



# THE AIRE CENTRE

Advice on Individual Rights in Europe



## Who can apply under the EU Settlement Scheme?

The UK government has developed the EU Settlement Scheme under which EEA nationals and their family members can apply for 'settled' (indefinite leave to remain) or 'pre-settled' (limited leave to remain) status, protecting their right to reside, work, study etc. in the UK after Brexit.

### **Who can apply?**

EU nationals, nationals of Iceland, Liechtenstein, Norway and Switzerland and their family members (of any nationality) can apply for settled or pre-settled status.

If you are exempt from immigration control (e.g. because you are a foreign diplomat or a member of consular staff), you will not be able to apply.

### **Should I apply if I have dual British nationality?**

Dual British nationals cannot apply for settled or pre-settled status, as they will already have a right to reside in the UK because of their British nationality.

### **Should I apply if I have Irish nationality?**

Irish nationals or dual Irish nationals do not have to apply for settled or pre-settled status. They will continue to enjoy a right of residence which is not dependent on EU legislation. However, they may apply if they wish to do so.

### **Should I apply if I already have permanent residence under the current EU immigration rules?**

Yes. While you will be able to use your permanent residence status to prove your right to reside, work, study etc. in the UK until at least December 2020, after this date EEA nationals and their family members will only have a right to reside, work, study etc. if they have settled or pre-settled status.

### **Should I apply if I already have indefinite leave to enter or remain?**

You do not have to apply under the EU Settlement Scheme, but you may wish to exchange the indefinite leave to enter or remain for the settled status. The benefit of the settled status is that you will be able to spend more time outside the UK without losing your rights. Indefinite leave to enter or remain only allows you to spend up to 2 years in a row outside the UK, whereas the settled status allows up to 5 years.

### **What are the criteria for applying for settled status?**

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The Government has set out the basis on which EEA nationals and their family members will be able to obtain settled and pre-settled status in the [Immigration Rules Appendix EU](#).

EU nationals and their family members will be eligible for settled status if:

- |                                                                                  |                               |
|----------------------------------------------------------------------------------|-------------------------------|
| there is no supervening event which prevents them from obtaining settled status; | A supervening event occurs if |
| they fall within one of relevant categories; and                                 | The relevant categories are:  |
- at the date of application for settled status, the person applying has been absent from the UK for more than 5 consecutive years; or
  - the person applying has been subject to an exclusion or removal or deportation order.
- holding a valid document certifying permanent residence or permanent residence card;
  - holding a valid evidence of indefinite leave to enter or remain in the UK (e.g. valid biometric immigration document or stamp in passport);
  - started to reside in the UK before 31 December 2020 and have been living in the UK for 5 continuous years by the time of the application;
  - living in the UK for at least 2 / 3 continuous years, having been a worker or self-employed person, and ceasing that activity due to retirement, permanent incapacity to work or becoming a worker or self-employed person in another EU country; and

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- family members of EEA nationals falling within the above categories.

they pass the criminal record check.

A person may be refused their application on the basis of criminal offences committed in the past (whether in the UK or abroad).

Offences committed prior to the exit date will be subject to existing EU rules on deportations.

Offences committed after the exit date will be subject to general UK immigration rules which offer weaker protection against deportation.

Offences will be considered on a case-by-case basis, and applications should not be refused for minor offences such as speeding fines.

## What if I do not fall within any of the categories listed above?

If the EEA national or their family member does not have entitlement to settled status simply because they have not yet resided in the UK for a continuous 5 year period (or such relevant period as set out in the categories above), then they will be eligible for pre-settled status.

The pre-settled status entitles the EEA nationals and their family members to reside in the UK for up to 5 years from the date it is acquired (and allows them to depart the UK for up to 2 years without losing that status). Anyone with pre-settled status will be able to apply for settled status once they reach 5 years of continuous residence.

## Where can I get more information on the eligibility criteria?

Further information on each of the categories set out above and on the definition of family members can be found in our information notes on [*I already have a permanent residence card – what do I need to apply under the EU Settlement Scheme?*, *I already have indefinite leave to enter / remain – what do I need to apply under the EU Settlement Scheme?*, *I was a worker / self-employed but not for 5 continuous years – what do I need to apply under the EU Settlement Scheme?* *I am a family member of an EEA national – what do I need to apply under the EU Settlement Scheme?*]

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