

# EU Citizens' Rights and Settled Status

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Contracted by the European Commission to provide legal and policy advice to the EC Representation in the UK, Embassies, and the European Direct Information Centres, plus information services to local community organisations

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# Introduction

- Seraphus
- A firm with 30+ years of combined experience
- UK domestic law, asylum, human rights, and EU law
- A *www.freemovement.org.uk* partner
- Proponents of freedom of movement for all
- As a result of the 2016 referendum EU free movement law will end and all EEA / Swiss\* citizens will fall under UK domestic immigration law

\*for the purpose of this presentation we use the term EU citizen to include EEA / Swiss citizens

# Presentation structure

- This presentation will cover:
  - a. The requirements of the EU Settlement Scheme in the event of a negotiated Brexit
  - b. The differences to the EU Settlement Scheme in the event of a 'no-deal' Brexit
  - c. The proposed temporary immigration system for EU citizens coming to the UK after Brexit day in the event of a 'no-deal' Brexit

# EU law

- Currently most EU citizens and their family members live in the UK under EU law which is commonly known as free movement
- This allows EU citizens to come to the UK to live, work, set up businesses, study etc. (known as 'exercising treaty rights')
- Most EU citizens do not have much direct interaction with EU law because their passport or ID card is enough to evidence their rights
- EU law documents can be requested from the Home Office - such as a blue Permanent Residence document (PR document)
- Non-EU family members of EU citizens are the most likely people to have documents in order to travel, be employed, access NHS etc., more easily (they are not obliged to apply)
- EU law covers other areas such as healthcare, pension and other social assistance rights; under the Withdrawal Agreement (WA) there will be limited changes

# 2016 referendum

- EU free movement law will cease to apply when the UK leaves
- This has necessitated a scheme to provide lawful residence status of EU citizens under the UK Immigration Rules (domestic law)
- This is what is known as the EU Settlement Scheme/Settled Status Scheme/Appendix EU (throughout this presentation “the EUSS”)
- In the event of a negotiated Brexit:
  - The EU Settlement Scheme will be implemented in full and in accordance with the EU/UK agreement
- In the event of a 'no-deal' Brexit:
  - The EU Settlement Scheme will still be implemented but with some in the rights and entitlements of that scheme

# Key dates

- 28 August 2018 – Start of first private EUSS trial (PB<sub>1</sub>)
- 01 November 2018 – Start of the second private EUSS trial (PB<sub>2</sub>)
- 14 November 2018 – WA text jointly agreed by the UK and the EU
- 21 January 2019 – Start of the public EUSS trial (PUB<sub>1</sub>)
- 30 March 2019 – Official launch of the full EUSS
- 31 October 2019 – Brexit day if there is no-deal (maybe!)
- 31 December 2020 – The end of the transition period (under a deal)
- 31 December 2020 or 30 June 2021 – Deadline for EU citizens and family members apply to the EUSS (unless there are good reasons)
- 31 January 2020 - New proposed no-deal Brexit day

EU Settlement Scheme:  
A negotiated Brexit



# The EU settlement scheme

- Applications under the EUSS are for one of two statuses:
  - Settled status is for those EU citizens and their family members who have lived in the UK for 5 years when they apply (with some limited exceptions to the 5 year rule)
  - Pre-settled status is for who have not lived in the UK for 5 years by 30 June 2021 and to allow them to accrue the 5 years needed to apply for settled status (they must then apply for settled status before their pre-settled status expires)
- Online form and an optional identity app (on Android phones only currently with iPhones from late 2019)
- Paper form will be available to limited groups (for those with derivative rights or with permission from the Resolution Centre as having exceptional circumstances), the online form will be the norm
- Under the deal, the deadline to apply is 30 June 2021 which gives discretion as to the date of application



# The EUSS

- It's a residence based application, the Home Office will not ask for:
  - Evidence of exercising '*treaty rights*' in most situations (see also EU16 Suitability requirements)
  - Evidence Comprehensive Sickness Health Insurance (Students and Self-Sufficient persons)
- In essence this means that the HO will look at how long an applicant has been resident in the UK for and not what they have been doing while resident in the UK (e.g. working, unemployed, claiming benefits)
- UK residence includes Guernsey, Jersey and the Isle of Man. Time spent in these Crown Dependencies will be counted towards the relevant 5 years

# The EUSS

- ALMOST ALL EU CITIZENS AND FAMILY MEMBERS WHO WANT TO REMAIN LIVING IN THE UK WILL HAVE TO APPLY UNDER THE EUSS!
- Even those who have a PR document still need to apply
- Failure to apply in time will result in no lawful status in the UK
- There is an exemption for those who hold Indefinite Leave to Remain (ILR). But... they can and probably should apply as well

# Nationalities protected

- The EU27 citizens
- EEA citizens - Iceland, Liechtenstein, Norway\*
- Swiss citizens\*
- Irish citizens can apply but do not need to (rights from CTA - now formalised between Ireland and the UK)
- Non-EU family members
- Non-EU family members of Irish citizens will need to apply and can do so without the Irish citizen doing so
- Non-EU family members of dual British/EU citizens will need to apply and can do so without the British/EU citizen doing so

\*Technically these countries' citizens are not covered by the Withdrawal Agreement but the UK government has made separate agreements meaning these citizens are included in the EUSS since 30 March 2019

# Individuals protected

- EU citizens and family members who, by 31 December 2020, have been residing in the UK can continue to do so (this means that those whose UK residence begins before 31 December 2020 are eligible to apply under the EUSS)
- Those who are outside the UK on 31 December 2020 and can establish historical continuous residence for a period of 5 years
- Those without 5 years residence in the UK who are outside the UK on 31 December 2020 but have maintained continuity of residence
- Those previously resident in the UK but serving or accompanying someone serving as a Crown Servant or those accompanying a member of the HM Forces overseas
- Selected family members will be allowed to enter the UK after 31 December 2020

# Family members

- Family members of an EU citizen who can enter the UK anytime:
  - Spouse
  - Civil partner
  - Durable partner
  - Dependent children or grandchildren (including adopted, born through surrogacy recognised in UK law, and children in respect of guardianship orders)
  - Dependent (dependency is assumed) parents or grandparents
- BUT! The relationship must have existed on 31 December 2020 *and* at the time that they enter the UK (except future children)
- All other (extended) family members must be residing in the UK by 31 December 2020

# Family members

- Family members can be of any nationality if related to the:
  - EU citizen
  - EU/non-EU spouse of the EU citizen
  - EU/non-EU civil partner of the EU citizen
- Family members of a non-EU durable partner are not included
- Other (extended) family members have to be related to an EU citizen (unless they applied for an EU document before 01 Feb 2017)
- Relationships need not exist on 31 December 2020 for:
  - Future children born to the EU citizen or their spouse and civil partner
  - Future children adopted by the EU citizen or their spouse or civil partner

# Key steps

- To apply there are 3 things that an applicant 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)

# Validity

## Apply to stay in the UK after it leaves the EU

### Prove your identity

You will need:

- an email address and phone number
- your current passport or national identity card, if you are a European Economic Area (EEA) or Swiss national
- your current passport or UK residence card with a biometric chip, if you are a not an EEA or Swiss national

Read the [guidance on staying in the UK after it leaves the EU](#) to check if you qualify and for information on this service.

Prove your identity



# Identity

There are different ways you can prove your identity using your passport, national identity card or UK residence card with a biometric chip.

You can choose the best option for you.

## Android App

Use the app to scan your document details and take a photo of yourself, this will save you time entering the details into the form. It is unlikely you will need to post us your document.

If you do not have a suitable phone, use a friend's or one of ours at an [ID document scanner location](#).

If you want to apply whilst you are outside the UK, then you must use this option.

## Online and by post

Enter your document details.

Upload a digital photo.

Post your document at the end of the application.

If you want to apply whilst you are outside the UK, then you cannot use this option.

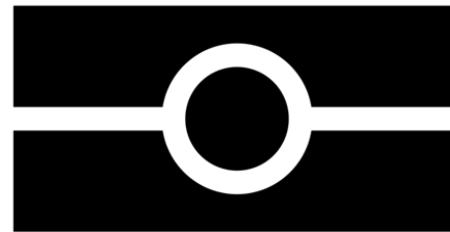
## How will you prove your identity?

- Android app
- Online and by post

Continue

# Identity

- Identity is verified by a valid passport (for any applicant), or
  - Valid national ID card (for EU citizens)
  - Valid Biometric Residence Permit (for Non-EU citizens)
  - Valid Biometric Residence Card issued under the EEA Regulations



- An App will check biometric passports for EU citizens or UK residence cards with a biometric chip for non-EU citizens and transmit identity data to the HO (only available on Android phones not iPhones yet)

# Identity



## EU Exit: ID Document Check

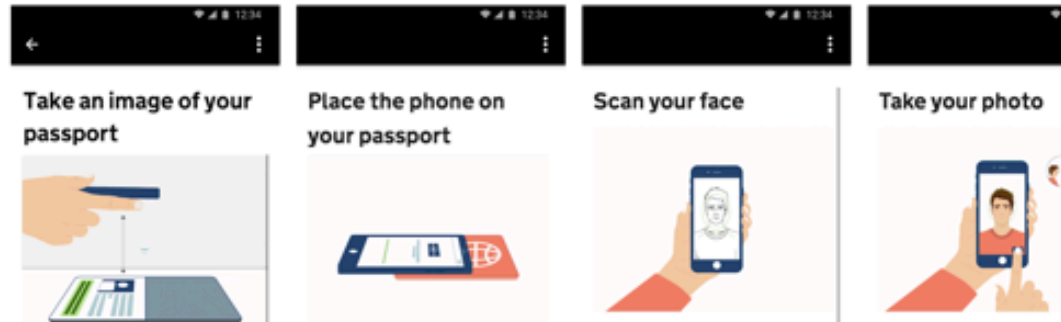
UK Visas and Immigration Tools

★★★★★ 3,501

PEGI 3

This app is compatible with your device.

Installed



# Identity

- Face-to-face services available in certain locations to allow applicants to access the App (full list on Gov.UK website)
- Alternatively, documents can be posted to the HO
- The HO may accept alternative evidence of identity and nationality *'where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons'*
- HO policy on alternative evidence of identity is likely to be applied restrictively and so....
- Those with identity documents coming up renewal for should consider renewing in good time to ensure they can meet the EUSS deadline

# Progress

## Apply to stay in the UK after it leaves the EU

You need to complete every section.

**Identity**

**COMPLETED**

[View answers](#)

[Application type](#)

[Residence in the UK](#)

[Criminal convictions](#)

[Digital photo](#)

**Submit answers**

# Validity: Application type

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## Do you have dual nationality?

This means you have more than one current nationality.

Yes  No

[Continue](#)

[Save and return later](#)

## Do you have any previous nationalities?

Countries where you used to have citizenship but don't anymore.

Yes  No

[Continue](#)

[Save and return later](#)

Validity:  
Application  
type

## Do you have a UK residence card with a biometric chip?



Your document will say 'residence card' at the top.

Yes  No

Card number

For example, RE1234567

Expiry date

For example, 31 3 2024

Day    Month    Year

<input type="text"/>	<input type="text"/>	<input type="text"/>
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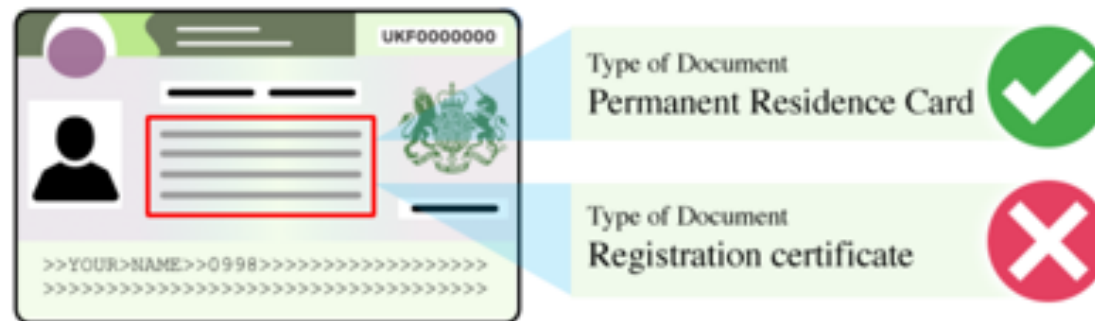
[Continue](#)

[Save and return later](#)

Validity:  
Application  
type

## Do you have a valid UK permanent residence card?

Check the 'Type of document' section on the card. If it says 'Registration certificate' answer 'No' to this question.



Yes  No

[Continue](#)

[Save and return later](#)



## Validity: Application type

### Have you ever been granted indefinite leave to remain (ILR)?

ILR is a type of immigration status you would have applied for. You'll usually have a stamp in your passport if you have it.

By answering yes to this question, you confirm that your ILR status is valid. This means you have not:

- been out of the UK for a continuous period of more than 2 years since getting ILR
- lost your ILR status for any other reason for example, you were deported

Yes  No

[Continue](#)

[Save and return later](#)

# Validity: Application type

## Applying as a family member

As the national of a country outside the EEA or Switzerland, you can only apply for status based on your relationship to an EEA or Swiss family member (your 'sponsor').

To complete your application, you will need:

- evidence of your relationship to your sponsor
- your sponsor's application number, if they have one

If we can't confirm your residence, you'll also need evidence that you have been resident in the UK.

It'll be quicker to process your application if your sponsor applies before you.

▶ [If your sponsor isn't applying or hasn't applied yet](#)

Has your sponsor applied for settled status?

Yes

No

[Add another sponsor](#)

[Continue](#)

[Save and return later](#)

# Residence

## What is your address in the UK?

Postcode

Find Address

- The online form will automatically check HMRC for evidence of residence based on employment or self-employment using the applicant's NI number (if provided)

## Do you have a National Insurance Number?

You'll usually have one if you're over 16 and have been an employee, self-employed or received state benefits.

Yes  No

Continue

[Save and return later](#)

## Residence: establishing

- The HO will not check any data beyond an '*ongoing relationship with HMRC*' and will be limited to going back 7 years
- The HO will also carry out checks with the DWP for evidence of residence (note: these are limited checks)
- Gaps in records can be supplemented with additional proof of residence
- A non-prescriptive list of acceptable residence evidence in the EU Settlement Scheme: evidence of UK residence guidance
- The applicant can submit a photocopy, photograph or scanned digital image of any required evidence

## Residence: "continuous" meaning

- In most situations an applicant will be aiming to achieve 5 years of "continuous residence"; this has a specific 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 but which do not exceed 12 months are permitted for an important reason:
  - childbirth
  - serious illness
  - study
  - vocational training
  - overseas posting
- Any period of compulsory military service is permitted
- Once 5 years of continuous residence is achieved, the applicant is not bound by these rules as they should qualify for settled status

# Criminality

- The HO intends to identify serious or persistent offenders, or
- Anyone who poses a security threat
- Disclosure will be required by the EU citizen or family member aged 18 or over
- Checks will be made against UK criminality and security databases (PNC and WI)
- Checks may be made against overseas criminal records
- Conduct, including convictions that relate to it, before 31 December 2020 will be assessed according to the current EU public policy tests for deportation
- Conduct, including convictions that relate to it, from 01 January 2021 will be considered against UK deportation thresholds

# Criminality

**BETA** This service is currently in development

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## Have you ever been:

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

This includes offences in the UK or any other country

Yes  No

[▶ Help with this question](#)

[Continue](#)

[Save and return later](#)

# Criminality

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## Have you ever supported, encouraged or been involved in:

- terrorist activities
- war crimes, crimes against humanity or genocide
- an extremist organisation

Yes  No

[Continue](#)

[Save and return later](#)



# Criminality: suitability

- An application *will* be refused on grounds of suitability where:
  - The applicant is subject of a deportation order (plus Islands) or a decision to make a deportation order, or
  - The applicant is the subject of an exclusion (plus Islands) order or an exclusion decision
- An application *may* also be refused where:
  - Whether or not to the applicant's knowledge false or misleading information was submitted
  - Whether or not to the applicant's knowledge false representations or documents have been submitted
  - The applicant is subject to a removal decision under the EEA Regulations on the grounds of their *non-exercise* or *misuse of rights* under Directive 2004/38/EC
    - *Note not to be used against students or self-sufficient persons for lacking Comprehensive Sickness Health Insurance*
  - The decision must be proportionate

# Granted: the status

- For EU citizens, evidence of pre-settled or settled status will be in digital form – this means online they can:
  - View their status
  - Understand the rights associated with their status
  - Update personal details (you must update your profile if you change your ID document)
- Accessible via ID number and date of birth (A single-use code will be sent to your mobile phone number or email address that you provided in your application so you can access your profile)
- Displays:
  - Name, photo, personal details
  - Type of status and what this status means
  - Providing rights (ID document or status pre-Dec 2020) information and sharing this with third parties
- Non-EU citizen family members holding pre-settled or settled status will be issued with a Biometric Residence Permit (unless they already hold one which remains valid)

# Granted: Settled status

- Settled status is an indefinite status that will not expire (also known as indefinite leave to remain in the UK)
- Settled status is the right to live in the UK indefinitely 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 face deportation action)
- Holders of settled status can apply for British ('naturalisation') citizenship but are *not* required to do so to retain lawful residence

\*The provision to allow up to 5 years absence from the UK after settled status has been granted has not been legislated for at the time of writing. It is unclear in the event of a no-deal Brexit whether the allowable absence will be for 5 years or for a lesser period. Holders of settled status should check their legal position in the event of a no-deal Brexit.

## Granted: Pre-settled status

- Pre-settled status is a limited status that will expire after 5 years (also known as limited leave to remain in the UK)
- Holders of pre-settled status will need to maintain continuous residence and, where relevant, their family relationship, in order to qualify for settled status later on
- The same rules on continuous residence apply to holders of pre-settled status and can be broken by an absence of 6+ months in one stretch or cumulatively (with the 12 month exception)
- Holders of pre-settled status must apply for settled status before the expiry of their pre-settled status to continue living in the UK (the Home Office may send out notification reminders)
- Holders of pre-settled status may lose this status if they commit a criminal offence (they may face deportation action)

# Becoming British

- You can apply for naturalisation as a British citizen immediately if:
  - You are the spouse or civil partner of a British citizen and hold a permanent residence document, settled status or ILR
  - If you were issued a permanent residence document or ILR in another capacity other than settled status, more than 12 months prior to the date of your naturalisation application
- Otherwise, you can apply for naturalisation:
  - 12 months after the date on which you were issued a permanent residence document or granted ILR
  - 12 months after the date you were granted settled status
- There are other additional requirements to be naturalised as British (these requirements are outside the scope of this presentation)

# Refusals

- Where a valid application is refused before 31 December 2020 the applicant can:
  - Reapply to remedy the refusal ground
  - Request an administrative review of the decision
  - If the refusal is received after the implementation of the WA, apply to appeal the decision (subject to primary legislation)
- An appeal is made to the immigration tribunal at a cost of £80 / £140 (depending on an paper or oral appeal)
- Continued rights of residence under free movement is unaffected by refusal decisions received before 31 December 2020

# Missed deadlines

- If an applicant misses the 30 June 2021 deadline they can apply late
- They must have a '*good reason*' for the delay in their application date
- They will then have a reasonable further period in which to apply
- But, a period of unlawful residence may occur
- SO...

...apply before the 30 June 2021 deadline!





EU Settlement Scheme:  
A 'no-deal' Brexit



# The EUSS: No-deal

- The UK Govt. [published](#) a plan for the EUSS on 06 December 2018 *if* there is no Brexit deal
- European Free Movement will probably end soon after Brexit day meaning that new EU arrivals will be subject to a new immigration system
- The EUSS will still be run in the way described in the presentation so far... But!
- It will be less generous in the following ways:
  - only apply to EU citizens who arrive before the withdrawal date
  - have a shorter deadline for applications, of 31 December 2020
  - have no right of appeal, only an internal administrative review or full-blown judicial review as remedies
  - Lower threshold for deportation for criminal offences
  - More restrictive for non-EU family members

# The EUSS: No-deal

- There will be a cut-off point for family members of EU citizens with settled status (i.e., the status needs to be obtained before a family applies) to join them in the UK:
  - 29 March 2022 for close family members where the relationship existed before the withdrawal date
  - 29 March 2022 for children born by this date
  - 31 December 2020 for spouse and partners and other dependent relatives whose relationships were established after the withdrawal date
- It will be easier to deport people convicted of minor crimes from 30 March 2019: “The EU deportation threshold would continue to apply to crimes committed before exit. However, we would apply the UK deportation threshold to crimes committed after [the withdrawal date].”
- You will be allowed to apply late, but a period of unlawfulness may occur, so:

...apply before 31 December 2020!



# The Future No Deal Arrangements



## Future No deal Arrangements: Visiting the UK

- A no-deal Brexit should not occur before 31 October 2019 and therefore the following information relates to after this date
  - Free movement will end and a temporary transitional immigration system will take over until 31 December 2020
  - This means that EU citizens arriving in the UK after Brexit day will need permission to be here under domestic immigration law
  - This will be granted automatically to EU citizens on arrival, with permission to visit, work and study; there is no charge
  - Permission to remain in the UK lasts until 31 December 2020, those who want to stay beyond this date need to take action
  - Non-EU family members) wishing to travel or join the EU citizen in the UK will need to apply for an EEA permit before arrival
  - Family members means spouse, partner, dependent child under 18

## Future No deal Arrangements: Staying in the UK

- Those EU citizens who want to stay in the UK after 31 December 2020 will need to apply to the Home Office for leave to remain ('European Temporary Leave to Remain'):
  - This is a a 36-month (three years) non-extendable visa (i.e. does not lead to settled status)
  - The application is free and can be made anytime from arrival in the UK to 31 December 2020
  - If the EU citizen wants to remain in the UK past the end of the 36-month visa, they must move into another immigration route
- Employers, universities, landlords will not be required to ask EU citizens for any proof of residence other than a passport or national ID card until after 31 December 2020

Further information





# Available HO assistance

- The HO has a Assisted Digital service which provides either telephone, face to face or home assistance to those who are unable to complete the application themselves (not legal advice)
- To request the Assisted Digital service you should call 03333 445 675 or text "VISA" to 07537 416 944

# Reference material

- [EU Settlement Scheme: applicant information](#)
  - [EU Settlement Scheme: evidence of UK residence](#)
  - [EU Settlement Scheme: application processing times](#)
- [EU Settlement Scheme: caseworker guidance](#)
  - [EU Settlement Scheme: suitability requirements](#)
- [EU Settlement Scheme: community leaders toolkit](#)
- [EU Settlement Scheme: employer toolkit](#)

## Further info

- EU citizens and their family members can follow updates on:
  - The [eurights.uk](http://eurights.uk) website
  - Our website [www.seraphus.co.uk](http://www.seraphus.co.uk)
  - The <https://www.the3million.org.uk> website
  - The [www.freemovement.org.uk](http://www.freemovement.org.uk) website
  - The EU Rep [https://ec.europa.eu/unitedkingdom/services/your-rights\\_en](https://ec.europa.eu/unitedkingdom/services/your-rights_en) website
  - GLA Hub <https://www.london.gov.uk/what-we-do/business-and-economy/representing-london-brexit-talks/eu-londoners-hub>
  - And register for email updates on the gov.uk page (Google: 'EU settled status email updates')

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

Thank you!

