

Bird & Bird Business Immigration

Brexit and the EU Settlement Scheme

February 2019



Foreword

Brexit will have a major impact on EU nationals and their family members in the UK. The Government has introduced a plan to register over 3 million EU nationals living in the UK to protect their existing rights.

In order to continue living and working in the UK after Brexit, EU nationals and their family members will need to apply under the EU Settlement Scheme.

We have prepared this booklet as a preliminary reference guide based on the information available to us at this time. It is not exhaustive and should not be used as a substitute for specific advice.



Introduction

Background

On 23 June 2016, the people of the United Kingdom voted to leave the European Union. On 29 March 2017, the UK officially gave notice under Article 50 of the Lisbon Treaty to withdraw from the EU.

If no agreement is reached with the EU before 29 March 2019, the UK will exit the EU under a no-deal scenario and lose access to the single market (i.e. freedom of movement of goods, services, capital and people). There will also be no reciprocal implementation period to allow sufficient time for businesses and EU nationals to prepare their affairs.

Given the increasing likelihood of a no-deal scenario, the Government has pledged to protect the rights of EU nationals and their family members "unilaterally" even under a no-deal scenario.

The Government has proposed a new EU Settlement Scheme in order to register EU nationals and their family members under UK law (as opposed to EU law) to protect their existing rights.

The Scheme offers many benefits as the application process is designed to be streamlined and the criteria for qualification are mainly based on residence in the UK and lack of any serious criminal convictions.



Scope of the EU Settlement Scheme

All EU nationals* (and their family members) who wish to continue living in the UK after Brexit must make an application through the EU Settlement Scheme to obtain a new status under UK law.

Provided a deal is made between the UK and the EU (i.e. the Withdrawal Agreement is ratified by both sides), the Scheme will be extended to EU nationals and family members who are resident in the UK as of 31 December 2020.

Under a no-deal scenario, EU nationals and family members must be residing in the UK on or before 29 March 2019 in order to be eligible for the Scheme.

Individuals who register under the Scheme will continue to be able to access work, pensions, healthcare and other benefits after Brexit.

Eligible individuals can apply for the following:

- "Pre-settled" for those who have less than five years of continuous residence in the UK; or
- "Settled status" for those who have lived in the UK for more than five continuous years.

**Irish nationals have a special status in the UK and are not required to register. Family members who are British citizens also do not need to apply. Citizens of Norway, Iceland, Liechtenstein and Switzerland are now eligible to apply under the the EU Settlement Scheme.*



Questions

When do I need to apply?

EU nationals (and their family members) who are residing in the UK at 31 December 2020 will need to make an application before 30 June 2021 to maintain their status.

Under a no-deal scenario, eligible EU nationals (and their family members) will need to make an application before 31 December 2020 to maintain their status.

It is anticipated that the Scheme will be phased in from early 2019 and will become fully operational by the end of March 2019.

How do I apply?

There will be a streamlined, online application portal which can be accessed by desktop computers, laptops, tablets and mobile devices.

What steps are involved in the application?

1 Proof of your identity

Applicants can verify their identity by scanning their EU passport or national ID

card. They will also need to upload a recent photograph.

Non-EU nationals (who are close family members) will be required to provide their fingerprint biometrics if they do not already possess a biometric residence permit.

2 Proof of residence

Applicants can provide their national insurance numbers for the Home Office to confirm the residence period by checking tax and/or benefit records with the relevant agencies. There will also be an option for applicants to upload documents to demonstrate their residency (i.e. Council tax bills, bank statements, and tenancy agreements).

3 Criminality check

Applicants will be asked to declare any serious criminal convictions.

4 Evidence of relationship (if applicable)

Non-EU national family members will need to show proof of their relationship to the EU national living in the UK (i.e. marriage



certificate, birth certificate). If those documents are not in English, it is expected that a certified translation will be required.

5 Payment

On 21 January 2019, the Prime Minister announced that she will waive the registration fee of £65 for each adult (and £32.50 for each child under the age of 16) when the Scheme fully opens on 29 March 2019.

There is no need to pay if you already have a valid permanent residence/indefinite leave to remain document.

There is also no fee when you are changing your status from "pre-settled" to "settled status".

What if I need help completing the online registration application?

Applicants can contact the EU Settlement Resolution Centre by phone on 0300 123 7379 (from inside the UK), 0203 080 0010 (from outside the UK) or by submitting a further question using the online enquiry form.

<https://eu-settled-status-enquiries.service.gov.uk/start>



What about my family members?

The Scheme is available to close family members listed below so long as the relationship exists on 31 December 2020 and continues to exist when they apply.

Under a no-deal scenario, the relationship must exist on 29 March 2019. The family member will then have until 29 March 2022 to make an application.

- spouses
- civil partners
- unmarried partners
- dependent children and grandchildren
- dependent parents and grandparents

I already have a permanent residence card. Do I need to apply under the new Scheme?

Yes, you will still need to make an application to obtain "settled status" (free of charge).

Will I get a paper document confirming my new status under the Scheme?

Proof of your new status will be made available online. You will not receive a physical document confirming your new status unless you are a non-EU national who does not already have a biometric residence permit.

How can Bird & Bird help employers prepare for Brexit?

Our experienced business immigration lawyers offer bespoke mobility planning services for employers, including training, face-to-face presentations, contingency planning and project management, advice on communication strategies and surgery services for complex queries.

The EU Settlement Scheme should be straight-forward for most EU nationals who are working in the UK. However, we anticipate there will be challenging circumstances particularly for family members of EU nationals (i.e. spouses, dependent parents) where residence cannot be confirmed through the use of automatic checks of HMRC and DWP data. Difficulties are also expected for unmarried partners of EU nationals.

We are also well-placed to assist UK nationals living in EU countries who are likely to be impacted by Brexit through our offices in Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Luxembourg, Netherlands, Poland, Spain, Slovakia and Sweden.

Glossary of Terms

Continuous residence

Continuous residence generally means you have not been absent from the UK for more than six months in any given 12 month period.

Implementation period

This refers to the period from 29 March 2019 to 31 Dec 2020 in which freedom of movement rights will be preserved. There will be no implementation period under a no-deal scenario.

Pre-settled status

This status allows the holder to stay in the UK for up to five years. Once five years continuous residence has been accumulated the holder can then apply for "settled status".

Settled status

This status allows the holder to stay in the UK indefinitely. However, this status will lapse if the individual is absent from the UK for more than five consecutive years. There is no need to take the Life in the UK test to obtain "settled status".



Yuichi Sekine

UK Head of Business
Immigration

Tel: +44 (0)20 7982 6419

yuichi.sekine@twobirds.com



Jonathan Goldsworthy

Senior Associate

Tel: +44 (0)20 7905 6389

jonathan.goldsworthy@twobirds.com



Tom Mintern

Associate

Tel: +44 (0)20 7982 6519

tom.mintern@twobirds.com



Sam Rayner

Associate

Tel: +44 (0)20 3017 6925

sam.rayner@twobirds.com



twobirds.com

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