

BREXIT


What you need to know
as a senior EU citizen
living in the UK



START



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This leaflet has been written with a specific focus on older EU citizens and their family members and complements our general leaflet* on the topic.

It is purely for information purposes and has no legal force. It does not provide any legal interpretation of EU or UK legislation and is not meant to replace specialised legal advice on UK immigration rules.

* Brexit: What you need to know as an EU citizen living in the UK, European Commission, 2020, accessible at <https://op.europa.eu/fr/publication-detail/-/publication/8f5b72ed-8ada-11ea-812f-01aa75ed71a1/language-en>

1 I am an EU citizen in the UK. How will Brexit affect me?

As of 1 February 2020, the UK is no longer part of the EU. The EU and the UK have negotiated the terms of the UK's exit which is commonly referred to as the 'Withdrawal Agreement' or the 'Brexit deal'. According to this, EU law – including EU free movement¹ – will continue to apply to and in the UK until the end of an agreed transition period (which will end on 31 December 2020²).

Once EU law ceases to apply to the UK at the end of the transition period, freedom of movement between the EU and the UK will end. The UK has stated clearly that they will no longer apply free movement of persons. This will affect EU citizens and their non-EU/EEA/Swiss family members (known as third country nationals) living in the UK, as well as British citizens living across the EU.

¹ Free movement of workers is a fundamental principle of EU law. According to this, EU citizens can look for a job, work without a permit, reside and stay after the end of their employment in another EU country. They also enjoy equal treatment with nationals of their host country in terms of access to employment, working conditions and all other social and tax advantages.

² Under the Withdrawal Agreement, the UK can request to extend the transition period for 1 or 2 years if a request is made before 1 July 2020.

2 What will happen now that the Withdrawal Agreement has entered into force?

Thanks to the EU-UK Withdrawal Agreement³, the residence status of EU citizens who arrived in the UK **before the end** of the transition period is protected and such citizens can apply for a new residence status under UK immigration law. To achieve this, the UK Government set up the **EU Settlement Scheme (the Scheme)** which is based on the same EU-UK Withdrawal Agreement.

The Scheme is a **free** UK Home Office application process that all EU citizens residing in the UK, and their family members, must complete to be able to continue to stay lawfully in the UK. You **do not need to apply** if you are an Irish citizen, a dual British/EU-citizen, or you hold valid Indefinite Leave to Remain immigration status (commonly known as 'ILR', see section 4). If you successfully apply under the Scheme, you will be granted '**Settled**' or '**Pre-Settled Status**' depending on how long you have lived

³ There are separate agreements between the UK and Iceland, Liechtenstein, Norway and with Switzerland which means the information in this leaflet applies to these citizens as well.

in the UK before your application. In most cases, 'Settled Status' is for citizens who have lived in the UK continuously for over 5 years whilst 'Pre-Settled Status' is for those with less than 5 years continuous UK residence.

Therefore, all EU citizens⁴ and their family members living in the UK before the end of the transition period and who intend to stay in the UK **after 31 December 2020, must apply for this new UK immigration status.** Failure to do so before the **application deadline of 30 June 2021**, means that your future residence in the UK may be unlawful.

3 I have lived in the UK for 30 years. Do I still have to apply for Settled Status?

Some citizens who have lived in the UK a long time feel that they should not have to apply for a status to remain in the country they consider home. Whilst this is an understandable reaction, it is very important you read this leaflet to see if you are someone who needs to apply to the Scheme. Just because you have lived in the UK for a long time, it does not mean that you are exempted from applying to the Scheme.

⁴ Unless an exception stated above applies to you.

However, some citizens who have lived in the UK for many years do not need to apply to the Scheme **if they already hold a UK issued indefinite immigration status**; this is explained in detail in the next section.

It is extremely important to find out whether you need to apply or not. Please see section 8 for details on how to find organisations who will be able to tell you whether you need to apply to the Scheme. If you are a **British citizen as well as an EU citizen**, you do not need to apply as your right to live in the UK is provided by your British citizenship, so you do not need 'Settled Status'. **Irish citizens do not need to apply to the Scheme** unless they want to in which case, they apply like any other EU citizen.

Some EU citizens and their family members already have a UK-issued EU Permanent Residence Document or EU Permanent Residence Card (commonly known as 'PR' document/card). **Even if you hold one of these, you must apply to the Scheme for 'Settled Status'.**

If you are in doubt about whether you need to apply to the Scheme, the best thing is to submit an application. There are no negative consequences for applying to the Scheme even if you did not have to. The application is free to make and there is free assistance to help you apply.

Applications for your
'Settled Status' or
'Pre-Settled Status'
must be made by
30 June 2021



4 I have Indefinite Leave to Remain (ILR). Do I still need to apply?

As **some EU citizens arrived** in the UK **before the UK was a member of the EU⁵**, these citizens sometimes already hold a UK immigration status **called Indefinite Leave to Remain** or are **given leave to remain in the UK indefinitely**. This leaflet will refer to this as holding **Indefinite Leave to Remain**.

Proof of holding Indefinite Leave to Remain is usually found as a stamp in an old passport, in a UK-issued residence card, or in a letter from the Home Office. Whatever physical form it takes, you must see the word 'indefinite' for you to be exempt from applying to the Scheme. If you have physical proof of this Indefinite Leave to Remain **and the status remains valid today**, you **do not need** to apply to the Scheme.

It is crucial that the Indefinite Leave to Remain is still valid today and has not been lost or has lapsed because of spending a long time outside of the UK. For example,

⁵ There are other situations where a person may hold Indefinite Leave to Remain; however, this is a common example.

Indefinite Leave to Remain today can be lost if the holder spends more than 2 years outside of the UK. **If you have spent long periods of time outside the UK since you were granted Indefinite Leave to Remain, it is recommended that you apply for 'Settled Status'.**

Even if you hold proof of your valid Indefinite Leave to Remain, you are still allowed to apply for 'Settled Status'. Some citizens feel that it is a good idea to apply for 'Settled Status' because it is up-to-date proof of the right to live lawfully in the UK. The status is held on a government database (see more in section 9) and so there is little risk of losing the evidence of holding Indefinite Leave to Remain (passports, residence cards and letters can unfortunately go missing).

If you are not sure whether you hold valid Indefinite Leave to Remain or are worried about losing your proof of this status, the best option is to submit an application. There are no negative consequences for applying to the Scheme even if you did not have to. The application is free to make and there is free assistance to help you apply.



5 How to apply to the Scheme

For those EU citizens and family members who must apply to the Scheme and those who wish to apply – even though they do not have to because they are Irish or hold Indefinite Leave to Remain already – this section sets out how to apply to the Scheme and what you will be asked to show to the Home Office. **It is free to apply to the Scheme.**

You normally have to complete an online application form using a computer, tablet or smartphone but if you are not able to apply in this way section 6 explains how to ask the Home Office for a paper application form.


The Home Office application checks three things: (1) your identity, (2) your residence in the UK and (3) any criminal record you may have.

(1) Identity

The application asks you for your basic information (name, nationality, contact details, National Insurance Number (sometimes called 'NiNo')) and you have to confirm your identity and nationality using your passport (for applicants of all nationalities) or national ID card (if you are an EU citizen).



To do this you have the following options⁶:

- ▶ If you have a valid passport or national ID card with a biometric chip (look for this  sign on your national ID card), newer Android and iPhone smartphone devices will be able to scan this using the **Home Office 'EU Exit: ID Document Check' app**.

If you have a passport or a national ID card with a biometric chip, but you do not have a newer Android or iPhone device, you can go to one of the locations⁷ listed by the Home Office to scan your document.

- ▶ If your passport or national ID card does not have a biometric chip, you will have to post your document to the Home Office for verification. The document will be returned to you by the Home Office as soon as it has been scanned.

As part of the application you have to upload a digital photo of yourself.

⁶ The listed options are for EU applicants. Third country national family members may not be able to use the Home Office 'EU Exit: ID Document Check' app or the scanning locations.

⁷ <https://www.gov.uk/id-scan-eu-settlement-scheme>

(2) Residence in the UK

In most cases you prove your residence in the UK by providing your National Insurance Number ('NiNo') if you have one or, by using documentary evidence. If you already hold valid Indefinite Leave to Remain or an EU Permanent Residence Document or EU Permanent Residence card, this can assist you to prove your UK residence without having to produce other evidence. If you give your 'NiNo' when you apply, the application process will automatically check your HMRC and Department of Work and Pensions (DWP) records over the past 7 tax years to see if there are records of your presence in the UK. Sometimes these checks do not show that you have been in the UK even when they should and if you are relying on UK residence from more than 7 tax years ago, the automatic checks will not assist you. In this situation you will be asked to provide documents to show that you are, or have been living in the UK. Depending on whether you are applying for 'Settled' or 'Pre-Settled Status', determines how much UK residence you need to show.

If you are applying for 'Settled Status' you need to show you have been living in the UK for **5 continuous years**. If the automated check finds that you receive a State Pension or New State Pension and

are currently in the UK, you should be offered 'Settled Status' without needing to provide further information about your residence. If there are gaps in your 5 years automatic 'NiNo' residence check or, if you do not have a 'NiNo', you may need to provide additional documents (such as utility bills), to fill in the gaps. You can scan and upload these documents during your online application.

If you are applying for 'Pre-Settled Status' because you have not lived in the UK for 5 years, then your automatic 'NiNo' check or documentary evidence must show that you have been living in the UK **at some point in the last 6 months**. If you are asked to provide documents these can be uploaded during your online application.

If there are still gaps in your UK residence, the Home Office should contact you by email or telephone to request that you provide more documentary evidence.

(3) Criminality

You will be asked about your criminal record. If you have only been convicted of a minor crime you will still be eligible for 'Settled' or 'Pre-Settled Status'. Any dishonest answer could have a negative impact on your application.

6 Can I apply by post if I do not have a computer or a smartphone?

Most EU citizens who apply to the Scheme will do so using a smartphone and filling out an online form as explained in section 5. This should be a straightforward and simple way to apply but if you do not have access to a computer or a smartphone, there is the option to apply by post to the Home Office.

To apply by post you will need to contact the Home Office-run 'Settlement Resolution Centre' (either by telephone or by using an online form), to request that they send you a paper application form to make your application with. The Settlement Resolution Centre may recommend that you use a Home Office funded charity or voluntary organisation or their 'Assisted Digital' support service to receive help to apply online (see section 8), instead of using a paper form.

To apply on a paper application form you, or someone helping you, must complete all of the sections in the form and you must send this to the Home Office with your valid identity document (your passport or national identity card), and your supporting evidence showing that you should be granted 'Settled' or 'Pre-Settled Status'.

7 I do not have a valid passport or national ID card. Can I still apply to the Scheme?

It is more straightforward to apply to the Scheme if you have a valid passport or national ID card. If your passport or national ID card has expired and you think that you would be able to **renew the document with your national authority**, it is a good idea to do this first **before applying** to the Scheme. Please remember that the **deadline to apply is 30 June 2021** and so if you need to renew your ID document, then it is advisable to leave plenty of time to do so.

If you are unable to renew your passport or national ID card and need to apply to the Scheme, you can do so by completing a paper application form (see section 6 for how to ask the Home Office for a paper form). The paper form will ask you to explain the reason why you are not able to provide a valid ID document. This is because the Home Office will only accept an application without a valid ID document if this is due to, 'circumstances beyond your control' or, because of 'compelling practical' or 'compassionate reasons'. An example of this would be where your national authority is unable to issue you with a valid ID document or,

because you are unable to travel to your embassy or consulate to apply for a new ID document due to ill-health. These are not the only reasons why you might not be able to provide a valid ID document; each case will be looked at individually by the Home Office to assess the explanation.

To apply to the Scheme without a valid ID document, you will be required to provide evidence of the reason why you cannot provide one with your paper application. In the example given above, if you are unable to travel to your embassy or consulate to apply for a new document because of ill-health, you may need to provide a medical letter confirming your health condition and if possible, evidence from your embassy or consulate that they are not able to issue you a new document without you physically attending. If the Home Office agrees that you have an acceptable reason for not providing a valid ID document, they will require you to provide alternative evidence of your nationality and identity. This can be an expired passport or national ID card for example (but not limited to these documents).



8 Who can help me with the application? Can someone else apply on my behalf?

It is fine to have someone help you complete your application form, but you should only take immigration advice from a person who is a qualified regulated immigration adviser. There are many people who can help you, for example a family member, friend, social worker, local authority, charity, community group, immigration adviser or Assisted Digital provider. If someone assists you to complete your application, the Home Office will ask them to provide their information as well. The vast majority of applicants should be able to complete their application on their own or with free community help. However, if your case is complex and you do need to seek legal advice, please be aware that only regulated immigration advisers are allowed to charge money to provide legal advice in the UK.

The Home Office has provided funding to charities and voluntary organisations across the UK to provide free help and information to vulnerable citizens applying to the Scheme. The support provided by these organisations ranges and includes



individual practical support and advice to assist citizens with their applications. A list of these funded organisations and contact details of how you can get in touch to discuss your situation is provided on the gov.uk webpage at this link:

<https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

These organisations can also tell you whether you need to apply to the Scheme if you think that you might already have Indefinite Leave to Remain (as set out in section 4).

The Home Office also funds a programme called 'Assisted Digital' support to help you if you have trouble filling in your online application form because you do not feel confident using a computer or mobile device or, if you do not have internet access. The service does not provide immigration advice and is there to give you practical help to apply. 'We Are Digital' provide the support and you can contact them to discuss your needs using the following telephone number or email address:

We Are Digital

info@we-are-digital.co.uk

Tel. 03333 445 675



9 How will I be able to show anyone that I have Settled Status?

If your application is approved, you will be granted 'Settled' or 'Pre-Settled Status', depending on how long you have lived in the UK. You will get a confirmation email and a digital letter telling you which status you have been granted. The Home Office will not give you a physical ID card as your status is 'digital'. This means that your status is stored online and can be accessed through the gov.uk website. The purpose of having a digital status rather than a physical document is so that organisations who may need to see your status in the future, are able to access this online without you needing to carry around an ID card.

To access your digital status, you will need:

- ▶ details of the identity document you used when you applied (the number of your passport or national ID card – it is a good idea to write this number down somewhere accessible as you will need the number to access your digital status);
- ▶ your date of birth;
- ▶ access to the mobile number or email address you used when you applied as you will be sent a one-time-use security code for logging in.

You can update the details contained in your digital status if they change by logging into your digital status and amending the details. The details that you should update in your online profile are:

- ▶ Your mobile phone number
- ▶ Your email address
- ▶ Your name
- ▶ Your UK address
- ▶ Your passport or national ID card (how this is done depends on the type of document).

10 Will I still be able to access NHS treatment after the end of the Transition Period?

As long as you have a lawful immigration status **and** are living in the UK then there will be no change to your right to access the NHS. This is known as having 'ordinary residence' in the UK. To ensure that you continue to be considered to have ordinary residence after the end of the transition period, it is very important that, unless you have Indefinite Leave to Remain or are a British or Irish citizen, you submit an application for 'Settled' or 'Pre-Settled Status'. By applying for status

under the Scheme you are ensuring that you have lawful immigration status, which means that you will be able to receive free NHS treatment for as long as you are living in the UK.

11 I would like to move back home to retire. Will I still have access to my UK pensions after 2020?

If you are an EU citizen or a family member who is covered under the EU-UK Withdrawal Agreement, **any UK state pension that you receive or are due to receive will be 'transferable'** which means it can be paid to you in an EU Member State if you decide to move there. It does not matter if your retirement comes after 31 December 2020 as you are protected by the Withdrawal Agreement for your lifetime. You do not have to wait until you are retired to move out of the UK, although the payment of the UK state pension may only begin once you reach the qualifying age.





Information

More information on 'Settled' or 'Pre-Settled Status' from the UK Government: search online 'Home Office Apply for EU Settled Status' and 'Home Office EU Settled Status Evidence of Residence'

More information on your rights under the Withdrawal Agreement at the European Commission's questions and answers document at

<https://bit.ly/2LlcxeM> and https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/implementing-withdrawal-agreement/citizens-rights_en

More information on organisations that may be able to assist you apply for 'Settled' or 'Pre-Settled Status':

www.eurights.uk

Questions



If you have questions, feel free to ask us on our Facebook page **@EUinUK** — immigration lawyers contracted by the EU Delegation to the UK will answer your question.

Disclaimer

Please note that this document has been drawn up for information purposes only and has no legal force. It cannot provide any legal interpretation of EU or UK legislation and is not meant to replace specialised legal advice on UK immigration rules. While best efforts have been made to provide accurate information, the European Union cannot be held responsible. The responsibility for the information on the EU Settlement Scheme and future immigration arrangements lies entirely with the UK Government which should be the first contact point for the latest information.

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