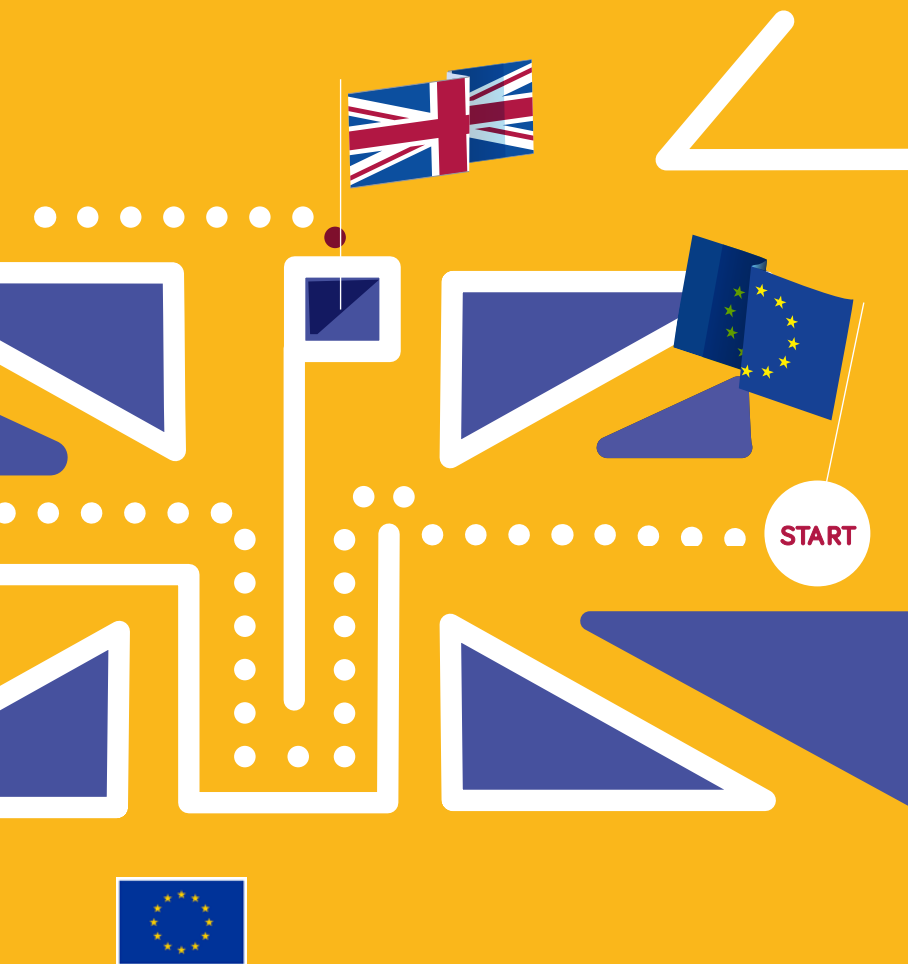


BREXIT

EU citizens with
pre-settled or settled status –
How your close family members
can apply to join you in the UK



Contents

1 I am an EU citizen in the UK. How does Brexit affect me?	3
2 What will happen now the Withdrawal Agreement has entered into force?.....	3
3 Who is a joining family member?.....	5
4 Which EU citizens can be sponsors?	6
5 Which family members are eligible to join?.....	7
6 What is dependency?	8
7 How do eligible family members apply to join?.....	9
8 Is there a deadline for joining family members to apply?	12
9 When can joining family members apply for settled status?	12
10 What if my family situation changes after I move to the UK?	13
11 What rights do I have once I come to the UK?	14

This leaflet has been written with a specific focus on family members of EU citizens who hold status under the EU Settlement Scheme (or are otherwise eligible to sponsor family members under the Scheme), where the family member does not currently live in the UK.

The information helps family members who want to join the EU citizen in the future understand how to make a successful application before they travel to the UK. It complements our general leaflet on the topic. This leaflet 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.

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

On 1 February 2020 the UK ceased to be part of the EU. The EU and the UK negotiated the terms of the UK's exit, which are commonly referred to as the Withdrawal Agreement or the 'Brexit deal'. The Withdrawal Agreement preserved EU law in the UK during a **transition period** which ended on 31 December 2020. Now that the transition period has finished, freedom of movement between the EU and the UK has also ended. This change has affected EU citizens and their family members living in the UK, as well as British citizens living across the EU. However, the purpose of the Withdrawal Agreement is to protect the rights of EU citizens who were resident in the UK before 11 p.m. UK time on 31 December 2020.

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

Thanks to the EU–UK Withdrawal Agreement (⁽¹⁾), the residence status of EU citizens who arrived in the UK **before the end** of the transition period is protected, and such citizens are able to apply for a new residence status under UK immigration law. The UK government set up the **EU Settlement Scheme (the 'Scheme')**, which is based on the EU–UK Withdrawal Agreement, to provide this new residence status to EU citizens and their family members.

The Scheme is a free UK Home Office application process that nearly all EU citizens residing in the UK must complete to be able to continue to stay lawfully in the UK. Citizens who successfully apply under the Scheme will be granted **settled** or **pre-settled status** depending on how long they have lived in the UK before the application is made. Failure to apply under this Scheme before the application deadline of

(¹) There are separate agreements between the UK and Iceland, Liechtenstein, Norway and Switzerland that very closely resemble the Withdrawal Agreement, which means the information in this leaflet applies to European Economic Area (EEA) and Swiss citizens as well.

30 June 2021 means that future residence in the UK may be unlawful.

Family members of qualifying EU citizens are also protected by the Withdrawal Agreement and can be granted status under the Scheme. Family members fall under two categories: those who were resident in the UK **before 11 p.m. on 31 December 2020**; and those who were not UK residents by this date but wish to join their EU family member who lives in the UK **in the future**. This leaflet is directed towards those citizens who want to move to the UK in the future, to understand how to make a successful application to come to live in the UK.

3 Who is a joining family member?

The Withdrawal Agreement gives the right to family members who were **not living in the UK by 31 December 2020 to join their EU family member at any time in the future**. This latter group of family members are known under the Scheme as **joining family members**, as they are not already in the UK so need to join their EU family member in the UK. The EU family member who already resides in the UK is known as the **EU sponsor**.

It is very important for joining family members to apply to join their EU sponsor **from outside of the UK** ^(?). If a family member enters the UK as a visitor they will **not be able to apply to stay** in the UK as a joining family member; they will need to leave the UK and **apply to re-enter under the Scheme**.

It is also very important for a family member who wishes to join their EU family member in the UK to make sure that they have a qualifying **EU sponsor** and that their **family relationship is an eligible one**.

^(?) There are some limited exceptions to this rule.

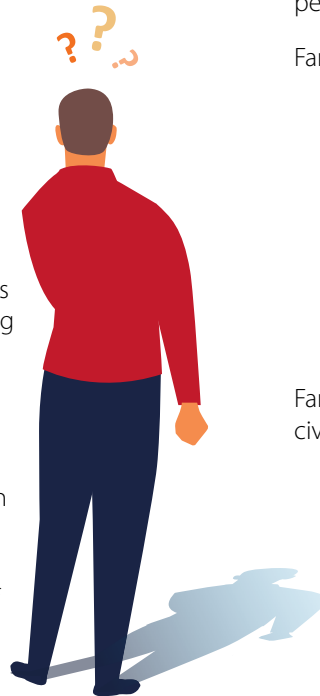


4 Which EU citizens can be sponsors?

To be an EU sponsor⁽³⁾, the EU citizen must have resided in the UK by 31 December 2020, as this makes them eligible to apply to be granted pre-settled status or settled status under the Scheme. When the joining family member applies, they can use the reference number of the pre-settled status or settled status granted to their EU sponsor as evidence that they are a qualified sponsor. Up until 30 June 2021, the joining family member can provide evidence that their EU sponsor will be eligible for pre-settled status or settled status once they make an application to the Scheme. **From 1 July 2021 the EU sponsor must hold pre-settled status or settled status under the Scheme** to be able to sponsor family members.

However, there are some situations where the EU sponsor does not need to, or cannot, hold pre-settled status or settled status themselves – for example where the sponsor is also a British citizen – but they are still able to sponsor joining family members. These situations where the EU sponsor will not hold status under the Scheme are:

- ▶ where the EU sponsor is an Irish citizen (as there is no requirement for Irish citizens to apply to the Scheme);
- ▶ where the EU sponsor has also become a British citizen after residing in the UK under EU law;
- ▶ where the EU sponsor is exempt from UK immigration control (this covers diplomats and some employees of embassies and international organisations);
- ▶ where the EU sponsor is a 'frontier worker' (this is someone who does not live in the UK but who was working or self-employed in the UK immediately before 31 December 2020 and continues / has continued with these activities since);
- ▶ where the sponsor is British or dual British/Irish citizen born in Northern Ireland to British, Irish or settled⁽⁴⁾ parents.



5 Which family members are eligible to join?

Family members eligible for sponsorship to join their EU family member in the UK are often referred to as close family members. It does not matter what nationality the family member applying to join holds as EU and non-EU family members are eligible. The Scheme covers the following people.

Family members related to the EU sponsor only:

- ▶ spouses and civil partners, where the marriage or civil partnership took place **before 11 p.m. on 31 December 2020**⁽⁵⁾;
- ▶ durable partners⁽⁶⁾, where the relationship was durable **before 11 p.m. on 31 December 2020**;
- ▶ spouses and civil partners, where the marriage or civil partnership took place **after 11 p.m. on 31 December 2020**, if the relationship was durable **before this date**.

Family members related to the EU sponsor or their spouse or civil partner⁽⁷⁾:

- ▶ dependent parents and grandparents (the dependency must exist at the date of application);
- ▶ the spouse, civil partner or durable partner of a person who has been granted an EU Settlement Scheme family permit or status under the Scheme as a dependent parent or grandparent⁽⁸⁾;
- ▶ children and grandchildren under 21 years old (including those born or adopted after 31 December 2020);

⁽⁵⁾ If the sponsor is a Swiss citizen the marriage or civil partnership can be formed after 31 December 2020, as these family members have until 31 December 2025 to apply under the EU Settlement Scheme.

⁽⁶⁾ Broadly speaking this is where the couple have cohabited for 2 years or more, or there is other evidence of the couple being in a serious relationship, for example having had a child together.

⁽⁷⁾ Family members of the spouse or civil partner are eligible where the marriage or civil partnership took place before 11 p.m. on 31 December 2020.

⁽⁸⁾ As long as the marriage or civil partnership took place before 11 p.m. on 31 December 2020 or the relationship was durable by this date.

⁽³⁾ This includes EEA and Swiss citizens who can act as sponsors under their respective separation agreements.

⁽⁴⁾ Settled in this context means residing in Northern Ireland without any immigration restrictions at the time of the sponsor's birth.

- ▶ children and grandchildren over 21 years old, if they are dependent (the dependency must exist at the date of application).

Any family relationship which does not fall under the above is not covered by the Scheme.

6 What is dependency?

Dependency is not strictly defined, but it means that the joining family member requires assistance from the EU sponsor, or their spouse or civil partner, in order to meet their essential living needs. In many cases this will be financial support, but it is not limited to this and can include other types of help and assistance as long as such support is considered material. The UK Home Office definition of dependency states:

‘Having regard to their financial and social conditions, or health, the joining family member cannot meet their essential living needs (in whole or in part) without the financial or other material support of the EU citizen or of their spouse or civil partner; and such support is being provided to the applicant by the relevant EU citizen or by their spouse or civil partner.’

If the joining family member is applying based on a dependent relationship, it is important to remember that there is no set way in which dependency will occur. It will always depend on the individual circumstances of that family member and how they are being supported by their EU sponsor or the EU sponsor’s spouse or civil partner. The reason why the joining family member has become dependent on the EU sponsor, or on their spouse or civil partner, is not relevant to the assessment.

As dependency can be a complicated issue, it may be necessary to seek qualified legal advice to understand whether or not a potential joining family member would be considered dependent under the Scheme.



7 How do eligible family members apply to join?

There are two ways in which an eligible family member can apply to join their EU sponsor in the UK. The first way is to apply to the Scheme for **pre-settled** status (also known as limited leave to enter) or **settled status** (also known as indefinite leave to enter). The second way is to apply for an **EU Settlement Scheme family permit**.

Both application routes require the joining family member to apply from outside the UK and to submit supporting evidence to show the Home Office that they meet the conditions to be granted entry to the UK to join their EU sponsor. Which method is used to apply to join the EU sponsor will depend on the circumstances of the family member seeking to apply.

(a) Applying for pre-settled status or settled status

If the joining family member is an EU, EEA or Swiss citizen themselves, the most straightforward way to apply to enter the UK under the Scheme is to apply for pre-settled status or settled status. In most cases the application will be for pre-settled status, except for children under 21 years old, who can apply for settled status.

The family member must hold a **valid biometric passport or biometric national identity card** in order to use this application route.

If the joining **family member is not from the EU, EEA or Switzerland**, they can only use this application route if they hold one of the following **UK-issued documents**:

- ▶ an EU residence card
- ▶ an EU permanent residence card
- ▶ an EU derivative residence card.

To submit an application for pre-settled status or settled status, the joining family member must be able to download and use the **Home Office EU Exit: ID Document Check app** so they can scan the information in their identity document

and upload a digital photograph (a 'selfie'). After they have scanned their identify document, they should complete the online application form and upload their supporting evidence (see Section (c) below).



The benefit of applying using this route is that the joining family member can use the Home Office EU Exit: ID Document Check app to apply. If the application is successful, they will be granted pre-settled status for 5 years, or settled status, which is indefinite. This means they **do not need to make a second application to the Scheme** once they enter the UK.

Please note that those who enter the UK with pre-settled status **must apply for settled status before their status expires** if they want to stay in the UK. This application can be made after 5 years of continuous UK residence.

(b) Applying for an EU Settlement Scheme family permit

If the family member cannot apply for pre-settled status as set out in Section (a) then they will need to apply for an EU Settlement Scheme family permit **before they travel to the UK**. This family permit is issued for 6 months, and allows the holder to enter the UK within the period of validity.

To apply for an EU Settlement Scheme family permit, the joining family member must complete an online application form, upload their supporting evidence (see below) and provide their biometric information – fingerprints and a digital photograph – at a visa centre in the country in which they live.

Once the EU Settlement Scheme family permit is issued, the joining family member has 6 months to travel to the UK. Once they arrive in the UK they **must then apply to the Scheme for pre-settled status or settled status within 3 months of arriving**. This means these joining family members have to make two applications:

- ▶ apply for the EU Settlement Scheme family permit outside the UK;
- ▶ apply for pre-settled status or settled status within 3 months of arriving in the UK.

(c) Supporting evidence

When the joining family member applies to enter the UK, they will need to provide evidence of how they are related to the EU sponsor. What evidence is required to show the relationship will depend on what the relationship is. For example, a marriage or civil partnership will be evidenced by the certificate showing the date that the family member lawfully married or entered into civil partnership with their EU sponsor. A child who is applying to the Scheme may submit their birth certificate to show that the EU sponsor, or the spouse or civil partner, is their parent.

The joining family member will also need to provide evidence that their EU sponsor holds pre-settled status or settled status, or, if the application is being made before 30 June 2021, evidence showing that their sponsor would be granted status if they made an application to the Scheme. If the EU sponsor does not need to hold status under the Scheme (for example if the sponsor is an Irish citizen), or if they are not allowed to hold status under the Scheme (for example the sponsor is a dual EU/British citizen), the evidence must show they would be granted pre-settled status or settled status if they made an application to the Scheme.

If the joining family member is a child or grandchild over 21 years old, they must provide evidence of their dependency with their application. If the joining family member is a parent or grandparent and the application is being made before 1 July 2021 (as long as the EU sponsor is over 18 years old themselves), they will not need to submit evidence of dependency with their application as this is 'assumed' in the application. From 1 July 2021, dependent applicants will be required to provide evidence documents

with their application to show how they are dependent. Evidence of financial dependency could be bank statements or money transfers from the EU sponsor or their spouse or civil partner to the joining family member, or financial evidence from the joining family member that demonstrates the financial support is essential to their living needs. Medical records or a letter from a hospital consultant can show that a joining family member who has serious needs in relation to health receives the personal care of the EU sponsor.

8 Is there a deadline for joining family members to apply?

There is no deadline for a joining family member to apply to join their EU sponsor in the UK, as eligible family members retain this right for life.

9 When can joining family members apply for settled status?

As most joining family members will hold pre-settled status for the first 5 years of their UK residence, they **must make an application for settled status in the future if they want to stay in the UK**. This application must be made before their pre-settled status expiry date. The application for settled status will require the family member to show that they have been continuously resident in the UK ⁽⁹⁾ for 5 years and that they have remained a family member for those 5 years with their EU sponsor also being resident in the UK.

Proving UK residence in the UK can be done in two ways:

1. by providing a National Insurance number (NiNo), if available; or 2. by using documentary evidence that shows UK residence. The applicant can use a combination of a

⁽⁹⁾ Continuous residence means being physically present in the UK for more than 6 months in any 12-month period. Absences of more than 6 months in one stretch or separate absences added up will break continuous residence. During the 5-year continuous residence period, one single absence of up to 12 months is permitted for an important reason. Examples of important reasons include pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.

NiNo and documents to show UK residence. If the applicant provides a NiNo when they apply, the application process will automatically check HMRC and Department of Work and Pensions records over the past 7 years to see if there are records of presence in the UK. If the NiNo check does not show UK residence, or shows an incomplete picture, the application form will ask the applicant to provide documents to show that they have been living in the UK.

The Home Office has produced guidance on what types of documents are best to show UK residence, such as council tax bills, utility bills and bank statements, but please be aware that this is just guidance, so an applicant can submit whatever evidence they have to demonstrate their 5 continuous years. Even though the application for settled status will be a number of years away for joining family members, it is very important to start thinking about the application and making sure that there is evidence to show 5 years of UK residence when the application is made. We have put the link to the Home Office residence guidance at the end of this leaflet.



10 What if my family situation changes after I move to the UK?

The general rule of the Scheme for joining family members is that they must remain as family members to the EU sponsor while they are building up their 5 years of continuous qualifying residence to be granted settled status. However, sometimes events beyond people's control mean that the family relationship changes or breaks down. These situations are often complicated, and it may be necessary to seek qualified legal advice to understand what rights the person has to remain in the UK.

This leaflet cannot set out all the situations where a joining family member might retain the right to stay in the UK.

However, the following are examples of where the family relationship might change but the joining family member might have the right to stay:

- ▶ the EU sponsor dies;
- ▶ the EU sponsor moves away from the UK, leaving their child in the care of the joining family member (the child must be in education in the UK);
- ▶ the joining family member has custody of a child or the right of access to a child following the termination of a marriage or civil partnership;
- ▶ the marriage or civil partnership ends in divorce or dissolution;
- ▶ the marriage or civil partnership ends and the joining family member should be granted the right to stay in the UK because of particularly difficult circumstances;
- ▶ the relationship breaks down because of domestic abuse.

11 What rights do I have once I come to the UK?

Joining family members have the right to work and study in the UK. They also have the right to access the NHS for free and can apply for social assistance subject to meeting the eligibility criteria. It is very important for those joining family members who enter the UK on EU Settlement Scheme family permits to apply for pre-settled status or settled status **within 3 months of arriving in the UK**, otherwise they will lose these rights.

Questions/information

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



More information on about the EU Settlement Scheme from the UK government:
<https://www.gov.uk/settled-status-eu-citizens-families>
<https://www.gov.uk/settled-status-eu-citizens-families/join-EU-EEA-Swiss-family-member>
<https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>
<https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

More information on your rights under the Withdrawal Agreement can be found in a questions-and-answers document available at:
<https://ec.europa.eu/info/publications/questions-and-answers-rights-eu-citizens-united-kingdom-after-end-transition-period>
https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/citizens-rights_en

More information on organisations that may be able to assist you in applying for pre-settled and settled status:
<https://www.eurights.uk>

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.

The information provided does not reflect the official opinion of the EU.
 Luxembourg: Publications Office of the European Union, 2021

© European Union, 2021

Reproduction is authorised provided the source is acknowledged.

For any use or reproduction of photos or other material that is not under the copyright of the European Union, permission must be sought directly from the copyright holders.

Print ISBN 978-92-9463-040-7 doi:10.2871/369248 OF-02-21-236-EN-C
 PDF ISBN 978-92-9463-020-9 doi:10.2871/873576 OF-02-21-236-EN-N

