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EU Settled Status and British Citizenship

What you need to know

The uncertainty surrounding Brexit has meant that people want to know what their rights are, and what they can do now to protect them. The EU Settled Status Scheme fully launched on 30 March 2019. It is important to note that many people, including children, living in the UK do not realise that they are eligible to apply for British citizenship, and therefore, it is critical to understand all of the possible options. This article aims to provide you with an overview of the Settled Status Scheme and British citizenship for EU citizens¹ and how the two interact.

This is an overview, so it is very important to get legal advice from a specialist qualified adviser about your personal situation.

The details of the EU Settled Status Scheme as set out in this note may change depending on the circumstances in which the UK leaves the EU and depending on whether its exit date is delayed.

1. This article does not cover the rights of nationals of EEA countries (Iceland, Liechtenstein and Norway) or Swiss nationals.

What is British citizenship?

Citizenship is the status of a person recognised under custom or law as being a member of a country. Since 1 January 1983 British citizenship can be acquired or obtained in the following ways:

- a) **Operation of law** either by (i) birth in the UK where one of the parents is a British citizen or is settled² at the time of the child's birth³, or (ii) birth outside of the UK to a parent with British citizenship otherwise than by descent⁴;
- b) **Naturalisation** for most adults; or
- c) **Registration** for children and some adults.

Some people living in the UK do not realise that they are eligible to apply for British citizenship. British citizenship carries additional entitlements compared to settled status or permanent residence or indefinite leave to remain, such as the right to vote in UK general elections and the right to return to the UK after any length of time away from the UK.

A fee is payable to apply for citizenship, which ranges from £1,012 for children to £1,330 for adults (by naturalisation).⁵

The fee will not be reimbursed if the citizenship application is refused. There is no automatic right of appeal but a review of a negative decision by the Home Office can be sought. The application for review of a decision carries an additional fee. It may also be possible to make an application for judicial review of a negative decision.

What is the Settled Status Scheme?

The EU Settled Status Scheme is the UK's new immigration status under the Immigration Rules⁶ for EU citizens and their family members following Brexit. Under the Scheme, EU nationals who started living in the UK for five years continuously before 31 December 2020 (in the event of a deal) or the date the UK leaves the EU (in the event of a no-deal Brexit) are able to apply for settled status upon completing five years' continuous residence. Settled status allows you to remain living and working in the UK indefinitely⁷.

It also allows you to remain outside the UK for up to five years in a row without affecting this status.⁸ If you spend longer than five years in a row outside the UK you will lose your settled status.

What is Pre-Settled Status?

You can apply for pre-settled status if you are an EU National and:

- a) you are resident in the UK by 31 December 2020 (in the event of a deal) or the date the UK leaves the EU (in the event of a no-deal Brexit); and
- b) you have not yet accrued five years' continuous residence.

Pre-settled status is a grant of limited leave to remain for five years. This allows you to remain living and working in the UK for five years. Once you have lived in the UK for the continuous five years you can apply for settled status. Pre-settled status also allows you to remain outside the UK for up to two years in a row without affecting this status.

If you spend longer than two years in a row outside the UK you will lose your pre-settled status and will only be able to return if you met the requirements of domestic UK immigration law at the time of return. You will also become ineligible for settled status.

Any children born in the UK to a parent who has pre-settled status will be automatically eligible for pre-settled status, on application. However, if at the time of birth one or both of the parents has British citizenship, or is settled (through the Settled Status Scheme, permanent residence, or indefinite leave to enter or remain), the child will automatically acquire citizenship at birth.

How can I apply for Settled Status or Pre-Settled Status?

Applications for settled status or pre-settled status can be made for free on the [government's website](#) in conjunction with a smartphone app. The deadline for applications will be 30 June 2021 if the UK leaves the EU with a deal, or 31 December 2020 if the UK leaves the EU without a deal.⁹

But what if I already have Indefinite Leave to Remain or Permanent Residence in the UK?

EU nationals and family members who currently have a valid permanent residence document in the UK must apply for either settled status or British citizenship before the deadline of 30 June 2021 or 31 December 2020 (as the case may be). EU nationals and family members who have automatically acquired permanent residence but who do not have a valid permanent residence document

2. Settled means free from restrictions on the amount of time a person can live in the UK and would include permanent residence, indefinite leave to enter, indefinite leave to remain or settled status under the new scheme.

3. Children born outside of marriage prior to 1 July 2006 could only rely on the mother's status. Where a person born outside of marriage has been affected by discriminatory legislation it is now possible to register as a British citizen.

4. Citizenship otherwise than by descent can be obtained through birth in the UK, naturalisation and some forms of registration.

5. These fees are correct as at the date of publication.

6. <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

7. <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

8. *ibid*

9. <https://www.gov.uk/settled-status-eu-citizens-families/when-to-apply?step-by-step-nav=0c79b832-75de-4854-8154-d62774a8dfb8>

will need to apply for settled status in order to make an application for citizenship by naturalisation. Unlike permanent residence under EU law a person only acquires settled status when it is granted by the Home Office.

EU nationals with indefinite leave to remain¹⁰ do not have to apply for settled status but are strongly advised to do so (or, alternatively, to apply for a biometric residence permit) to evidence their ongoing right to live and work in the UK.

It should be noted that indefinite leave to remain¹¹ and permanent residence¹² currently entitle you to remain outside the UK for up to two years in a row, whereas settled status entitles you to remain outside the UK for up to five years in a row.

Can I have Settled Status and still apply for British citizenship?

Yes. You can apply to naturalise one year after obtaining settled status if you do not already hold a valid permanent residence document.¹³

However, if you are a British citizen you cannot apply for settled status even if you are a dual citizen, eg a dual British and French citizen.

Settled status is not necessary for an application to naturalise as a British citizen if you already have a valid permanent residence document and you are applying before the deadline of 30 June 2021 or 31 December 2020 (as the case may be).

I have lived in the UK for five years – Is the Settled Status Scheme right for me?

Until the UK leaves the EU, EU nationals and their family members automatically acquire permanent residence in the UK after the EU national has exercised Treaty rights in the UK for a continuous five year period. A person exercising Treaty rights is known as a qualified person. A qualified person is:

- a) a jobseeker (for a period not exceeding 91 days);
- b) a worker;
- c) a self-employed person;
- d) a self-sufficient person (with comprehensive sickness insurance); or
- e) a student (with comprehensive sickness insurance).

You must apply for either settled status or British citizenship before the deadline of 30 June 2021 or 31 December 2020 (as the case may be).

Adult EU nationals who have had permanent resident status in the UK for at least one year and hold a permanent residence document from the Home Office, will be eligible¹⁴ to apply for naturalisation.¹⁵ The Home Office will use the date that you acquired permanent residence to consider a naturalisation application and not the date on which a permanent residence document was issued. EU nationals who have had settled status for at least one year will also be eligible to apply for British citizenship.

How can I obtain British citizenship?

Your eligibility for British citizenship depends on whether you are an adult or a child.

Adults generally have to apply to naturalise as British citizens although in certain circumstances an adult may have an entitlement to be registered as a British citizen. The general requirements are that you:

- a) are aged over 18 at the date of the application;
- b) intend to continue to live in the UK;
- c) can communicate in English, Welsh or Scottish Gaelic to an acceptable degree;
- d) have sufficient knowledge about life in the UK;
- e) are of good character;
- f) have lived in the UK for a minimum of five years (or three years if you are married to a British citizen at the time of the application);
- g) have been free of immigration restrictions for at least 12 months prior to your application (ie you have had permanent residence, indefinite leave or settled status); and
- h) have not spent more than 450 days outside the UK in the past five years (or 270 days if married to a British citizen) and not more than 90 days outside the UK in the 12 months prior to your application.

Children

There are a number of ways in which a child may be able to apply to be registered as a British citizen. Some children may have an entitlement to be registered and others may be able to apply at the Home Office's discretion. We will cover some of the most likely ways a child of an EU national may be able to apply to register as a British citizen.

The law in this area is complex, and it is important to get specialist qualified advice before making a decision about what is the right choice for you.

10. ILR may be held by EU nationals who arrived in the UK before their home country joined the EU, EU nationals who applied for ILR prior to 2 October 2000, or those resident in the UK on 1 January 1973 with no time limit on their stay. It may be evidenced by a stamp in an old passport, a vignette in an old passport, or a biometric residence permit.

11. <https://www.gov.uk/settled-status-eu-citizens-families/if-you-have-permanent-residence-or-indefinite-leave-to-remain>

12. EU website: https://europa.eu/youreurope/citizens/residence/documents-formalities/eu-nationals-permanent-residence/index_en.htm; UK government website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672960/Form-EEA-PR-guidance-notes-v3.pdf (page 4)

13. <https://www.gov.uk/apply-citizenship-indefinite-leave-to-remain>

14. This may differ if you are an EU national who is married to a British citizen.

15. <https://www.gov.uk/apply-citizenship-eea>

The following children have an entitlement in law to be registered as British citizens upon application:

1. Children who are born in the UK:
 - a) one or both of the parents become settled in the UK or become British before the child turns 18; and
 - b) if the child is aged 10 or over, the Home Office is satisfied the child is of good character.
2. Children who are born in the UK:
 - a) who have lived here for the first ten years of their life;
 - b) who have not left the UK for more than 90 days in each of those ten years;
 - c) the child is aged 10 or over; and
 - d) the Home Office is satisfied the child is of good character.

The Home Office also has a wide discretion to register any child as British upon application. This provision is often useful for children who were born outside the UK. The Home Office will usually register a child in the following circumstances:

- a) the child is settled in the UK, for example has settled status under the scheme;
- b) at least one parent is British or applying for citizenship;
- c) the other parent is settled or unlikely to be required to leave the UK;
- d) the Home Office is satisfied the child's future is in the UK; and
- e) if the child is aged 10 or over, the Home Office is satisfied the child is of good character.

However, it is possible to apply to be registered as a British citizen when a child does not meet these criteria. If you know a child who has very lengthy residence in the UK, whose future clearly lies in the UK and where it would be in the child's best interests to be registered as a British citizen you should seek legal advice. This provision may be particularly helpful for children who are in the care of a local authority.

But could British citizenship affect my citizenship of another EU country?

Possibly. When deciding between 'settled status' and British citizenship, it should be noted that whilst the UK permits dual citizenship some countries don't allow this and becoming a British citizen could mean losing the original citizenship. This can be checked with the Embassy or High Commission of the country of the original citizenship.



In summary

Settled status represents a way for EU nationals to remain lawfully resident in the UK after the UK leaves the EU. You will have to apply for this before 30 June 2021, or before 31 December 2020 if the UK leaves without a deal.

However, it does not carry certain entitlements which are available to British citizens, including the right to vote in general elections and the right to return to the UK, regardless of how long you have been away. If you wish to do so, you may apply for British citizenship after having either settled status or permanent resident status, confirmed by the Home Office, for at least one year. A fee is payable for applications for citizenship, whereas no such fee is payable for applications for settled status.

Some people will already meet the eligibility criteria to apply to become British citizens, so it is important to understand all of the options that are available. It is also important to keep in mind that the choice you make can have an impact on your children's eligibility for British citizenship.

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