

# European Citizens' Rights and Settled Status

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A law firm contracted by the European Delegation to provide legal and policy advice to the Delegation in the UK 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 EU citizens agreed in the EU/UK Withdrawal Agreement, the Home Office has to grant immigration status to those EU 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 who are subject to the “new immigration system” or the “points based immigration system”



## Students: EUSS vs. Student Visas

- Students are eligible to apply for free to the EUSS on the same basis as other EU citizens as long as they were resident in the UK before 31 December 2020
- Studying remotely at a UK university from outside the UK does not qualify someone for the EUSS if they have no physical presence before 31 December 2020
- There is no requirement to hold Comprehensive Sickness Insurance (CSI) to qualify to be granted status under the EUSS
- Students who are not eligible for the EUSS are required to apply for a student visa (£348) and pay the Immigration Health Surcharge (£470 per year) [though the IHS can be refunded if the student is eligible for an EHIC]

## Benefits of the EUSS:

- The application is free and you do not need to pay the Immigration Health Surcharge
- The qualifying criteria and evidence requirements for the EUSS are much less demanding than for a student visa
- You have access to home student fees (subject to meeting the qualifying criteria that exists today)
- You do not need to show that you have available funds to undertake your studies
- You can work unrestricted hours during your studies
- If you wish to change course or university to you are not required to apply for a certificate of sponsorship to do so

## Benefits of the EUSS:

- If you do not complete your studies you can remain in the UK to work or start your own business
- If you decide you want to stay in the UK after your studies finish you will be able to stay indefinitely without having to pay any extra visa fees (you would need to meet the residence criteria for settled status if you want to stay beyond the expiry of your pre-settled status)
- If you decide that you do not want to stay in the UK after your complete your studies you have not lost anything by holding EUSS status
- Your family members *may* be able to join in the UK without have to pay any extra visa fees

# 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
- The deadline to apply is **30 June 2021**



# The EUSS

- The application is residence based application, the **Home Office (HO) will not ask** for:
  - Evidence of exercising '*treaty rights*' in most situations
  - Evidence Comprehensive Sickness Health Insurance (Students and Self-Sufficient persons)
  - Note: that the exercise of '*treaty rights*' remain applicable for British naturalisation applications
- In essence, this means it's about how long you have been in the UK, and if you can prove you have been in the UK for the time you say you have been, and not what you have been doing while you have been in the UK



# 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

# 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





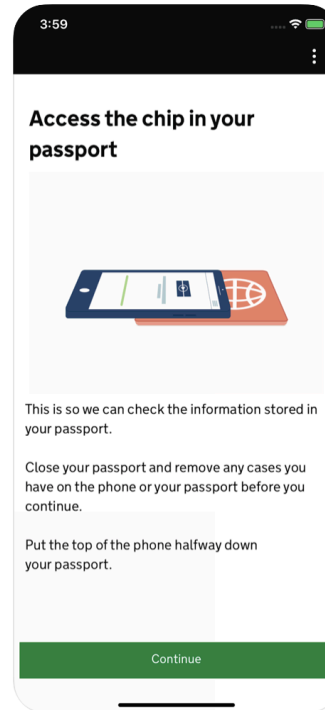
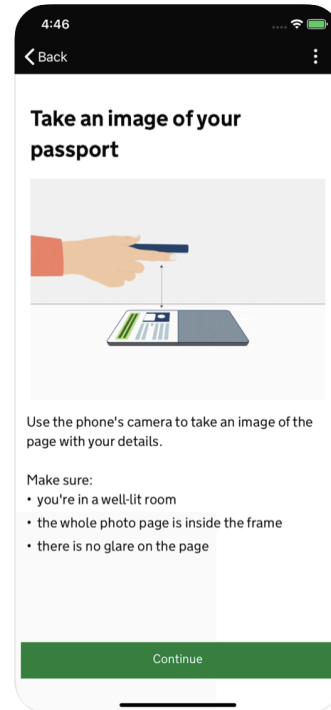
## Key steps

- 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. Prove **relationship to EEA citizen** if non-EEA applicant
- 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

# Step One: Validity - Identity

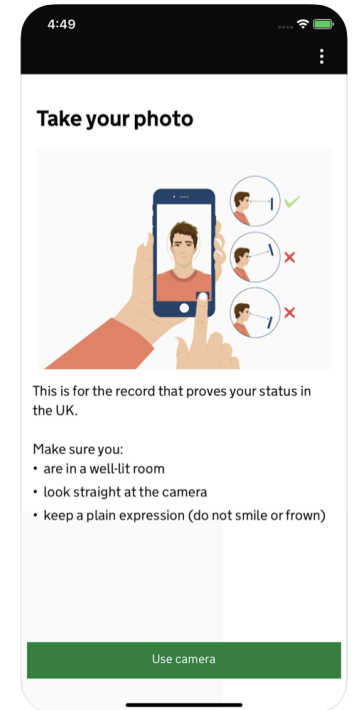
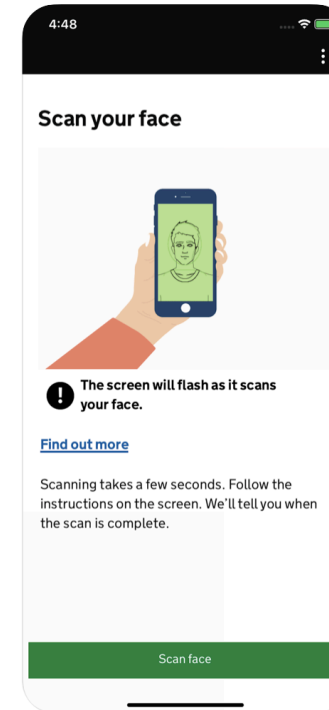
## Get the iPhone app

Download the free EU Exit: ID Document Check app on the App Store.



## Get the Android app

Download the free EU Exit: ID Document Check app on Google Play.



## Step Two: Residence

- The status you can apply for depends on how long you have been living in the UK
- The online form always allows you to state how long you have been resident for

### **How long have you lived in the UK?**

- ☐ 5 years or more
- ☐ Less than 5 years

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[Save and return later](#)

## Step Two: Residence

- The online form will then **automatically check HMRC and DWP** for evidence of residence based on employment, self-employment, or benefits using the applicant's NI number (if provided)
- The HO will not check any data beyond an '*ongoing relationship*' and will be limited to going back **7 years**
- **Gaps** in records can be **supplemented with additional proof** of residence
- A non-prescriptive list of residence evidence is available on the [gov.uk](https://www.gov.uk) website (see useful information page at the end)
- The applicant can submit **scanned copies** of any required evidence

## Step Three: Criminality

- The HO intends to identify **serious** or **persistent offenders**, or
- Anyone who poses a **security threat**
- A declaration will be required by the EEA citizen or family member aged 18 or over
- Criminality can be highly complicated but it is important that each case is considered on the individual's specific background

## Step Three: Criminality

### Have you ever been:

- convicted of a criminal offence
- arrested or charged with an offence that you are on trial for or awaiting trial

This includes offences in the UK or any other country

☐ Yes ☐ No

▼ [Help with this question](#)

[Read the guidance](#) if you are unsure what offences you need to declare.

Continue

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# Submission

## Declaration

Before continuing you need to confirm that:

- the documents you have uploaded are genuine to the best of your knowledge
- you are eligible and have been resident in the UK for the period you apply for - if you disagree with our data
- your photograph is an accurate likeness of you

We will process your information as detailed in our [terms and conditions](#) and [privacy policy](#).

If we find a mistake in your application, we will contact you to help you correct this. If your application meets the criteria under the EU Settlement Scheme you will be granted status.



**Your application may be refused and you could be prosecuted if you deliberately provide false information or documents.**

# 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



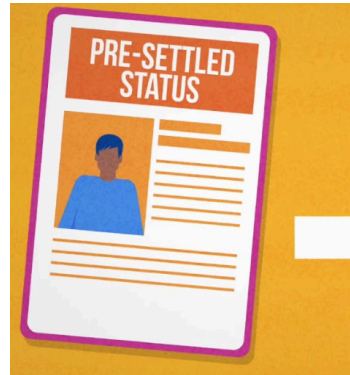
## Granted: Digital status

- 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)

# 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

## 31 December 2020 - Residence cut off

- **Q:** I was in the UK before 31 December 2020, will I always qualify for pre-settled status?
- The end of the transition period was the last date to begin a continuous qualifying period - after this date EEA citizens will not be eligible for the EUSS (except joining family members)
- Arrival on 31 December 2020 is acceptable as long as this can be proved and maintain continuous qualifying residence
- If you leave the UK after a short period you will still qualify for pre-settled status but you must return to the UK within 6 months (unless there is an important reason)
- You need to be able to provide evidence of being in the UK before 31 December 2020 to qualify



## Refusals / Wrong outcomes

- Currently, very few cases are actually 'refused' on suitability or eligibility grounds (although this is increasing)
- Depending on the basis of the refusal will dictate what the best approach to take in challenging
- There is also an outcome where a settled status applicant receives pre-settled status because of a lack of residence evidence (this is not recorded by the HO as a refusal as status is still granted)
- If there is an wrong outcome before 30 June 2021 you can:
  - **Reapply** to remedy the refusal ground
  - Apply to **appeal** the decision if the application was made on or after 31/01/20
  - Ask for an **Administrative Review** by the HO

# Missed deadlines

- If you **miss** the 30 June 2021 **deadline** you can apply late
- But only with a '*good reason*' for the delay
- You will have a reasonable period to apply
- But an **interruption** to **rights and entitlements** will occur
- **SO... Please apply before the deadline - and tell family and friends too!**

## Available EUSS assistance / non- English language guides

- **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
- **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
- **Home Office** - EUSS guidance [here](#) (all EU languages)

## Available EUSS assistance

- **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
- Google - 'Greater London Authority **EU Londoners Hub**'
- **Charity / community organisations** - HO has funded 72 organisations to assist vulnerable applicants with their EUSS applications for free, search on: [gov.uk](#)
- **Presentation slides** on [www.seraphus.co.uk](#)

# EUSS: Useful Information

- **Home Office EUSS Guidance** / Information on [gov.uk](https://www.gov.uk)
- [EU Settlement Scheme: applicant information \(general\)](#)
  - [EU Settlement Scheme: evidence of UK residence](#)
  - [EU Settlement Scheme: evidence of family relationship](#)
  - [EU Settlement Scheme: Using the ID checking App](#)
  - [EU Settlement Scheme: application processing times](#)
- [EU Settlement Scheme: caseworker guidance](#)
- [EU Settlement Scheme: local authorities toolkit](#)
- [EU Settlement Scheme: community leaders toolkit](#)
- [EU Settlement Scheme: employer toolkit](#)

# The new immigration system



# The new immigration system

- From 01 January 2021 EEA citizens who arrive in the UK are subject to the new immigration system (unless they are joining family members under the EUSS)
- Entry to the UK can be for visiting / studying / working / non-EUSS family reunion / other niche categories
- Visiting is free and does not require a visa but longer term categories need a visa granted before travelling to the UK
- For non-visiting visas there is a visa fee and the Immigration Health Surcharge (students sometimes exempted)
- Some visa routes lead to “settlement” in the UK but not all
- EU citizens will receive electronic visas under the new system meaning they will not have Biometric Residence Permits

# Visiting the UK

- The UK allows all EU / EEA / Swiss citizens the right to enter the UK for a short term stay of up to 6 months visa free
- This means entry to the UK through e-gates with no stamp in the passport
- Except for limited business activities there is no right to work in the UK if you enter as a visitor
- You cannot reset the 6 months by leaving the UK for a short period and then re-entering
- You may be asked at the border the reason why you are coming to the UK - you need to satisfy the border officer your travel is for a temporary stay and you will not engage in prohibited activities



# Skilled Working in the UK

- The UK government ended free movement partly on the basis that their policy is to restrict work visas to “skilled workers”
- A skilled worker visa can only be issued where a licensed UK company issues a certificate of sponsorship - tied to sponsor
- This means to qualify for a skilled worker visa an EEA citizen must have
  1. The relevant qualification level / English language skills
  2. A sponsored job offer above the designated salary
- Some “tradable” points (e.g shortage occupation)
- You cannot enter the UK to look for a job and then stay if you are offered one

# Studying in the UK

- EEA students will have to apply for a student visa to come to study in the UK (at school or university)
- The education institution will issue a certificate of sponsorship
- As well as the visa fee, overseas student fees will apply in many cases (different countries of the UK have different approaches)
- The the Immigration Health Surcharge surcharge can be refunded from 2022 using an SI form or an EHIC
- The Home Office will be introducing a graduate visa for students to stay in the UK after their course (2/3 years)
- Some short courses / English language course can be undertaken as visitors

## Other mobility routes

- Health and Care Workers (sponsored by NHS etc)
- Visitor permitted activities (e.g business activities)
- Intra-company transfers (for employees and graduates)
- T5 service providers / contractors (international agreement)
- T5 Government Authorised Exchanges
- T5 Seasonal workers / Creative / Sporting / Charity
- Investor visa (£2million to invest in UK)
- Innovator / Start up visa (“exceptional talent” visas)

# Students Useful Information

- Universities UK International [FAQ for EU students](#)
- [Department of Education guidance](#) on home fee status and student finance for 2021/22 [England only]
- [Student Awards Agency Scotland](#) student funding eligibility
- [Student Finance Wales](#) information notice
- [Northern Ireland Direct](#) Financial help for EU students
- UK Council for International Student Affairs [fee guidance](#)

Remember to apply,  
apply before the deadline,  
and spread the message!

Thank you!

