

GMS Flash Alert



Immigration Edition

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United Kingdom - Government Announces Details on Brexit EU Settlement Scheme

On 21 June 2018, the U.K. government published its Statement of Intent,¹ which provides much anticipated details on the application process EU nationals and their family members will need to follow to continue living in the U.K. permanently following Brexit.

The Statement of Intent confirms the agreements on citizens' rights laid down in the Draft Withdrawal Agreement² and the mechanism by which EU nationals who are already resident, or arrive in the U.K. prior to 31 December 2020, can apply to obtain an immigration status document. The U.K. and EU previously guaranteed a number of rights for EU citizens within the Draft Withdrawal Agreement, which means that EU nationals who arrive in the U.K. before 31 December 2020 will continue to benefit from the same rights of residence, work, and access to health-care and benefits under the new scheme.

WHY THIS MATTERS

The U.K. government has confirmed in detail its plans to create a new EU Settlement Scheme for EU nationals and their family members. This means it will become mandatory for EU nationals living in the U.K. (excluding nationals from the Republic of Ireland) to make an application to obtain an immigration status document as evidence of their future rights to live and work in the U.K. post Brexit. The new digital application system will open as part of a phased roll out from late 2018 and should be fully operational by 30 March 2019 (the date the U.K. leaves the EU). European Union nationals will have a flexible period to apply for their document, but they must have submitted their application by 30 June 2021. Global mobility managers, international HR professionals, and immigration counsel should take note and be prepared for the extra administration and altered procedures this will entail.

Furthermore, with the launch of the new scheme, employers may want to consider how they plan to communicate this to their UK-EU cross-border workforce and think about what assistance and support they could offer them regarding the upcoming changes and the requirement to make an application.

Finally, employers will need to start preparing for additional right to work checks in 2021.

Details of Changes

Eligibility for EU Settlement Scheme

- EU nationals who are already living in the U.K. or arrive in the U.K. before *midnight* on 31 December 2020, will be able to stay in the U.K. and apply under the EU Settlement Scheme.
- EU nationals who have been continuously resident in the U.K. for at least five years before 31 December 2020, should be eligible to apply for “settled status,” which is the same as the current immigration permission called “Indefinite Leave to Remain.”
- EU nationals who are resident in the U.K. before 31 December 2020, but have not by that time accrued five years’ continuous residence in the U.K., will need to apply for a “pre-settled status” document. A pre-settled status document will typically be issued for five years. This document can then be switched for settled status after five years.
- Settled status and pre-settled status afford the same rights of residence, access to work, health-care, pensions, and other benefits, as EU nationals currently receive under freedom of movement provisions.
- EU nationals who already possess a document certifying permanent residence under the European Economic Area (EEA) Regulations, will only need to swap their document for a settled status one.
- The main criteria for qualifying under the scheme is “continuous residence” in the United Kingdom. This is a more relaxed approach than the current EEA Regulations stipulate, where EU nationals have to demonstrate that they have been undertaking qualifying activities, and family members have to prove their connection to an EU national undertaking these activities (e.g., working, studying, etc.) to qualify to stay. In short, EU nationals will not have to evidence what they have been doing in the U.K., just that they have physically been in the U.K. for a continuous period of five years.
- The new scheme for EU nationals maintains the existing definition of continuous residence, which means that applicants may not qualify for settled status if they have spent six months or more outside the U.K. in any 12-month period in the five years they are relying on.
- EU nationals who have spent five years of continuous residence in the U.K. and qualify for settled status will be able to leave the U.K. for up to five years without losing it. This is more relaxed than the current system where an EU national can lose his or her permanent residence status after only two years’ absence from the United Kingdom.
- Some EU nationals may be permitted to apply for settled status early and before they complete five years of continuous residence, for example, retired workers, permanently incapacitated workers, workers who live abroad but retain a place of residence in the U.K. to which they return to at least once a week.
- All rules for the now closed Tier 1 (General) category are deleted.
- Returning residents with Indefinite Leave to Remain who have spent more than two years outside the U.K., will need to apply for entry clearance before attempting to return, and must show their strong ties to the U.K. and intention to make it their permanent home.

Family Members

- Family members living with, or joining, the EU national in the U.K. on or before 31 December 2020, will be eligible to apply under the scheme. They can either apply as “dependants” of the EU national or rely on their own residence in the U.K. to make their applications. Non-EU family members may wish to wait until the EU national has obtained his or her status under the scheme to make it easier to show their own eligibility.
- Non-EU national family members may need to provide evidence of their relationship with their EU national family member and also provide the EU national’s identity documents as part of their application.
- “Close” family members who are still living overseas after the end of the transition period, will still be able to travel to the U.K. and join their family member at a later date, so long as the relationship with the EU national resident in the U.K. existed on 31 December 2020. They will have a three-month grace period after arrival to submit their application.

Timeline for Applications

- The deadline for submitting an application to the Home Office will be 30 June 2021. It will be mandatory after this time to hold either a document evidencing settled status or pre-settled status. If an EU national submits an application before this date but does not receive a decision before 30 June 2021, this will not impact his or her right to remain in the U.K. until a document has been issued.
- If an EU national misses the deadline for applications for a good reason, the Home Office will grant a reasonable further period for them to apply.
- The government intends to launch a digital online application system for EU nationals, which will be rolled out from late 2018 and be fully operational by March 2019. EU nationals are invited to start submitting applications via the digital system as soon as the scheme goes live.

Application Criteria

- EU nationals and their family members will be subject to three core criteria:
 1. **Identity** – Applicants need to prove their identity by way of a passport, national identity card, or biometric residence card (non-EU nationals only).
 2. **Eligibility** – Applicants will be assessed to determine how long they have been resident in the United Kingdom. The Home Office will utilise data held by HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP) to determine if an applicant qualifies for settled status or pre-settled status. If the data do not support a grant of “settled status,” the Home Office will generally invite the applicant to submit additional evidence to show how he or she qualifies for settled status. If they are not convinced, they will likely issue a “pre-settled status” document. Applicants can submit additional evidence of their residence if they wish, but it is not required to make a valid application.
 3. **Suitability** – All applicants will be subject to security and criminality checks to identify serious or persistent criminals. An application will generally only be refused on the grounds of criminality if the applicant is the subject of an extant deportation order, exclusion order, or removal decision. If the applicant has provided false or misleading information in their application, this could also form grounds for refusal.

- The Home Office will generally invite the applicant to submit any outstanding information, evidence, and/or documents in support of their application before refusing an invalid application. Further details on the types of supporting documents can be found in Annex A of the Statement of Intent.

Applicants will not need to provide evidence of their activities in the U.K. or demonstrate that they hold comprehensive private medical insurance, which is required of some EU nationals under the current rules.

Application Process

- EU nationals will need to complete an online application form which will be short, simple, and user-friendly. The application form can be accessed by computer, tablet, or smartphone. There will also be an app available on Android to upload documents. Applicants must also provide an upload of a passport photo.
- Applicants who are able to submit their applications online or via the mobile app, may not need to submit any original documents to the Home Office to make a valid application.
- Applicants who are unable to access online resources will have the opportunity to submit their original documents to the Home Office by post if they choose to. The government is exploring options for applicants to be able to visit support centres, or receive direct support at home for more vulnerable applicants.
- Once an application has been submitted, applicants will be issued with a certificate of application as confirmation that their application is under consideration. Once approved, EU nationals will be issued with a digital document only, they will not receive a paper document.
- Non-EU national family members will need to attend a visa application centre in the U.K. to enroll their biometric data (fingerprints and photograph) as part of their application. Once approved, non-EU national family members will be issued with a biometric residence permit to facilitate travel and evidence their right to work.
- More information on the scheme and how to apply is expected to be released by the government at the end of summer 2018.

Application Cost

- An application under the scheme will cost £65 for adults. Children under the age of 16 will be subject to a reduced fee of £32.50.
- Where an applicant has been granted pre-settled status under the scheme, the application to apply for a settled status document will be free-of-charge once they qualify.
- EU nationals who already hold a document certifying permanent residence will not need to pay a fee to swap their document for a settled status one.

KPMG LLP (U.K.) NOTE

The government announcement provides greater certainty on what EU nationals and their family members should expect during the lead-up to Brexit and during the period until 31 December 2020. Whilst all EU nationals will need to obtain a form of status document as evidence of their future right to live and work in the U.K., the exemption from having to submit original documents to the Home Office for some applicants and provide evidence of economic activity in the U.K., i.e., employment, study, self-sufficiency etc., should help to reduce the administrative burden on EU nationals, organisations, and employers. However, we do not yet know exactly who will be able to use the simplified system and who will need to provide more complex evidence. At the moment, it seems likely that only people whose records for the five years can be verified with HMRC will completely avoid having to submit supporting documents.

It is also unclear what the position will be for people who qualify for pre-settlement status but subsequently do not spend sufficient time in the U.K. to qualify for settled status within five years. The Draft Withdrawal Agreement suggested people who exercised EU Treaty rights before Brexit would have a life-long right to continue to enjoy free movement. The Statement of Intent is silent on how this will work after pre-settled status permits applied for before 30 June 2021 expire.

Employers should plan ahead given the timeframe and start preparing their EU employees for Brexit and beyond. There will be a flexible period for EU nationals to obtain their documents, but employers will have a stake in establishing the right to work of those EU nationals in the future and may want to consider how best to start preparing their EU workforce and HR / recruitment functions for this change.

In the meantime, if employees wish to apply for U.K. citizenship or want peace of mind now, the current EU system for applying for permanent residence is still open and in many situations it is recommended that applications be submitted sooner rather than later.

FOOTNOTES:

1 See the [EU Settlement Scheme: statement of intent](#) (21 June 2018).

2 See the ["Joint Report from the Negotiators of the European Union and the United Kingdom Government"](#) (8 December 2017).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in the United Kingdom.

The KPMG Legal Services – Immigration Team has a wealth of experience in transactional, advisory, and compliance assurance services. We will be able to advise your business in relation to practical considerations in light of the above changes, as well as what this means for your long-term recruitment and compliance strategies.



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