

A GUIDE TO YOUR RIGHTS FOR EEA/EU CITIZENS IN SCOTLAND

Factsheet 1. My Right to Reside

This factsheet provides a brief summary of the rights of you and your family members to live in Scotland before, during and after the Brexit transition period.

What are my rights now (until 29 March 2019)?

You and your family members have:

- The right to live in the UK for an initial period of up to three months
- The right to continue to live in the UK if you are a **'qualified person'** exercising EU treaty rights
- The right to apply for **'permanent residence (PR)'** after living in the UK for 5 years continuously
- The right to become a British citizen after holding **'permanent residence (PR)'** for at least 1 year

What does it mean to be a **'qualified person'** exercising EU treaty rights?

It means you are:

- a jobseeker
- a worker, or self-employed worker
- a student (with comprehensive sickness insurance)
- a self-sufficient person (with comprehensive sickness insurance)

What is **'comprehensive sickness insurance'**?

The UK Government has said that students and self-sufficient people must show that they have

comprehensive sickness insurance in order to be **'qualified people'**

- **'Comprehensive sickness insurance'** can be proven by showing that you have any of the following:
 - European Health Insurance Card (EHIC)
 - private medical insurance that will cover the costs of the majority of medical treatment in the UK
 - other evidence that there is a direct arrangement between your country and the UK that will cover the cost of your medical care in the UK.

The European Commission thinks this requirement is a breach of EU law, and started infringement proceedings (an investigation) against the UK. However, this may no longer matter because the UK Government has said that proof of comprehensive sickness insurance will not be required under the EU Settlement Scheme (see below).

Who is your **'family member'** under EU law?

Under EU law, your **'family members'** include:

- your husband, wife or civil partner
- your unmarried partner with a residence card to prove your relationship
- your child, grandchild or great-grandchild under 21 years old
- your dependent child over the age of 21

- your dependent parent, grandparent or great-grandparent
- your other dependent relative with a residence card to prove your relationship

However, if you are a ‘qualified person’ because you are a student, your ‘family members’ only include your spouse/civil partner and your dependent children.

What will my rights be during the Brexit transition period (30 March 2019 to 31 December 2020)?

- The UK and the EU have reached agreement in principle that there will be no change to your rights during the Brexit transition period.
- They have also agreed that EEA/EU citizens arriving during this period will enjoy the same rights as those who arrived before Brexit.
- However, the transition period will only come into effect if the **withdrawal agreement** is ratified by both the EU and the UK before 29 March 2019.
- To implement this agreement, the UK Government has proposed a new approach to assessing the right to reside for EEA/EU citizens, called the **EU Settlement Scheme**.

What is the EU Settlement Scheme?

- You¹ and your family members living in the UK during the Brexit transition period (30 March 2019 until 31 December 2020) must apply for either:
 - **Settled status** (if you have been living here for 5 years continuously)
 - **Pre-settled status** (if you have been living here for less than 5 years)
- **Settled status** means you have the permanent right to continue to live in the UK after the Brexit

transition period, even if you are no longer a ‘qualified person’ or the family member of a ‘qualified person’

- **Pre-settled status** means that you have a temporary right to live in the UK for a period of up to five years after the end of the transition period. Once you have lived in the UK for 5 years, you will then be eligible to apply for settled status.
- Settled or pre-settled status means that you also have the same entitlements to work, study, and access public services and benefits as before the transition period.
- Evidence of your status will be given in digital form. No physical paper document will be issued to you.
- Evidence of the status of your non-EEA/EU family members will be issued as a biometric residence card.

Do I have to apply for the EU Settlement Scheme?

- Yes, if you want to remain in the UK after 31 December 2020.
- After that date, no other forms of right to reside for EEA/EU citizen will be valid.
- You’ll need to apply even if you’re an EEA/EU citizen married to a British citizen.
- You’ll need to apply if you hold ‘permanent residence (PR)’, but you will not need to pay a fee.
- You will not need to apply if you have Indefinite Leave to Remain or are Irish; however family members from outside the UK and Republic of Ireland must apply.

1. Rights of residence for citizens of the EEA (Norway, Iceland, Liechtenstein) and Switzerland are still being negotiated.

How do I apply for 'settled status' under the EU Settlement Scheme?

- The application system for settled status will be fully open by **30 March 2019**. You can then apply online, using your mobile phone, or using a paper form.
- You can apply by yourself, or you may want to seek help from an organisation that provides legal advice and information on the EU Settlement Scheme.
- You will need to prove:
 - **Your identity** (for example, using a passport, national ID card, or biometric residence card or permit)
 - **Your continuous residence in the UK** (for example, either by giving your National Insurance Number and agreeing to an online search of your HM Revenue & Customs and Department of Work and Pensions records, or by providing additional evidence²)
 - **That you are not unsuitable** because you:
 - Have made false or misleading statements about yourself in the application,
 - Have a previous criminal conviction,
 - Are associated with a terrorist organisation, or have committed a war crime or genocide, or
 - pose a risk to public safety, public security or public health
- You must pay £65 per application for an adult, and £32.50 per application for a child under 16 years old.
- You do not need to pay a fee if you already have Indefinite Leave to Remain, Permanent Residence or are a looked after child in the care of the local authority.

- You will also need to provide a passport photograph. Your non-EEA/EU family members may need to attend an application centre to give fingerprints, if they have not done so in the past.

When should I apply for the EU Settlement Scheme?

- You should apply for settled status as soon as you qualify for '**continuous residence**', meaning you have been living in the UK for at least 6 months of each of the last five years.
- If you will not qualify for 'continuous residence' before 30 June 2021, you must apply for pre-settled status first.
- **The latest date for making an application is 30 June 2021.**
- If you are the family member of an EU citizen, you should apply at the same time as the EU citizen, if possible.

What if my application is not successful?

- You can appeal the decision if you apply after 29 March 2019. You may need to pay a fee to appeal this decision.
- You can appeal by yourself or you can seek the advice of a qualified immigration advisor or a solicitor to help. If you qualify for legal aid, then you may not need to pay for this legal advice or the appeal fee. You can find contacts for immigration solicitors here: <https://www.lawscot.org/find-a-solicitor/>
- You can also reapply as many times as you want to before 30 June 2021, but you will have to pay the fee each time you apply.

2. The Home Office has provided a list of further evidence that will be accepted for proving continuous residence here, at Annex A to their guidance to Home Office caseworkers for the EU Settlement Scheme: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736281/EU_Settlement_Scheme_Caseworker_guidance.pdf

What will my rights be after the transition period (after 1 January 2021)?

As mentioned above, the EU Settlement Scheme will remain open until 30 June 2021.

- EEA/EU citizens who were granted ‘pre-settled status’ during the transition period, will have the right to apply for ‘settled status’ once they have achieved five years of ‘continuous residence,’ even if this is after 30 June 2021. There will be no additional fee for applying for ‘settled status’ if you already hold ‘pre-settled status’.
- EEA/EU citizens with ‘settled status’ or ‘pre-settled status’ will also have the right to apply for their close family members (a spouse, civil partner, durable partner, dependent child or grandchild, and dependent parent or grandparent) living overseas to join them, as long as the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK. Close family members joining an EU citizen after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021).
- EEA/EU citizens with ‘settled status’ or ‘pre-settled status’ will also always be able to apply for their children to join them in the UK, even if the children were born after 31 December 2020.
- The UK Government has not yet published a post-Brexit transition immigration policy. However, it is likely that the right of EEA/EU citizens and their families, arriving after 1 January 2021, to live, work, study and visit the UK will be restricted by immigration controls.

How can I find out more?

- Read more about the UK Government on EEA/EU citizens rights and settled status scheme here: <https://eucitizensrights.campaign.gov.uk>
- Read more about the Scottish Government policy on EEA/EU citizens here: <https://beta.gov.scot/policies/europe/eu-citizens/>
- JustRight Scotland provides free confidential second-tier advice to organisations supporting EU citizens. Contact us through our website: <http://justrightscotland.org.uk/our-work/scottish-refugee-migrant-centre/brexit-eu-citizens/> or by phone on 0141 406 5350.
- Read a settled status checklist from the 3million: <https://www.the3million.org.uk/checklist>

Last Updated September 2018

Funded by the Legal Education Foundation.

