

# Brexit and “settled status”

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## WHAT IS BREXIT?

Brexit is the popular term for the process of the UK leaving the EU, as a result of the referendum held on 23 June 2016.

In March 2017, Prime Minister Theresa May gave official notice to the EU of the UK's intention to leave the EU – referred to as the Article 50 notice. This was the start of a two-year negotiation process to agree the terms under which the UK would leave, and what its future relationship with the EU would be.

The UK has been a member of the EU since 1973. This means that many structures, arrangements and agreements in place as part of the UK's membership of the EU become redundant when the UK leaves the EU. New structures, arrangement and agreements need to replace these, which will come under UK law, not EU law.

## IMPACT OF BREXIT ON EU NATIONALS LIVING IN THE UK

Brexit impacts those who hold passports of the other 27 European Union (EU) countries, as well as citizens of non-EU countries like Norway, Liechtenstein and Iceland (also known as EEA countries) and Switzerland, who settled here under Freedom of Movement rights. Europeans resident in the United Kingdom (UK) under Freedom of Movement will see their residence status change when the UK leaves the EU. The UK Government has agreed with the EU a new status for these residents, to allow them to continue living and working in the country. This new residence status is called “Settled Status”. **EU27 citizens resident in the UK will need to apply for this through a process managed by the Home Office of the UK Government.**

## WHAT ARE SETTLED STATUS AND PRE SETTLED STATUS?

EU regulations for Freedom of Movement will no longer apply to the UK after December 2020, so the UK Government is making it compulsory for EU citizens, along with their family members, who wish to remain legally in the UK after 31 December 2020, to apply for a new residence status. This is called “Settled Status” and it grants Indefinite Leave to Remain (ILR) to successful applicants.

The UK Government and the Home Office have stated that they expect the vast majority of applicants will be successful, with only very few exceptions related to convictions for serious crimes. **You will have to provide evidence that you have lived in the UK for five consecutive years (continuous residence) to be eligible for Settled Status when you apply.** If you can't, but have entered the UK on or before 31 December 2020, you may be granted pre-Settled Status. Pre-Settled Status can be changed to Settled Status once you have five years of continuous residence in the UK.

There are some exceptions, for instance for people who hold Permanent Residence (PR) or Indefinite Leave to Remain.

The timelines will be different in a ‘no deal’ scenario, and so as yet, firm advice in this regard is not available. This information uses the timelines proposed in the draft Withdrawal Agreement.

## THE APPLICATION PROCESS

The Settled Status application process is open from 30 March 2019 until the end of the grace period (six months after 31 December 2020), which is 30 June 2021 and is now free of charge.

## WHY WOULD YOU NEED TO APPLY?

Settled Status guarantees your right to reside in the UK after 30 June 2021, which is the end of the six month grace period (after the 31 December 2020 deadline for applications to be submitted). If you are an EU citizen and you want to continue to live and work in the UK, to have the same access to benefits, public services and healthcare, the right to study and rent accommodation after 31 December 2020, you will need this new status. If you are a family member whose status in the UK is reliant on the free movement rights of an EU citizen, or an EEA citizen from Norway, Liechtenstein, or a citizen of Iceland or Switzerland this will also apply to you and you must apply, even if you yourself are not a citizen of any of these countries.

## WHO NEEDS TO APPLY FOR SETTLED STATUS?

If you and your family members are citizens from any of the 27 EU states (EU27) and live in the UK, you will all have to apply. This includes Third Country Nationals – whose immigration status is dependent on an EU27 family member.

This does not apply to Irish citizens, or EU citizens who have Indefinite Leave to Remain (ILR) or Indefinite Leave to Enter the UK (ILE), but they may still want to apply. People with a valid Permanent Residence (PR) document will need to exchange this for Settled Status as their document will become invalid after 31 December 2020.

The Home Office has stated that if you hold British nationality in addition to that of a EU27 country, which is known as Dual Nationality, you will not be able to apply for Settled Status, although certain rights protected under the Withdrawal Agreement may still apply to you. Close family members are able to join you in the UK and family members of so-called Lounes dual nationals can apply under the settlement scheme.



## CAN I APPLY FOR SETTLED STATUS OR PRESETTLED STATUS?

If you have been continuously resident for five years or more you can apply for Settled Status. 'Continuous' means that you must not have left the UK for more than six months in any calendar year during the five-year period, although longer absences are permitted under some limited circumstances.

In the application process you will be asked to confirm your identity, provide evidence of the length of your stay in the UK and be asked to declare any serious criminal convictions.

If you have lived in the UK for less than five years by the end of December 2020, you will be able to apply for pre-Settled Status. Once you reach five years of continuous residence, you will then be able to apply for Settled Status.

## WHAT IF YOU HAVE PERMANENT RESIDENCE OR INDEFINITE LEAVE TO REMAIN?

Settled Status is in effect Indefinite Leave to Remain. People who have Indefinite Leave to Remain or Indefinite Leave to Enter the UK already have the right to remain in the UK. However, you might wish to apply for Settled Status to obtain the additional rights agreed under the Withdrawal Agreement, such as the right to a five-year absence and the right to be joined by eligible family members. It is also easier to demonstrate your right of residence with Settled Status than with ILR.

People who hold a valid Permanent Residence document will have to exchange this for Settled Status, as the Permanent Residence status will become invalid on 31 December 2020. The document however may still be relevant, as evidence of the nationality of British born children, for instance, so needs to be retained by you. During the application process you can indicate whether you have Indefinite Leave to Remain or Permanent Residence.

If you held ILR and cannot provide proof of this if, for instance, you have lost your documents or they have been destroyed for some reason, and you arrived in the UK before 31 December 1988, you may also be able to apply under the Windrush Scheme.

You will need to declare that you have not been absent from the UK for any periods of more than two years (Indefinite Leave to Remain or Indefinite Leave to Enter) or five years (Permanent Residence). However, you will not need to provide evidence of the length of your stay in the UK.



## IMPACT ON IRISH CITIZENS

Irish citizens have a right of residence in the UK that is not reliant on the UK's membership of the EU and are considered 'settled' from the moment they took residence in the UK. They will therefore not be required to apply for the new status under the scheme, although they are not excluded from doing so if they so wish. Family members of Irish citizens who are EU citizens or non-EEA nationals will need to apply for Settled Status.

Eligible family members of Irish Citizens living in the UK from non-EU countries will be able to obtain Settled Status under the scheme without the Irish citizen doing so.

## GETTING ADDITIONAL HELP

The Home Office is aware that there are many reasons why people will not have easy access to information, or are not able to understand or navigate through the system without assistance. They may not have access to computers or know how to use one, they may have a limited understanding of the English language, or may have a disability or other health issues that prevent them from engaging with the application process easily or without support. For people who are unable to access online services, or find this difficult, an Assisted Digital service will be offered. This Assisted Digital support can include telephone support, face-to-face support at selected libraries or at home for anyone unable to access either of these services.

## WHAT IF YOU HAVE DUAL CITIZENSHIP?

For EU27 nationals who also have a British passport nothing will change. As you are a British National, you will continue to be able to access the same rights as now without the need to apply for Settled Status. You may still retain the rights agreed in the draft Withdrawal Agreement although the UK Government has not yet provided details of how dual citizens will prove their entitlement. See the 'Can I apply for British Citizenship' section for more details.

## IMPACT ON NON EU FAMILY MEMBERS/DEPENDANTS

Proof of your relationship to your EU citizen family member (for example, a birth, marriage or civil partnership certificate) can be scanned and submitted through the online application form. You will also need to provide evidence of your family member's identity and residence and your fingerprints and a photo of your face at an application centre in the UK, unless you already have a biometric residence card.

EU Citizens who are resident in the UK by 31 December 2020, can be joined by current family members, even if these are not EU citizens themselves. This is also the case for those who obtain or have obtained British citizenship in addition to the citizenship of the country of their origin. They will retain the rights that allow them to be joined automatically by a current non-EU family member after 31 December 2020. This follows the judgment in the Lounes case. UK citizens may not have this automatic right.

This does not apply to British Citizens who have obtained an EU27 passport (including Irish), to enable them to retain the right to Freedom of Movement in the EU, but still reside in the UK. As they did not immigrate into the UK and are not considered to have exercised their treaty rights and will be treated as a British citizen for this purpose.

## HOW TO APPLY?

Applications can be completed online and the Home Office has released a mobile phone app to support the application process. The app is functional on smart phones with Android 6.0 or above. You will be able to scan your passport and it can read the chip with biometric data. The iPhone app will not be able to scan your passport or biometric ID, but ID document scanning services are available at a number of centres (although charges may apply). You can also send your ID documents by post. Please check if you can use the app on your particular phone.

Applications will mostly be done via the app or online. Paper applications are possible, but will be limited and there is no detailed information available at this stage about this. Paper applications will require that you send your ID card or passport by post, or you may be able to have them verified at dedicated centres. For people who are unable to access online services, or find this difficult, an Assisted Digital service will be offered. Assisted digital support can include telephone support, face-to-face support at selected libraries or at home for anyone unable to access either of these services.

## WHAT DOCUMENTS/OTHER INFORMATION WILL I NEED?

You will need a valid passport or biometric national identity card. A biometric document contains a chip (like a bank card has a chip) that holds information on you.

You will need proof of residence in the UK, unless you already have a valid Permanent Residence document, or Indefinite Leave to Remain or Indefinite Leave to Enter the UK. If you have paid tax through work or received benefits, you can use your National Insurance number to help confirm that you have been residing in the UK. If there is not enough information held on national databases, such as HMRC or DWP, you will be asked for further evidence to prove your continuous residence. This could include:

- P60s or P45s
- Payslips
- Bank statements
- Utility bills, Council Tax bills, phone bills
- Annual business accounts
- Employer contracts or letters confirming employment
- Letters, invoices or certificates from accredited educational organisations
- Passport stamps confirming entry at the UK border
- Airline or train tickets confirming travel into the UK

There are currently limitations on the number of documents you can scan and upload, but applicants can submit via other methods, such as by post, should they not be able to stay within the limit. You will not need to provide evidence of your entire residence in the UK, only for the period that proves you are eligible for Settled or pre-Settled Status which generally is the most recent five years.

If you are from outside the EU, any of the other three EEA countries or Switzerland you will need to provide evidence of your relationship to a family member from the EU living in the UK.

If you are not able to provide any further information or proof of residence, the Home Office has stated it will engage with you further to help determine your residence in the UK.

## IS THERE A COST /FEE?

Initially the Government announced that a fee would be charged (£65 for adults and £32.50 for children under 16). However, in a statement to the House of Commons on 21 January 2019 the Prime Minister announced this fee requirement was withdrawn and that applications are now free of charge. Those that acquired status under the pilot phase of the scheme will still have to pay but will be reimbursed.

Costs may still be attached to document and ID checking service in dedicated centres, as well as immigration and legal advice, if your specific circumstances require this.

## APPEALS

Your decision letter will set out how you can apply for a review if you are unhappy with the decision and the status you have been offered. This is called an administrative review and a request must be submitted within 28 days of the date of the decision. A fee of £80 applies, but this will be refunded if the application is successful, or if the application is rejected because it is invalid. The fee will not be refunded if the review is successful because you submitted additional information. You can request a review through an application form.

The establishment of an independent authority to oversee the process has been agreed in the draft Withdrawal Agreement and during the Transition Period the European Commission continues to have oversight.



HM Government

**LINK TO GOVERNMENT WEBSITE FOR APPLICATIONS:**

**[www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status](https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status)**