that the person can stay in the UK for a further five years from the date of pre-settled status being granted.

Those with pre-settled status can apply for settled status as soon as they have lived in the UK for five years, provided they have spent at least six months of each year in the UK. More than two continuous years spent away from the UK would result in the loss of pre-settled status. Children born after pre-settled status is granted are automatically eligible for pre-settled status (unless the status of their other parent means that the child is a British citizen).

Those with settled and pre-settled status are entitled to work in the UK, use the NHS, enrol in education or continue studying and access public funds such as benefits and pensions.

However, while it says that they can apply, the EU Settlement Scheme does not currently provide any guarantee that those granted pre-settled status will actually be granted settled status when they have been in the UK for five years. Therefore, the rights of those who came to the UK after 31 December 2015, to remain here permanently, may depend on the EU Withdrawal Agreement being approved by parliament.

### **1.7 The Government's intentions in the event of a no-deal Brexit**

On 6 December 2018, the Government published a policy paper which says that, if there is no deal, then the EU Settlement Scheme will still be implemented but there will be some significant changes:

- To be eligible for the scheme, EU citizens would have to be resident in the UK by 29 March 2019 (21 months earlier than the arrangements provided for in the Withdrawal Agreement)
- The deadline for applying for status under the scheme would be 31 December 2020 (six months earlier than the arrangements provided for in the Withdrawal Agreement)
- Family members could still apply to come to the UK to join EU citizens in the UK after 31 December 2020 but only up until 29 March 2022 (there is no cut-off date in the Withdrawal Agreement)
- With the exception of children born during the period from 29 March 2019 to 29 March 2022, family members applying to come to the UK after 29 March 2019 would have to show that the relationship existed by 29 March 2019 (21 months earlier than the arrangements provided for in the Withdrawal Agreement)
- A new UK immigration system (see 1.8) would be implemented from 1 January 2021.

The policy paper says that, until 31 December 2020, EU citizens will continue to be able to rely on their passport or national identity card if they are asked to evidence their right to reside in the UK. It also purports, in the context of parallel rights for UK citizens living elsewhere in the EU, to offer some reassurance to EU citizens and their employers:

*'UK nationals who went to the EU and EU citizens who came to the UK before the UK's exit from the EU did so on the basis that they would be able to settle permanently and build a life here, or in the EU. That is why the UK has taken steps to remove any ambiguity and provide complete reassurance for EU citizens in the UK. We ask that the EU and Member States do the same for our nationals.'*

However, the policy paper has no legal status and, in the event if a no-deal Brexit, it would be possible for the Government to adopt a different policy. Any such change would require legislation to change current legal rights (see section 1.3) and could not be implemented until after the UK leaves the EU.

Therefore, EU citizens who can show that they have been continuously resident in the UK since, at least, 30 March 2014 (five years before the UK is due to leave the EU in a no-deal scenario) will have a legal right to remain in the UK permanently under the Immigration (European Economic Area) Regulations 2016, regardless of any changes in Government policy.

However, regrettably, the position of those EU citizens who arrived in the UK after 30 March 2014, some of whom will have arrived before the UK's referendum on leaving the EU even took place, is currently less certain.

### **1.8 The proposed new UK Immigration system**

A detailed review of the proposed new 'Future skills-based immigration system' is beyond the scope of this note.

The Government's executive summary, published on 19 December 2018, says that:

- Up until 30 December 2020, EU citizens will be able to enter and reside in the UK under the current rules
- The Government will introduce the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which will end freedom of movement for EU citizens with effect from 1 January 2021
- The new UK immigration system will come into operation on 1 January 2021
- One of the objectives of the new scheme will be to reduce annual net migration to sustainable levels as set out in the Conservative Party manifesto (i.e. tens of thousands)
- The future system will apply in the same way to both EU and non-EU citizens but there will be an exception where there are objective grounds to differentiate, for example in the context of a trade agreement or on the basis of risk
- A proposed visa route, enabling EU workers to apply to come and work in the UK, will open in autumn 2020
- There will be a year of 'extensive engagement' with business before the new Immigration rules are published.

The Government is proposing to end the UK's obligations, under EU treaties, in relation to free movement of EU citizens but still, presumably, hopes to negotiate a trade deal with the EU. However, at the same time, the Government is acknowledging that future trade agreements with other countries may mean that the citizens of that country acquire a greater degree of freedom of movement within the UK. On the face of it, there appears to be some inconsistency in the Government's approach.

The remainder of this note looks at the detail of the Government's EU Settlement Scheme. Section 2 looks at how the scheme works and section 3 looks at the application process itself.

## 2. Settled status: questions about the scheme

### 2.1 What is settled status?

Settled status means that you can stay in the UK for as long as you like. You can work in the UK, use the NHS, enrol in education and access state benefits. Any children born in the UK after you are granted settled status will automatically be British citizens.

You should be able to spend up to five years in a row outside the UK without losing your settled status. How long you can live outside the UK is still subject to approval by parliament.

### 2.2 Who can apply for settled status?

To be eligible for settled status you will normally need to:

- Be an EU citizen (or an EEA or Swiss citizen) or a family member of an EU citizen (or EEA or Swiss citizen)
- Have started living in the UK by 29 March 2019 (31 December 2020 if the Withdrawal Agreement is signed)
- Have lived in the UK for a continuous five year period.

The UK has reached a separate agreement, on the application of the settled status scheme, with EEA countries (Iceland, Liechtenstein and Norway) and with Switzerland. However, citizens from these countries will not be able to apply until the scheme opens fully.

For ease of reference, the term 'European citizen' has been used in the remainder of this document to mean EU citizens, EEA citizens and Swiss citizens.

### 2.3 What does a continuous five-year period mean?

It means that, for five years in a row, you have been in the UK for at least six months of every year.

### 2.4 Are there any exceptions to the five-year requirement?

Children of European citizens (including children of the European citizen's spouse or civil partner) who are under 21 and continuously resident in the UK will be eligible for settled status, if their parent is granted settled status, without the child having to meet the five year residency requirement.

There are exceptions allowed for certain absences from the UK. These are:

- One period of up to 12 months for an important reason (such as childbirth, serious illness, study, vocational training or an overseas work posting)
- Compulsory military service of any length.



If you are a European citizen and you have to stop working permanently because of an accident or illness, you and your family members may be able to get settled status if either:

- You have lived continuously in the UK for the two years immediately before you had to stop work
- The permanent incapacity was the result of an accident at work or an occupational disease that entitles you to a pension from a UK institution.

If you are a European citizen you and your family members may be able to get settled status if you reach State Pension age and either:

- You worked continuously or were self-employed for one year before reaching State Pension age and you have lived continuously in the UK for three years
- Your spouse or civil partner is a British citizen.

If you are a European citizen, you and your family members may be able to get settled status if you retire early and either:

- You worked continuously (for someone other than yourself) for one year before retirement and have lived continuously in the UK for three years
- Your spouse or civil partner is a British citizen.

If you're a European citizen you and your family members can get settled status if you start work or self-employment in another EU country and you both:

- Have lived and worked or been self-employed in the UK continuously for three years beforehand
- Usually return to your UK home once a week.

If your family member worked or was self-employed in the UK at the time of their death, you may be eligible for settled status. You must have been living with them just before their death and either:

- They lived continuously in the UK for at least two years before their death
- Their death was the result of an accident at work or an occupational disease.

## **2.5 What is pre-settled status?**

Pre-settled status means that you can stay in the UK for a further five years from the date you get pre-settled status. You can work in the UK, use the NHS, enrol in education and access state benefits.

Once you have lived in the UK for five continuous years, you can apply for settled status. If the Withdrawal Agreement is approved, you will have a right to settled status (subject to exceptions for criminality or abuse of the system). It is currently unclear what the position will be if the Withdrawal Agreement is not approved.

Any children born in the UK after you have got pre-settled status will be automatically eligible for pre-settled status (if they are not already a British citizen through their other parent).

## 2.6 Who can apply for pre-settled status?

To be eligible for pre-settled status you will normally need to:

- Be a European citizen or a family member of an European citizen
- Have started living in the UK by 19 March 2019 (31 December 2020 if the Withdrawal Agreement is signed).

## 2.7 Which family members of European citizens can apply?

Family members who are European citizens can apply for settled status in their own right. This section is likely to only be relevant for family members who are not European citizens.

You can apply if you are a spouse, civil partner or an unmarried partner. If you are an unmarried partner, you have to be in a durable relationship, normally this means living together in a relationship similar to marriage for at least two years but it can also apply where there is other significant evidence of a durable relationship.

You can also apply if you are related to a European citizen, their spouse or civil partner as their:

- Child, grandchild or great-grandchild under 21 years old
- Dependent child over the age of 21
- Dependent parent, grandparent or great-grandparent
- Dependent relative with a residence card<sup>3</sup> to prove the relationship
- Former spouse or civil partner if you were resident in the UK at the time of the termination of the marriage/civil partnership and you meet one of the conditions set out below.

Child includes adopted children and children born through surrogacy (where recognised in UK law).

Dependent means that, taking into account their financial and social conditions or health, the family member cannot meet their essential living needs without financial or material support from the European citizen (or the European citizen's spouse or civil partner).

If you are the former spouse or civil partner of a European citizen, you must meet one of the following conditions:

- Before the termination proceedings started, the marriage/civil partnership had lasted for at least three years and both of you had been continuously resident in the UK for at least one year during the marriage/civil partnership
- You have custody of a child of the European citizen
- You have the right of access to a child of the European citizen, where the child is aged under 18 and a court has ordered that the access must take place in the UK
- Your continued right of residence is warranted by particularly difficult circumstances, such as where you or another family member has been a victim of domestic violence or abuse during the marriage or civil partnership.

<sup>3</sup> Currently, extended family members of EU citizens who are from outside the EEA and not from Switzerland need to have a residence card to prove that they can live in the UK.

## 2.8 Who does not need to apply?

- Home Office guidance says that Irish nationals do not need to apply because the rights of Irish citizens are protected under the UK-Ireland Common Travel Area arrangements (although they can still apply for settled status if they wish). This guidance reflects assurances given by the UK Government and the provisions of the Immigration and Social Security Co-ordination Bill (see section 1.2). However, as the Common Travel Area arrangements are not legally binding there is (unless the Bill becomes law) no clear right of residence (other than their rights as EU nationals) for Irish nationals contained within UK legislation. If you are an Irish national, and you would prefer not to wait for the Bill to pass through parliament, you have the option to apply for settled status if you wish. You can check on the progress of the bill at <https://services.parliament.uk/Bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal.html>.
- Non-EU nationals who already have indefinite leave to enter or remain in the UK.

## 2.9 I am a European citizen and I already have valid permanent residence document<sup>4</sup>. Do I still need to apply for settled status?

Yes, your permanent residence document will not be valid after 31 December 2020 and so you will still need to apply for settled status.

## 2.10 I am not a European citizen and I have indefinite leave to remain. My wife is a European citizen. Do I still need to apply for settled status?

You do not have to apply but you can choose to apply if you wish. You will not have to prove five years' continuous residence.

## 2.11 Will I get a document to prove my settled or pre-settled status?

Generally, no. If you are granted settled status or pre-settled status, you will get a letter confirming that your application has been successful. However, the letter will say that it is not proof of your status. At the time of writing, your status can only be confirmed online through the Home Office online checking service: <https://www.gov.uk/government/publications/eu-settlement-scheme-view-and-prove-your-rights-in-the-uk/view-and-prove-your-rights-in-the-uk>.

You will not get a physical identity document unless you are from outside the EU and you do not already have a biometric residence card.

<sup>4</sup> Currently, EU citizens in the UK can apply for a permanent residence document after five years in the UK

## 3. Applications for settled status: the application process

### 3.1 When can I apply?

The EU Settlement Scheme is expected to be fully open by 30 March 2019.

**THE FINAL DEADLINE FOR APPLYING WILL BE 31 DECEMBER 2020 (IF THE WITHDRAWAL AGREEMENT IS SIGNED THEN THE DEADLINE WOULD BE EXTENDED TO 30 JUNE 2021).**

It may be possible to apply after this date, but only if you are joining a family member with settled or pre-settled status in the UK (in which case it is likely that you will have three months, from the date of your arrival in the UK, to apply).

### 3.2 When is the best time to apply?

The Home Office website suggests that it may be simpler and quicker for you if you do not apply as soon as the scheme opens. It is not possible at this stage to say whether or not this is good advice because we do not know when the busiest times for applications might be nor how efficiently the scheme will operate. Certainly, it is likely to be inadvisable to wait until close to the deadline on 31 December 2020 (if the Withdrawal Agreement is signed the deadline will be extended to 30 June 2021) before applying.

If you have not yet been living in the UK continuously for five years but you will reach the five-year threshold before 31 December 2020 (30 June 2021 if the Withdrawal Agreement is signed), then you may wish to wait until you reach the five year threshold, so that you can apply for settled status straight away (i.e. without first having to apply for pre-settled status.)

However, if you will not have been living in the UK continuously for five years by 31 December 2020 (30 June 2021 if the Withdrawal Agreement is signed), i.e. if you first came to the UK after 1 January 2015 (30 June 2016 if the Withdrawal Agreement is signed) or if you came here before then but have not been in the UK for five years in a row due to being abroad for six months or more, then you must apply to get pre-settled status.

You will then be able to apply for settled status once you have been living in the UK continuously for five years.

The Home Office website advises that, if you're applying as a non-European citizen family member of a European citizen, you will probably get a decision more quickly if you apply at the same time as or after your family member. If the European citizen has already made an application, you can enter their application number to link your application to theirs.

### **3.3 Can I apply early?**

Up until 29 March 2019, the public test phase of the scheme will be open but (at the time of writing) only for certain categories of people i.e. European citizens with a valid passport and non-European citizen family members holding a valid biometric residence card (European citizens will not be able to apply using a biometric national identity card until the scheme is fully open). Nationals of Iceland, Liechtenstein, Norway and Switzerland are not eligible to apply until the scheme opens fully.

### **3.4 Do I have to apply online?**

Yes. The Government has said that consideration is being given to the option of a paper application form but, at the time of writing, no further information is available. You should be able to complete the online application form using your phone or any device which can access the internet. The website address is: [www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status](http://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status).

Documents (other than your identity document) which support your application, such as evidence of residence (see 3.13), can be scanned in and submitted online. Original documents will only be required if the Home Office has reasonable doubt about the authenticity of the scanned document.

### **3.5 What if I need help using the online application system?**

You should be able to get support over the phone or in person if you need help doing things online. The phone number to access support with using the online application system is 03333 445 675. Phone lines are open Monday to Friday from 9am to 5pm. You can also text the word 'VISA' to 07537 416 944.

### **3.6 What if I don't have access to the internet?**

Face-to-face support is available at various centres and home visits can be organised in some areas. You should be able to arrange this by calling 03333 445 675.

### **3.7 Do I have to pay a fee?**

On 21 January 2019, the Government announced that the proposed application fees would be scrapped. Therefore, you do not have to pay a fee to apply for settled status.

However, the online application system has not yet been changed. Therefore, it is possible that, if you choose to apply before the scheme opens fully on 30 March 2019, you will have to pay a fee, which will be refunded later. The (refundable) fees are:

- £32.50 for children under the age of 16
- £65 for those over the age of 16 (who do not already have a document certifying permanent residence or indefinite leave to remain).

Anyone who applied during the pilot scheme and paid a fee will have their fee reimbursed.

### 3.8 Do I need to provide all my contact details?

It is sensible to provide at least two different ways in which you can be contacted during the day (e.g. daytime telephone number and email address).

The Home Office has a duty to try to contact you if more information or evidence is needed. If the Home Office tries to contact you, but you do not reply within two weeks, then your application could be rejected.

### 3.9 What will I need to apply?

When you apply you'll need proof of:

- Your identity
- Your residence in the UK, unless you have a valid permanent residence document, or valid indefinite leave to remain or enter the UK
- Your relationship to a family member from the EU living in the UK, if you're from outside the EU.

### 3.10 How do I prove my identity?

You will need a valid passport or national identity card. If you're from outside the EU, you can use a valid passport or biometric residence document.

The online application system allows some users to scan their identity document (biometric passport or residence card) using an app called 'EU Exit: ID Document Check', which is available from Google Play. This will only work if your document is a biometric document with a chip (indicated by a rectangular gold symbol that looks like a camera). Guidance on how to do this can be found at [www.gov.uk/guidance/using-the-eu-exit-id-document-check-app#check-if-you-can-use-the-app-on-your-device](http://www.gov.uk/guidance/using-the-eu-exit-id-document-check-app#check-if-you-can-use-the-app-on-your-device).

However, at present, it is only possible to scan identity documents using an android (such as Samsung, Google or Sony) phone or tablet with NFC (Near-Field Communication). The Government has previously said that it has raised the issue with Apple and it is being looked at. However, at the time of writing, the problem has still not been resolved.

At present, if you do not have a suitable android device, your options are either to borrow a suitable android device or to make an appointment to visit an identity document scanner location, which you can do at [www.gov.uk/government/publications/eu-settlement-scheme-id-document-scanner-locations/locations-offering-chip-checker-services](http://www.gov.uk/government/publications/eu-settlement-scheme-id-document-scanner-locations/locations-offering-chip-checker-services). There may be a charge for this service.

Once the scheme is fully open, it will be possible to send your original identity document to the Home Office by post. The Home Office says that it will return identity documents as soon as it can.

You will also need to upload a recent passport-style digital photo of your face. This should not be the same picture as the one in your passport.

If you do not have a biometric identity document then you will need to wait until the scheme opens fully and then go to an application centre to provide your fingerprints and a photograph of your face.

### **3.11 How do I prove that I have been continuously resident in the UK for five years?**

You will need to prove you have lived in the UK for five consecutive years and that you have been in the UK for at least six months in each of those years.

You can give your National Insurance number when you apply to allow an automated check of your residence based on tax and certain benefit records.

If this check is successful then you will not need to provide any documents as proof of residence. You should see the result of the check straight after you apply. If the check is not successful, then you will need to provide documents to prove residence in the UK.

You should be able to submit photos or scans of your documents through the online application form. You will only need to provide one piece of evidence for each period of residence in the UK.

### **3.12 What if the results of the automatic check are that I have been resident in the UK for less than five years?**

If you agree that you have been resident in the UK for less than five years, then you can apply for pre-settled status.

If you don't agree with the results, then you can choose to submit documentary evidence to show that you have been resident in the UK for five years so that you can be considered for settled status.

### **3.13 What documents do I need to prove that I have been resident in the UK?**

All the documents you provide must be dated and should have your name on. A document with a single date on it will count as proof of evidence for that month. You should only provide one piece of evidence per month.

The Home Office suggests, if possible, choosing documents showing more than one date, as these can cover a longer period of time such as:

- Annual bank statement or account summary, showing at least six months of payments received or spending in the UK
- Dated and signed letter from an employer confirming dates of employment and evidence that the employer is genuine (for example their Companies House number)
- Annual business accounts for a self-employed person
- P60, which shows the tax you've paid on your salary in the tax year (6 April to 5 April). If you provide a P60, the Home Office may ask you for additional evidence to confirm that you were resident here for at least six months of that period.
- A P45 showing the length of your previous employment
- Council tax bills
- Dated and signed letter from a registered care home confirming the period of residence in that home
- Residential mortgage statements or rental agreements and evidence of payment
- Employer pension contributions
- Dated and addressed council tax bill.

If this is not possible, you can provide documents with a single date on them such as:

- Bank statements showing payments received or spending in the UK
- Pay slips for a UK-based job
- Dated invoice for work you have done in the UK and evidence of payment
- Water, gas or electricity bills which show a UK address
- Landline or mobile telephone, TV or internet bills showing a UK address
- Domestic bills, such as for home repairs, vet's services or insurance, and evidence of payment
- Cards or letters from your GP or other healthcare professional confirming appointments you have made or attended
- Letters from Government departments, other public services or charities that show you dealt with them on a particular date or for a particular period (for example Job Centre Plus or Citizens Advice)
- Passport stamps confirming entry at the UK border
- Used travel tickets confirming you entered the UK from another country.

Documents with a single date on them will only be valid for the month in which the document is dated. Therefore, you will need more of them. For example, if you are relying on monthly bank statements then you will need at least six bank statements to show residence for each 12 month period.

The documents listed above are only examples and other documents which show that you were living in the UK on a particular date may also be acceptable. The Home Office has said that it recognises that some applicants may lack documentary evidence in their own name and it will work flexibly with applicants to help them evidence their continuous residence in the UK.

### **3.14 Are there any kinds of documents which are not acceptable as evidence of being in the UK?**

The documents should come from an official or independent source. For example, the Home Office has said that it will not accept:

- Character references or testimonials from family and friends
- Photographs of a wedding or other special occasion
- Greeting cards such as birthday cards
- Postcards sent or received
- Personal scrapbooks.

### **3.15 What if I want to rely on one of the exceptions to the continuity of residence requirement?**

You will need evidence to show that the exception applies to you to you. If you were away from the UK for a period of between 6 – 12 months, the evidence you will need depends on the reason for your absence:

- Due to pregnancy or serious illness – a letter or other records from a qualified medical professional
- Due to studying, training or an overseas posting – a letter or other records from the educational establishment where you studied or from your employer
- Due to compulsory military service – a letter or other records from the relevant Government body.



If you are relying on one of the retirement exceptions, you will need:

- Evidence of your retirement - such as a relevant HMRC form, a letter from your employer or pension statements
- Evidence of employment in the UK for at least 12 months before retirement – such pay slips or a letter from your employer
- Evidence that you were continuously resident in the UK for three years (see section above regarding evidence of continuous residence).

If you are relying on permanent incapacity, you will need:

- Evidence of being continuously resident in the UK for two years (see section above regarding evidence of continuous residence)
- Evidence of your permanent incapacity to work - such as a letter from your hospital consultant
- Evidence of an accident at work or an occupational disease work - such as a letter from your hospital consultant)
- If you have an occupational disease, evidence that the occupational disease entitles you to a pension payable from a UK institution - such as a letter from the pension provider or pension statements.

If you are relying on being a worker in another EU country who has retained a place of residence in the UK you will need:

- Evidence that you were continuously resident in the UK for three years (see section above regarding evidence of continuous residence)
- Evidence that you were a worker in the UK for at least three years - such as pay slips or a letter from your employer
- Evidence of retaining a place of residence in the UK, such as utility bills
- Evidence that you return to this place of residence at least once a week, such as travel tickets.

If you are relying on being a family member of a relevant European citizen who has died, you will need:

- A copy of the European citizen's death certificate
- Evidence that you lived with the European citizen in the UK at the time of their death (see section above regarding evidence of continuous residence but you will only need documents showing that you both lived at the same address at the time of the person's death)
- Evidence that the European citizen was resident in the UK as a worker at the time of their death - such as pay slips or a letter from the employer
- Evidence that the European citizen was continuously resident in the UK for a period of at least two years before their death (see section above regarding continuous residence) or that the death was the result of an accident at work or an occupational disease - such as a letter from a qualified medical professional or other medical documents.

### **3.16 What happens if I have criminal convictions?**

If you are 18 or over you'll be asked about your criminal history in the UK and overseas. You'll also be checked against the UK's crime databases.

If you have only been convicted of a minor crime, for example you've had a speeding fine, you will still be eligible for settled or pre-settled status.

You may still get settled or pre-settled status even if you have other convictions. This will be judged on a case-by-case basis.

If you have been to prison, you will usually need at least five years' continuous residence from the day you were released to be considered for settled status. The only possible exception is where you have resided in the UK continuously for at least 10 years and you have integrating links with the UK (such as family and social ties and employment history) which were not broken by imprisonment.

### **3.17 I am not a European citizen but I am applying as a family member of a European citizen. What evidence do I need?**

If you do **not** have a valid permanent residence document, then you will also need to provide:

- Evidence of your European citizen family member's identity and 5 years continuous residence (see section on continuous residence above)
- If you are aged over 21, evidence that you have been continuously resident in the UK for five years (see section on continuous residence above)
- Proof of your relationship to your European citizen family member - for example, a birth, marriage or civil partnership certificate.
- If you do not have a biometric residence card or a biometric residence permit then you will need to provide your fingerprints and a photo of your face at an application centre in the UK.

If you are an unmarried partner, you will need a residence card and evidence of a durable partnership, normally evidence that you have lived together for at least two years. This could take the form of: bank statements or utility bills in joint names at the same address, rental agreements, mortgage contracts or official correspondence sent to both of you at the same address. Current Home Office guidance indicates that other significant evidence of a durable relationship, such as evidence of the joint responsibility, for a child will be sufficient. This evidence could take the form of the child's birth certificate or a custody agreement showing that you are co-habiting and sharing parental responsibility.

Dependent children over 21 (but not parents or grandparents) will need evidence of their dependency. This might take the form of bank statements showing money transfers from the European citizen (or their spouse or civil partner) or documents showing that the dependent child is in full-time education.

Where your application is being made because of the death of a person, you will normally need a copy of their death certificate.

### **3.18 What if I make a mistake in my application?**

The Home Office should contact you before making a decision on your application, so that you can correct the error. They should also tell you if you need to provide more evidence before they can make a decision.

The Home Office guidance says that caseworkers should make three attempts in total, over a minimum period of three weeks, to contact you by at least two different methods (if you have provided the relevant contact details), in order to give you a reasonable opportunity to correct the mistake and/or provide more evidence.

It is important that you check your emails (including your junk folder) regularly and respond promptly to any request for further information or clarification. If you do not respond within two weeks of the Home Office attempting to contact you, then your application could be rejected.

### **3.19 What if I already have an outstanding immigration application?**

When you apply under the EU Settlement Scheme any other immigration application you have with the Home Office will not be considered.

You will get a refund of any fees paid for your outstanding application.

### **3.20 What if my application is not successful?**

You may be able to apply for an administrative review of the decision. You can apply for an administrative review if either:

- Your application was refused because you did not meet the requirements for settled status/pre-settled status but you believe that you do
- You were granted pre-settled status but you think you qualify for settled status.

You cannot apply for a review if your application was refused because you are going to be or have been removed, deported or excluded from the UK.

If you applied after 29 March 2019, then you may be able to appeal the decision. The right of appeal is still subject to approval by parliament.

### **3.21 Is there a limit on the number of times I can apply for settled status/pre-settled status?**

No. You can re-apply as many times as you want to before 31 December 2020 (30 June 2021 if the Withdrawal Agreement is signed).

### **3.22 What is the process for applying for an administrative review?**

You will need to complete the administrative review application form online. You have to use a separate form for each person applying for a review. Separate forms have to be completed for each child.

You have to submit your documents within 10 working days of submitting your online application. If you do not do this, your application may be rejected.

### **3.23 Is there a fee for an administrative review?**

There is a fee of £80 per person. The fee will be refunded if either:

- Your application for a review is successful, because the decision maker made a mistake with the original application
- Your application for a review is rejected because it's invalid.

If the original decision is upheld then the fee will not be refunded.

If the application is successful due to new evidence then the fee will not be refunded. Therefore, if you are relying on new evidence, then you should consider making a fresh application for settled status/pre-settled status, instead of applying for an administrative review, as (after the scheme opens fully) no fee will be payable.

### **3.24 Is there a deadline for applying for an administrative review?**

You must make your application within 28 days of the date on your decision email.

### **3.25 What if I have other questions about the scheme?**

You can contact the EU Settlement Resolution Centre, which is open from 8am to 8pm Monday to Friday and from 9.30am to 4.00pm at weekends. The number is 0300 123 7379 (or 0203 080 0010 from outside the UK).

Organisations helping others to apply can ring 0300 790 0566.