

# EU nationals and Brexit:

## How to answer immediate and technical questions

We know that you will have received lots of questions about the UK government and the EU's agreement on citizens' rights. The agreement is set out in a joint report that can be found [here](#). Our FAQ will help you to answer the most common questions.

If you wish to provide your staff with links, the FAQ is available on our website [here](#). Please let your Fragomen account manager know if you would like us to create a tailored version or email us at [brexit@fragomen.com](mailto:brexit@fragomen.com).

### The key questions

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#### WHAT HAS BEEN AGREED?

The UK and EU have agreed that EU citizens living in the UK will be able to continue to live here on broadly the same terms as now, so long as they enter the UK before 31 December 2020 (when the UK's Brexit transition period ends) and do not have a disqualifying criminal conviction. The same has been agreed for British citizens living in Europe.

The Home Office released the detail of their plans in a [Statement of Intent](#), published on 21 June 2018. The Statement of Intent sets out how EU nationals will be able to confirm their residence and the process they will need to follow. The government is asking for feedback on the policy so it may change, although we would not expect any major revisions.

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#### DOES THIS MEAN ALL EU CITIZENS CAN STAY IN THE UK?

Broadly speaking, yes. EU nationals will be able to stay in the UK so long as they are not serious criminals and are resident here before 1 January 2021.

It will not be as simple as EU nationals being allowed to stay in the UK. EU citizens who enter the UK before 31 December 2020 must apply for appropriate residence documents (i.e. settled or pre-settled status) by 30 June 2021. Reports have suggested that those who enter between 29 March 2019 and 31 December 2020 may also need to register their stay but it is not clear how the registration requirement will be applied (if at all).

In practice this will mean:

- People who have been continuously and lawfully resident in the UK for five years by 31 December 2020 will be permitted to apply for "settled status".
- People who arrive before 31 December 2020, but won't have been in the UK for five years by that date will be able to apply for pre-settled status before switching to settled status at the five year mark.
- Close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join EU citizens after exit, where the relationship existed on 31 December 2020 and continues to exist. Children born to or adopted by EU citizens after the end of the transition period will be able to join their parent in the UK under current EU legislation.

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#### WHAT ABOUT NATIONALS OF IRELAND, SWITZERLAND AND THE EEA STATES?

**Ireland:** Brexit will not change the status of Irish nationals and they will not need to apply for pre-settled or settled status. Irish people are automatically deemed to hold settled status in the UK, so they are not required to do anything in preparation for Brexit.

However, Irish people can continue to apply for British citizenship if they meet the requirements. In particular, they must not have been absent from the UK for more than 450 days in the five year period before they apply, or 90 days in the year immediately before the application.

**Switzerland and the EEA:** The Home Office Statement of Intent (and the remainder of this FAQ document) is only concerned with EU nationals. The UK government is in separate discussions with the governments of Norway, Iceland, Liechtenstein and Switzerland. Officials from the EEA States (Iceland, Liechtenstein and Norway) and the UK met on 12 February 2018 to discuss the agreement reached by the UK and the EU on citizens' rights in December 2017. They subsequently issued a statement to confirm that positive discussions took place at the meeting and the parties affirmed their desire to secure the status and protect the rights of UK nationals living in Iceland, Norway and Liechtenstein and nationals of those countries living in the UK. The government has suggested that the scheme described in the Statement of Intent will be open to other EEA and Swiss Citizens (and their family members) on a similar basis as for EU nationals. We will provide a further update once more information is made available.

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#### SHOULD I APPLY NOW AND WHAT SHOULD I DO IF I WANT TO BECOME BRITISH?

EU nationals will not be able to apply for either pre-settled or settled status just yet. It is expected that the UK will begin to accept settled status applications in a phased role out from Autumn 2018 and is expected to be fully open on 30 March 2019.

EU nationals are still able to submit an application for a registration certificate or a permanent residence card now. However, we tend not to recommend applications for registration certificates. They are not mandatory documents, rarely serve a purpose and will be invalidated with Brexit. They only tend to be useful if a European national has a non-EU family member(s) joining them here.

It may make sense to apply for permanent residence now if a person wants to become British. Europeans will be eligible to apply for a document certifying permanent residence after living in the UK and exercising Treaty rights here for five years. Once an EU national has held permanent residence for 12 months (so has been in the UK for six years in total), they may apply for British citizenship. In approving a permanent residence application, the UK government will confirm the date on which it deems the applicant to have obtained permanent residence; so a successful applicant may not need to wait for 12 months from the date of their permanent residence application approval to apply for British citizenship. There are two helpful exceptions to this rule – Irish nationals (who will not be affected by Brexit anyway) can apply for citizenship without the document certifying permanent residence, and the European spouses of British citizens can apply for citizenship immediately on receipt of the document certifying permanent residence.

For people who are keen to become British quickly, it would make sense to apply for the permanent residence card now. Those who are not could wait and apply for settled status once the scheme opens. The UK government has promised that it will be an easier application than the current application. People should always check the impact of being granted a new nationality on a current nationality before making an application.

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### **WHAT IF I ALREADY HAVE PERMANENT RESIDENCE?**

If a person already has permanent residence but is not British, they will still need to apply for settled status under the new system. We are promised that this will be a very easy and relatively quick process. The government will not charge for the application.

## The timeline

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### **WHEN SHOULD I APPLY?**

Europeans and their non-EU family members can apply for settled status once the new process is rolled out. We understand that some employees of employers, perhaps in the public sector, will be able to apply from Autumn 2018. Everyone else will be able to apply from 30 March 2019.

European resident here should then apply for settled status or pre-settled status before 1 July 2021. Although the EU / UK deal allows for a proportionate approach where someone does not apply before the deadline if there is a good reason, it does not specify what constitutes a good reason. So people should, where possible, apply on time. If an out of time application is refused by the UK authorities, there will be an opportunity to have the decision reviewed.

## The process

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### **HOW LONG WILL IT TAKE FOR A DECISION TO BE MADE?**

It has been reported that the process will take between two and three weeks.

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### **HOW WILL THE PROCESS WORK FOR EU NATIONALS?**

The Home Office Statement of Intent says that the application process will be straightforward. Applicants will need to:

1. Make an online application
2. Confirm their identity, either using an app or by sending their passport to the Home Office, once instructed
3. Evidence how long they have been resident in the UK – the online application will check residence against tax and benefits residence so this will be automatic for many people
3. Pay the required fee, unless an exception applies
4. Upload their facial image for verification (normally a selfie)

The application form is expected to be quick and user friendly, with no more than six to eight questions. The aim is to make the application process as quick and simple as possible.

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## HOW CAN I DEMONSTRATE RESIDENCE?

Essentially, there will be two considerations when an EU national is demonstrating residence:

- Are they/ were they resident in the UK before 1 January 2021? This will confirm whether they are entitled to apply for pre-settled or settled status.
- Have they lived in the UK for five years, without breaking continuous residence? This will confirm whether they should be granted pre-settled or settled status.

The online application form will confirm residence for many people. Once they have provided their personal details it will run them against tax and benefits data. If the government has a record showing they have been in the UK for over five years they will be able to confirm residence and a settled status application will be considered.

If the government does not have five years of tax or benefits records the applicant will have a choice:

- If they have been here for under five years they will be able to confirm and progress an application for pre-settled status. They may need to provide evidence that they are residing in the UK.
- If they have been here for over five years, despite government records, they will need to provide evidence of the entire period.

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## WHAT SORT OF EVIDENCE WOULD BE NEEDED?

Pages 34-36 of the [Statement of Intent](#) contain the type of evidence that people should supply to demonstrate residence.

The guidance begins by listing the sort of evidence that the Home Office would prefer to receive, for instance an annual bank statement, a signed and dated letter from an employer or a signed and dated letter from an accredited college. It then sets out other evidence that would be accepted, for instance a letter from a GP. Applicants should read this list before submitting evidence.

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## WHAT IS CONTINUOUS RESIDENCE?

Continuous residence generally means that a person has not been absent from the UK for more than six months in total in any 12 month period (there is no restriction on the number of absences permitted).

### There are some exceptions:

- A single period of absence of more than six months but less than 12 months is permitted where this is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.
- Any period of absence on compulsory military service is permitted.

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## WHAT WILL IT COST?

The application should cost £65 for adults and £32.50 for children under 16. Children in the care of local authorities and those who already hold settled status will be exempt from paying.

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**CAN I LOSE MY SETTLED STATUS IF I LEAVE THE UK?**

Once a person has obtained settled status, it would only be lost if they leave the UK for five years or more.

## Family

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**WILL MY NON-EUROPEAN FAMILY MEMBERS BE ABLE TO STAY HERE WITH ME?**

Yes, non-European family members already living in the UK, on the basis of their relationship with a European, will be able to stay with long as they:

- Enter before the 31 December 2020.
- Do not have a disqualifying criminal conviction.

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**I HAVE NON-EUROPEAN FAMILY MEMBERS WHO WANT TO MOVE IN FUTURE, WILL THAT BE POSSIBLE?**

This will depend on the relationship and whether they are related before the 31 December 2020. If they are related before this date (and continue to be on the date of application) then close family members should be able to join the European in the future. Direct family members typically include spouses, civil and unmarried partners, children, grandchildren and dependent parents and grandparents. The UK / EU deal does not protect extended family members such as siblings, uncles, aunts, nieces and nephews etc.

If they are not related before 31 December 2020, for instance they get married at a later date, family members will be subject to UK law. In practice, the biggest difference may be that under UK law they will need to meet certain earnings requirements to sponsor a spouse.

At present, the annual gross earnings threshold is at £18,600 for spouses of UK nationals or settled migrants. Any children born or legally adopted after 31 December 2020 will also be protected by the exit agreement.

## The politics

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**WILL THIS DEFINITELY HAPPEN?**

The agreement states that 'nothing is agreed until everything is agreed'. As such, these conditions will be subject to the UK and EU agreeing to the full exit agreement. We would hope and expect that EU nationals will still be able to stay under similar terms if there is no deal, but the UK government has not yet made that promise.

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### **HOW WILL IMMIGRATION BE MANAGED AFTER BREXIT?**

It is too early to say. The UK government has asked an independent committee to review the UK labour market after the Brexit transition period ends on 31 December 2020. They are also expected to publish a consultation White Paper in the coming months. Frankly though, it is likely to be some time until we know exactly how things will work.

## Information

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### **WHERE CAN I FIND MORE INFORMATION?**

If you wish to read the releases and policy papers from the UK government, you can find them at the below links:

[www.gov.uk/government/policies/brexit](http://www.gov.uk/government/policies/brexit)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718237/EU\\_Settlement\\_Scheme\\_SOI\\_June\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf)

Fragomen will be publishing more material as further details become available.