

# The EU Settlement Scheme, and family members of EU citizens

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A law firm contracted by the European Delegation to the UK to provide legal and policy advice to the Delegation and the EU27 Embassies, and to provide information services to local community organisations

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# Brexit and EU immigration



- **EU free movement law ended** on 31 December 2020
- This means from 01 January 2021, EU / EEA / Swiss citizens (called EEA citizens in this presentation) are now subject to the UK's domestic immigration laws and border controls
- Generally unless visiting the UK on a short term basis (tourism, family visits etc), EEA citizens must apply from outside of the UK under designated visa routes (work, study etc)

# Brexit and EU immigration

- **But:** as part of the UK's obligations to EEA citizens agreed in the EU/UK Withdrawal Agreement, the Home Office has to grant immigration status to those EEA citizens resident by the end of the "transition period"
- So for EEA citizens resident in the UK by 31 December 2020, they have the right to apply for immigration status under the EU Settlement Scheme (EUSS)
- Family members of EEA citizens are able to apply to the EUSS if they live in the UK already, or can apply from outside the UK to join their EEA sponsor at any time in the future

# Brexit and EU immigration

- **Therefore:** when talking about EEA citizens and UK immigration, there are two categories which it is important to distinguish between:
  1. EEA citizens (including family members), who have the right to apply for status under the EUSS
  2. All other EEA citizens, and their family members, who are subject to the “new immigration system” or the “points based immigration system”

# EU Settlement Scheme



# The EU settlement scheme

- Applications under the EUSS are for one of two statuses:
  - **Settled status** - for those who have lived in the UK for a continuous 5 years
  - **Pre-settled status** is for who have not yet lived in the UK for 5 years by 30 June 2021
- It is important to aware of the difference between deadlines:
  - The **residence deadline** was **31 December 2020**
  - The **application deadline** is **30 June 2021**



## Key steps

- To apply there are **3/4 things** that you must do:
  1. Make a valid application by proving **identity and nationality**
  2. Prove **length of residence** in the UK
  3. Undergo a **criminality check** (for over 18s)
  4. (If a non-EEA applicant) Prove **relationship to EEA citizen**
- The application process is mainly online
- Applicants who are unfamiliar with the online process can contact the Home Office and ask for a paper application form
- Applicants who cannot get a valid ID document must contact the Home Office and ask for a paper application form

# The EUSS

- **ALMOST ALL EU/EEA/SWISS CITIZENS** AND FAMILY MEMBERS WHO WANT TO REMAIN LIVING IN THE UK **HAVE TO APPLY** UNDER THE EUSS!
- Those who have a PR documents need to apply
- Non-EEA family members need to apply
- There is an exemption for those who hold Indefinite Leave to Remain (ILR). But... they can and probably should apply as well
- Any person who has become British cannot apply (but their family members can and will need to if not British / Irish)
- Irish citizens are not required to apply but can do so if they wish
- Children must make their own applications unless British / Irish

## Continuous Qualifying Residence

- You began your “continuous qualifying period” once you move to the UK
- This is also called continuous residence and sets out the conditions to make sure you do not break residence
- If you are granted Pre-Settled Status this means you are still in your continuous qualifying period and are building up the 5 years you need for Settled Status
- To be granted Settled Status you need to have a “continuous qualifying period” of 5 years or more (in most cases)
- It is essential that you maintain your continuous residence until you have qualified for Settled Status

# Continuous Qualifying Residence

- To be considered to have 5 years of “continuous residence” an applicant needs to meet the legal definition
- The applicant must not have been absent from the UK for more than 6 months in any 12 month period otherwise continuous residence is broken (in one stretch or cumulatively)
- One period of absence of more than 6 months which does not exceed 12 months is permitted for an important reason:
  - childbirth
  - serious illness
  - study
  - vocational training
  - overseas posting
- Any period of compulsory military service is permitted

## Continuous Qualifying Residence

- **Q:** Is Covid-19 an important reason to be outside the UK for more than 6 months but less than 12 months?
- It should be in some cases but you should not be assume it will automatically be accepted as an important reason
- The Home Office has issued specific guidance as to how they will assess absences because of Covid-19
- **Note** - You cannot have x2 absences that exceed 6 months that are less than 12 months
- **Note** - no absence of more than 12 months is allowable (unless for military service or crown service)

# Breaking Continuous Qualifying Residence

- **Q:** The Home Office letter granting Pre-Settled Status says that I can be outside of the UK for up to 2 years without losing my status - is this right given the definition of continuous residence?
- The legal answer is yes, Pre-Settled Status does not “lapse” until the holder has been outside the UK for more than 2 continuous years
- **BUT!** Where continuous residence is broken after 31 December 2020, the Pre-Settled Status holder cannot progress to Settled Status
- If you cannot convert your Pre-Settled Status into Settled Status you either need to apply into another immigration category (expensive / restrictive) or you have to leave the UK
- So please **completely ignore** the 2 year rule for Pre-Settled Status unless you know that you do not want to get Settled Status

Children



## Children: Who cannot or does not need to apply

- Assume that your child needs to register to the EUSS until you are sure that they do not
- Do not need to apply to the EUSS if your child is an Irish citizen, but can choose to do so
- Do not need to apply to the EUSS if your child holds valid Indefinite Leave to Remain or Enter, but can choose to do so
- Cannot apply if your child is British or dual British and EU citizen
- If your child becomes British at a later date, they lose their EUSS status

## Children: Is my child born British?

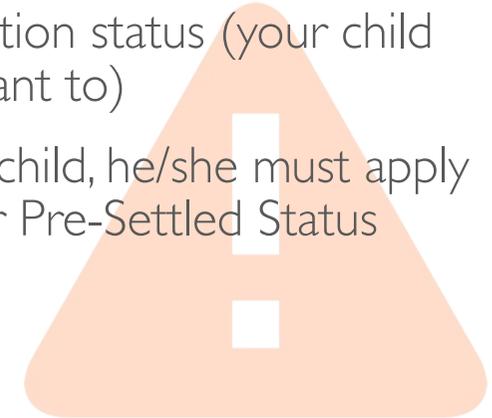
- Not a simple answer to this question - sometimes a person born in the UK will be British, sometimes they are not
- If your child was born in the UK, it is very important that you find out if your child was born British
- If your child is born British, then your child has the right to apply for a British passport to evidence your child's citizenship
- If your child is British then your child has the right to live in the UK and does not/cannot apply to the EUSS
- If your child is born outside of the UK unlikely to be British unless one of the parents is British (even then not always)

## Children: My child is not British, what next?

- Possible that EU citizens' children born in the UK have the right to become British through a process called registration if one of the parent becomes settled
- Possible that EU citizens' children not born in the UK can apply to become British through a process called registration by discretion in some situations
- But! Applications for British citizenship registration cost £1012
- Always check the impact on the child's current nationality as some countries do not allow dual citizenship!
- If you do not intend to register your child as British, it's very important to apply to the EUSS before the 30 June 2021 application deadline

## Children: Checklist

- Make sure by 30 June 2021 your child is in one of the following situations as this means your child can continue living in the UK lawfully:
  - Confirm that your child is born British (we recommend getting a British passport), or
  - Your child has been registered as a British citizen by the Home Office, (we recommend getting a British passport), or
  - Confirm that your child is an Irish citizen or holds the Indefinite Leave to Remain immigration status (your child can still apply to the EUSS if you want to)
  - If none of 1, 2 or 3 applies to your child, he/she must apply to the Scheme for Settled Status or Pre-Settled Status



## Adults: Applying to be British

- Need to hold settled status to naturalise as British (it does not make a difference if you are married / CP to a British citizen)
- More strict residency criteria than with EUSS
- Have to pass life in UK / English language test
- It is expensive to become British - £1 350 to naturalise
- For naturalisation you need to consider whether your UK residence over a 10 year period was legal under EU law (CSI)
- Family reunion is more complicated if you are a dual British / EU citizen - you need to understand the CJEU Lounes case
- Will you lose your current nationality if you become British? Need to check with your embassy

Family members



# Family members

- Family members of an EEA citizen who can enter the UK anytime in the future:
  - Spouse or Civil partner
  - Durable partner
  - Children / grandchildren (dependent if over 21 years)
  - Dependent parents / grandparents
- BUT! The relationship must have existed on 31 December 2020 and at the time that they enter the UK (except future children)
- Children and parents can be related to the spouse or civil partner of the EEA citizen



## Family members: Related to the EAA sponsor only

- To be an eligible spouse or civil partner the marriage or civil partnership must have taken place before 11pm on 31 December 2020
- To be an eligible durable partner the relationship must have been durable before 11pm on 31 December 2020
- Broadly speaking durable partners applies to couples who have cohabited for 2 years or more, or there is other evidence of the couple being in a serious relationship, for example having a child together
- Also eligible are spouses and civil partners where the marriage or civil partnership took place after 11pm on 31 December 2020 but only if the relationship was durable before this date

## Family members: Related to the EAA sponsor or their spouse or civil partner

- 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 (EUSS) Family Permit or status under the scheme as a dependent parent or grandparents
- Children and grandchildren under 21 years (including those born or adopted after 31 December 2020)
- Children and grandchildren over 21 years if they are dependent (the dependency must exist at the date of application)
- Any family relationship which does not fall under this and the previous slide is not covered by the scheme.

# Dependency

- Dependency is not strictly defined but it means that the joining family member requires assistance from the EEA sponsor, or their spouse or civil partner
- The assistance is needed 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 as long as it is considered material
- The Home Office definition of dependency is:
  - *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.*

# Dependency

- There is no set way in which dependency will occur, every circumstance is different and unique
- It will depend on the individual circumstances of that family member and how they are being supported by the EEA sponsor or the spouse or civil partner of the EEA sponsor
- The reason why the family member has become dependent on the sponsor is not relevant and the Home Office should not ask this question
- Dependency is complex, and applications are often refused because dependency was not established. It may be necessary to seek advice from a regulated lawyer before applying

## EEA sponsor

- The EEA citizen must have resided in the UK by 31 December 2020
- This allows the EEA citizen to be able to sponsor family members to join them
- Residence prior to 31 December 2020 makes them eligible to be granted Pre-Settled or Settled Status under the EUSS
- If they are granted Pre-Settled or Settled Status, they will receive a reference number for that status
- The joining family member can quote the reference number in their overseas application to link them to the EEA sponsor

## EEA sponsor

- Sometimes EEA sponsors do not need to, or cannot hold, Pre-Settled or Settled Status themselves. These situations include:
  - The EEA sponsor is also a British citizen
  - The EEA sponsor is also an Irish citizen (there is no requirement for Irish citizens to apply to the EUSS, but they can choose to)
  - The EEA sponsor is exempt from immigration control (for example, diplomats and some employees of embassies or international organisations)
  - The EEA sponsor is a Frontier Worker (someone who does not live in the UK but was working or self-employed in the UK immediately before 31 December 2020 and continues these activities)
  - The EEA Sponsor is a British citizen born in Northern Ireland to British, Irish or settled parents

## EEA sponsor

- Where an EEA sponsor does not need to, or cannot hold, Pre-Settled or Settled Status themselves, or
- The EEA sponsor is eligible for Pre-Settled or Settled Status but has not yet applied
- The joining family member will not have a reference number from the EEA sponsor to quote in their joining application
- The joining family member can instead provide evidence their EEA sponsor will be eligible for Pre-Settled or Settled Status once they make an application or they are a person that does not need to, or cannot hold, either status

# Family members

- There are **two categories** of family members:
  1. Those who **lived in the UK** with an EEA citizen before 31 December 2020
  2. Those who want to **join** their EEA family member in the UK from **01 January 2021**
- Important to understand which category the family member falls into as this tells you what need to do
- For family members in category 1. they must apply to the EUSS by **30 June 2021**
- For family members in category 1. who are EEA citizens themselves, they can apply to the EUSS independently of the EEA citizen sponsor and must do so before 30 June 2021

## Family members

- For family members in category 2, there is **no deadline** to apply to enter the UK to join their family member
- They can join their family member at anytime in the future
- But... in most cases they must **apply to enter** the UK as a family member under the EUSS
- They **cannot enter** the UK as a **visitor** and apply to the EUSS
- Either applies for **Pre-Settled / Settled Status** from outside of the UK (limited mainly to EEA) or,
- Applies for an **EUSS family permit** and then for EUSS status within **3 months of arrival** (if after 01 April 2021)

## Family members and visitors

- If a family member has entered as a visitor, then they cannot apply to the EUSS while inside the UK as a visitor
- If they want to join the EEA citizen then the family member will need to leave the UK to either:
  - Apply for Pre-Settled / Settled Status from outside
  - Apply for the EUSS family permit from outside, and then apply to the EUSS once inside the UK

## Joining family members: applying for Pre-Settled or Settled Status

- If the joining family member is an EEA citizen themselves the most straightforward way to apply to enter the UK under the scheme is to apply for Pre-Settled 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
- For EEA family members, they must hold a valid biometric passport or biometric national identity card in order to use this application route
- If the family member is not an EEA national they must hold one of the UK issued documents:
  - an EU residence card
  - an EU permanent residence card
  - an EU derivative residence card

## Joining family members: applying for pre-settled or settled status

- The joining family member must be able to access and use the Home Office EU Exit: ID Document Check app
- After they have used the app, they should complete the online application form and upload their supporting evidence
- The benefit of this route is that the family member will be granted an EUSS status, which means they do not need to apply to the EUSS after they enter the UK
- If they are granted Pre-Settled Status, they must apply for Settled Status as soon as they are eligible. Pre-Settled Status does not automatically convert to Settled Status

## Joining family members: applying for an EUSS family permit

- If the family member cannot apply for Pre-Settled or Settled Status then they will need to apply for an EUSS Family Permit before they travel to the UK
- The joining family member must complete an online application form, upload their supporting evidence and must provide their biometric information – fingerprints and a digital photograph – at a visa centre in the country they live
- If successful, the issued family permit is valid for 6 months to facilitate entry into the UK
- Once they arrive in the UK they must then apply to the scheme for Pre-Settled or Settled Status within 3 months arriving
- This means there are two applications for these joining family members (1) a Family Permit from outside the UK (2) Pre-Settled or Settled Status within 3 months of arriving in the UK

## Joining family members: supporting evidence

- Joining family members need to provide evidence of how they are related to the EEA sponsor
- The evidence depends on the type of relationship, for example:
  - marriage certificate for married partners
  - Birth certificate showing the EEA sponsor, or the spouse or civil partner, is their parent

## Joining family members: supporting evidence

- Need to provide evidence that their EEA sponsor holds Pre-Settled or Settled Status or, if the application is being made before 30 June 2021 evidence showing their sponsor would be granted status if they made an application to the scheme
- If the EEA 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

## Joining family members: supporting evidence

- If the joining family member is a child or grandchild over 21 years 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 EEA sponsor is over 18 years 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 parents will be required to provide evidence documents with their application to show how they are dependent
- Evidence of dependency showing financial dependency could be bank statements or money transfers from the EEA sponsor or their spouse or civil partner to the joining family member. Medical records or a letter from a hospital consultant can show that a joining family member who has serious health grounds needs, receives the personal care of the EEA sponsor

## Family relationships in the UK

- The general rule of the scheme for joining family members is that they must remain as family members to the EEA sponsor whilst they are building up their 5 years continuous qualifying residence to be granted Settled Status
- Sometimes events beyond peoples 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

# Family relationships in the UK

- As these situations are complicated, this presentation cannot set out all the situations where a joining family member might retain the right to stay in the UK
- However, these are examples where the family relationship might change but the joining family member might have the right to stay:
  - The EEA sponsor leaves the UK
  - The EEA sponsor dies
  - 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

# Granted: Digital status

- For EEA citizens, evidence of Pre-Settled or Settled Status will be in **digital form**
- Google - 'view and prove my Settled Status'
- Access your digital status using:
  - details of the identity document you used when you applied (your passport, national identity card, or biometric residence card or permit)
  - your date of birth
  - access to the mobile number or email address you used when you applied - you'll be sent a code for logging in

## Granted: Digital status

- The idea is that that holder of status can:
  - Manage it and update it when changes occur to phone numbers, emails, an address, name, or ID
  - Get a share code to prove your status to others, for example employers
  - check what rights you have in the UK, for example the right to work or claim benefits
- Non-EEA citizen family members holding Pre-Settled or Settled Status will be issued with a Biometric Residence Card (unless they already hold one which remains valid)
- Remember! If you're a citizen of the EU, Iceland, Liechtenstein, Norway or Switzerland, you can still show your identity documents to prove your rights in the UK until 30 June 2021. You do not have to use the online service.

## Granted: Settled status

- Settled Status is a indefinite status that **will not expire**
- It's indefinite **subject** to limited **conditions**
- Settled Status may allow the holder up to a **5-year absence** (4 for Swiss nationals) from the UK before the right to live in the UK is lost
- Holders of Settled Status *may* lose it if they commit a **criminal offence** (they may also face deportation action)
- Holders of Settled Status can apply for British ('naturalisation') citizenship but are *not* required to do so to retain lawful residence
- Note that naturalising as British may require the applicant to show they have been living in the UK under EU law

## Granted: Pre-settled status



- Pre-Settled status is a limited status that will **expire** after 5 years
- You will need to **maintain continuous residence** and, where relevant, their family relationship, in order to apply for Settled Status later
- The **same rules on continuous residence apply** to holders of Pre-Settled Status and can be broken in the same way
- Currently, holders of Pre-Settled Status **must apply for Settled Status** before the expiry of their Pre-Settled Status to continue living in the UK
- Holders of Pre-Settled Status **may lose** this status if they **commit a criminal offence** (they may face deportation action)

## Challenges once status obtained

- Entitlement to benefits differs depending on which status is granted
- Holders of settled status do not need to show the right to reside
- Holders of pre-settled status must have the right to reside to be entitled to benefits (subject to a legal challenge)
- This means at the moment pre-settled status holders have to provide additional evidence with benefits claims to prove they are eligible (evidence of employment etc)
- Family members of EEA citizens with the right to reside also qualify for benefits

# The new immigration system

- From 01 January 2021 there is a new cohort of EU citizens arriving in the UK who are not covered by the WA
- This can be for visiting / studying / working
- Visiting does not require a visa but the other 2 categories need a visa before travelling to the UK
- For non-visiting visas there is a visa fee and the Immigration Health Surcharge
- We have heard of issues with EU citizens at the UK borders being refused entry as they were trying to enter for work

Further information



# Resources

- Visit [www.seraphus.co.uk](http://www.seraphus.co.uk) or email [eurights@seraphus.co.uk](mailto:eurights@seraphus.co.uk) for a copy of these slides
- Information on organisations that may be able to assist you: [www.eurights.uk](http://www.eurights.uk)
- Information on your rights under the Withdrawal Agreement in a questions and answers document at: <https://ec.europa.eu/info/publications/questions-and-answers-rights-eu-citizens-united-kingdom-after-end-transition-period>
- 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/family-permit/eu-settlement-scheme-family-permit>

## Available EUSS assistance

- EU Settlement Resolution Centre - call 0300 123 7379 between Monday to Friday (excluding bank holidays), 8am to 8pm, Saturday and Sunday, 9:30am to 4:30pm
- Charity / community organisations - HO has funded organisations and LAs to assist vulnerable applicants with their EUSS applications for free, search on: [gov.uk](https://www.gov.uk)
- Identity Scanning Locations - search [gov.uk](https://www.gov.uk) for a list of Local Authority locations
- Assisted Digital Service - call 03333 445 675 or text "VISA" to 07537 416 944

## English and non-English language guidance

- **European Commission Publications Office** - Brexit and EUSS information leaflet [here](#) (all EU languages)
- Google - 'Delegation of the European Union to the United Kingdom' including the **Facebook** and **Twitter** accounts
- **Home Office** - EUSS guidance [here](#) (all EU languages)
- Google - 'Greater London Authority **EU Londoners Hub**' or <https://www.london.gov.uk/what-we-do/eu-londoners-hub>

**Please feel free to ask any  
questions!**

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