

SETTLED STATUS

A GUIDE FOR EU WORKERS

January 2020

Settled status – a guide for EU workers

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I. SETTLED STATUS APPLICATIONS

I.1 What is settled status?

The Government has set up the 'settled status' scheme for EU nationals living in the UK. Applying successfully for settled status means that you can stay in the UK permanently. You can work in the UK, use the NHS, enroll in education and access state benefits. Any children born in the UK after you are granted settled status will automatically be British citizens.

I.2 Do I need to apply for settled status?

If you are an EU national living in the UK then, unless you have either British or Irish Citizenship (see below re Irish Citizens), you will need to apply for settled status.

There has been much criticism of the unfairness of a policy requiring all EU nationals, even if they have lived in the UK for decades, to apply for settled status but that is Government policy, at the time of writing.

Even if you have a permanent residence document, it will not be valid after 30 June 2021 which means that you will still need to apply for settled status.

Technically, if you have been granted indefinite leave to remain (which is unlikely to apply to EU citizens who moved to the UK after 2006) then you do not need to apply for settled status. However, it is still advisable to do so, in order to avoid any practical difficulties in proving your rights in the future.

I.3 Why do I need to apply for settled status

The Government's intention is that, from January 2021, EU freedom of movement rights will no longer apply in the UK.

Therefore, EU nationals who do not have British or Irish Citizenship, are likely to be required to prove their right to live in the UK.

It is necessary to prove your right to be live the UK when applying for work, when renting somewhere to live, when claiming benefits and when opening a bank account. In some circumstances, you can be asked to do so before being able to access NHS treatment.

In October 2019, a Home Office Minister went so far as to suggest that those who did not apply for settled status before the 31 December 2020 deadline could face deportation.

1.4 Who can apply for settled status?

To be eligible for settled status you will normally need to:

- Be an EU national (or an EEA or Swiss national) or a family member of an EU national (or EEA or Swiss citizen)
- Have lived in the UK for a continuous 5 year period (i.e. for 5 years in a row, you have been in the UK for at last 6 months of every year)

For ease of reference, the term 'European citizen' has been used in the remainder of this document to mean EU nationals, EEA nationals and Swiss nationals (who do not have British citizenship).

1.5 Where do Irish citizens stand?

Home Office guidance says that Irish citizens do not need to apply for settled status because the rights of Irish citizens are protected under the UK-Ireland Common Travel Area arrangements, although they can still apply if they wish.

This guidance reflects assurances given by the UK Government and the provisions of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. The Bill failed to complete its passage through parliament before the end of the parliamentary session, in October 2019. However, in the Queen's speech on 19 December 2019, the Government said that it would bring forward a new version of the bill, which would clarify the immigration status of Irish citizens.

The Common Travel Area arrangements are not legally binding. The UK and Irish Governments signed a Memorandum of Understanding, in May 2019, under which the UK undertook to take the necessary legal and administrative and legal steps to protect the rights of Irish citizens. However, there is currently no clear legal right of residence (other than their rights as EU nationals) for Irish nationals contained within UK legislation. Therefore, Irish citizens who would prefer not to wait for the Government to legislate to protect their rights, may wish to apply for settled status.

1.6 What if I came to the UK before Brexit but I have been in the UK for less than 5 years?

If you are a European citizen who came to the UK before Brexit but you have been here for less than 5 years then (unless you fit into one of the exceptions set out below) you can apply for pre-settled status. At the time of writing, the date of Brexit is planned to be 31 January 2020. Pre-settled status means that you can stay in the UK for 5 years from the date you get pre-settled status. You can work in the UK use the NHS, enrol in education and access state benefits.

Once you have lived in the UK for 5 continuous years, you can apply for settled status.

Any children born in the UK after you have got pre-settled status will be automatically eligible for pre-settled status (if they are not already a British citizen through their other parent.)

1.7 When should I apply?

THE FINAL DEADLINE FOR APPLYING IS EXPECTED TO BE 30 JUNE 2021

This date assumes that the European Union (Withdrawal Agreement) Bill will be enacted. The Home office has said that, if you have reasonable grounds for missing the deadline, then you will be given a further opportunity to apply but it would be inadvisable to rely on this statement.

1.8 When is the best time to apply?

It is not a good idea to wait until close to the deadline on 30 June 2021 before applying.

If you have not yet been living in the UK continuously for 5 years but you will reach the 5 year threshold, before, say, 31 March 2021, then you may wish to wait until you reach the 5 year threshold, so that you can apply for settled status straight away (i.e. without first having to apply for pre-settled status).

If you are applying as a non European citizen family member of a European citizen, you will probably get a decision more quickly if you apply after your family member. Once your family member has made an application, you can enter their application number, to link your application to theirs.

1.9 Do I need to be in the UK to apply?

You do not need to be physically present in the UK when you apply, but you do need to be living in the UK at the time of your application, i.e. have a UK residential address.

1.10 How do I apply?

Most people will need to apply online. The website address is: www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status

1.11 What if I need help using the online application system?

If you need help applying online, you should be able to get support over the phone or in person. The phone number, to access support with using the online application system, is 0300 123 7379. (If you are outside the UK, the number is +44 (0)203 080 0010.) Phone lines are open Monday to Friday from 8am to 8pm and at weekends from 9.30 pm to 4.30 pm.

1.12 What if I don't have access to the internet or don't know how to use it?

Face to face support is available, at various centres, and home visits can be organised, in some areas. You should be able to arrange this by calling 03333 445 675.

1.13 Do I have to pay a fee?

There is no application fee.

1.14 Do I need to provide all my contact details?

It is advisable to provide at least 2 different ways in which you can be contacted during the day (e.g. day time telephone number and email address).

The Home Office has a duty to try to contact you, if more information or evidence is needed. If the Home Office tries to contact you, but you do not reply within 2 weeks, then your application could be rejected.

1.15 What will I need to apply?

When you apply, you'll need proof of:

- your identity
- you might need proof of your residence in the UK

If you have a valid permanent residence document or valid indefinite leave to remain or enter the UK, then you will not need to prove your residence

If automatic checks carried out against Government databases confirm that you have been resident in the UK for 5 years then you will not need evidence of residence.

If you are not an EU national, then you will also need evidence of your family relationship to an EU national living in the UK.

1.16 How do I prove my identity?

You will normally need a valid passport or national identity card. If you're from outside the EU, you can use a valid passport or biometric residence document.

The online application system allows some users to scan their identity document (biometric passport or residence card) using an app, called 'EU Exit: ID Document Check' which can be downloaded from Google Play or from the App Store. This will only work if your document is a biometric document with a chip (indicated by a rectangular gold symbol that looks like a camera). Guidance on how to do this can be found at <https://www.gov.uk/guidance/using-the-eu-exit-id-document-check-app>.

It is only possible to scan identity documents using newer phones or tablets with NFC (Near-Field Communication). The issue of the app not working on iPhones has been resolved but it is currently only available on models from the iPhone8 onwards.

At present, if you do not have a suitable device, your options are either to borrow one or to make an appointment to visit an identity document scanner location, which you can do at www.gov.uk/government/publications/eu-settlement-scheme-id-document-scanner-locations/locations-offering-chip-checker-services, there may be a charge for this service, at the time of writing this is normally £14.00

Alternatively you can send your original identity document to the Home Office by post. The Home Office says that it will return your identity document as soon as it has been scanned. You will also need to take and upload a recent passport-style digital photo of your face. This should not be the same picture as the one in your passport. The photo will be used as part of the digital record that proves your status in the UK.

If you are unable to produce the required identity document, due to circumstances beyond your control or due to compelling practical or compassionate reasons, then the Home Office has a discretion to accept alternative evidence of identity. If you do not have a valid passport or national identity card, you should contact the EU Settlement Resolution Centre (see section 1.25).

1.17 How do I prove that I have been continuously resident in the UK for 5 years?

The application system requires you to prove you have lived in the UK for 5 consecutive years and that you have been in the UK for at least 6 months in each of those years.

The application system will automatically check your national insurance number against Government databases to look for evidence that you have been resident for 5 years. If the check confirms your residence, then you will not need evidence of residence.

However, the checks are not always reliable and some people, who are entitled to settled status, have wrongly been offered pre-settled status. If this happens to you, then it is important that you select the option to submit further evidence. This is because pre-settled status gives you much less security than settled status.

You should be able to submit photos or scans of your documents through the online application form. You will only need to provide one piece of evidence for each period of residence in the UK.

More information about what documents you can use is set out in the section on residence.

1.18 What happens if I have criminal convictions?

If you are 18 or over you'll be asked about your criminal history in the UK and overseas. You will also be checked against the UK's crime databases.

If you have only been convicted of a minor crime, for example you've had a speeding fine, you will still be eligible for settled or pre-settled status.

You may still get settled or pre-settled status even if you have other convictions. The Home Office says that this will be judged on a case-by-case basis.

Home Office caseworker guidance indicates that your settled status application could be refused, and you could face deportation, if you have:

- received any sentence of imprisonment at all within the last 5 years
- at any time (no matter how long ago) received a sentence of 12 months or more for a single offence
- been resident for less than 5 years and had 3 or more convictions in the last 3 years (including non-custodial sentences)
- previous involvement in serious deception such as sham marriage or assisting unlawful immigration (even if there was no conviction)

Failure to tell the Home Office about a past criminal conviction is likely to lead to refusal of your settled status application on the grounds of deception.

1.19 What if I make a mistake in my application?

The Home Office should contact you before making a decision on your application, so that you can correct any mistakes. They should also tell you if you need to provide more evidence before they can make a decision.

The Home Office guidance says that caseworkers should make 3 attempts in total, over a minimum period of 3 weeks, to contact you by at least two different methods (if you have provided the relevant contact details), in order to give you a reasonable opportunity to correct the mistake and/or provide more evidence.

It is important that you check your emails (including your junk folder) regularly and respond promptly to any request for further information or clarification. If you do not respond within 2 weeks of the Home Office attempting to contact you, then your application could be rejected.

1.20 What if I already have an outstanding immigration application?

When you apply under the EU Settlement Scheme any other immigration application you have with the Home Office will not be considered. You will get a refund of any fees paid for your outstanding application.

1.21 Will I get a document to prove my settled or pre-settled status?

Generally, no. If you are granted settled status or pre-settled status, you will get a letter confirming that your application has been successful. However, the letter will say that it is not proof of your status. At the time of writing, your status can only be confirmed online through the Home Office online checking service: <https://www.gov.uk/government/publications/eu-settlement-scheme-view-and-prove-your-rights-in-the-uk/view-and-prove-your-rights-in-the-uk>.

You will not get a physical identity document unless you are from outside the EU and you do not already have a biometric residence card.

This aspect of the scheme has been subject to much criticism. Understandably, most people would prefer to have their own document, to prove their right to live in the UK, and not to have to rely on the Home Office computer system.

1.22 What if my application is not successful?

You may be able to apply for an administrative review of the decision. You can apply for an administrative review if either:

- your application was refused because you did not meet the requirements for settled status/pre-settled status but you believe that you do
- you were granted pre-settled status but you think you qualify for settled status

You cannot apply for a review if your application was refused because you are going to be or have been removed, deported or excluded from the UK.

1.23 Is there a limit on the number of times I can apply for settled status/pre-settled status?

No. You can re-apply as many times as you want to before 30 June 2021.

1.24 How do I apply for an administrative review?

You will need to complete the administrative review application form online. You have to use a separate form for each person applying for a review. Separate forms have to be completed for each child.

The deadline for applying for an administrative review is 28 days from the date on your decision email.

You have to submit your documents within 10 working days of submitting your online application. If you do not do this, your application may be rejected.

There is a fee of £80 per person. The fee will be refunded if either:

- your application for a review is successful, because the decision maker made a mistake with the original application
- your application for a review is rejected because it's invalid

If the original decision is upheld then the fee will not be refunded. If the application is successful due to new evidence then the fee will not be refunded. Therefore, if you are relying on new evidence, it is usually better to make a fresh application for settled status/pre-settled status.

1.25 What if I have other questions about the scheme?

You can contact the EU Settlement Resolution Centre, which is open from 8am to 8pm Monday to Friday and from 9.30 am to 4.00 pm at weekends. The number is 0300 123 7379 (or 0203 080 0010 from outside the UK).

Organisations helping others to apply can ring 0300 790 0566.

2. RESIDENCE IN THE UK

2.1 What documents do I need to prove that I have been resident in the UK?

All the documents you provide must be dated and should have your name on. A document with a single date on it will count as proof of evidence for that month. You should only provide one piece of evidence per month.

The Home office suggests, if possible, choosing documents showing more than one date, as these can cover a longer period of time such as:

- annual bank statement or account summary, showing at least 6 months of payments received or spending in the UK
- dated and signed letter from an employer confirming dates of employment, and evidence that the employer is genuine (for example their Companies House number)
- annual business accounts for a self-employed person
- P60, which shows the tax you've paid on your salary in the tax year (6 April to 5 April). If you provide a P60, the Home Office may ask you for additional evidence to confirm that you were resident here for at least 6 months of that period.
- a P45 showing the length of your previous employment
- council tax bills
- dated and signed letter from a registered care home confirming the period of residence in that home
- residential mortgage statements or rental agreements and evidence of payment
- employer pension contributions
- dated and addressed council tax bill
- letter or certificates from a school, college, university or other accredited organisation showing the dates you enrolled, attended and completed your course
- invoices for fees from your school, college, university or other organization and evidence of payment
- documents from Student Finance or Student Loans Company showing a UK address

If this is not possible, you can provide documents with a single date on them such as:

- bank statements showing payments received or spending in the UK
- pay slips for a UK-based job
- dated invoice for work you have done in the UK and evidence of payment
- water, gas or electricity bills which show a UK address
- landline or mobile telephone, TV or internet bills showing a UK address
- domestic bills, such as for home repairs, vet's services or insurance, and evidence of payment
- cards or letters from your GP or other healthcare professional confirming appointments you have made or attended
- letters from Government departments, other public services or charities that show you dealt with them on a particular date or for a particular period (for example Job Centre Plus or Citizens Advice)
- passport stamps confirming entry at the UK border
- used travel tickets confirming you entered the UK from another country

Documents with a single date on them will only be valid for the month in which the document is dated. Therefore, you will need more of them. For example, if you are relying on monthly bank statements then you will need at least 6 bank statements to show residence for each 12 month period.

The documents listed above are only examples and other documents which show that you were living in the UK on a particular date may also be acceptable. The Home Office has said that it recognises that some applicants may lack documentary evidence in their own name and it will work flexibly with applicants to help them evidence their continuous residence in the UK.

2.2 Are there any exceptions to the 5 year residence requirement?

Children of European citizens (including children of the European citizen's spouse or civil partner) who are under 21 and continuously resident in the UK will be eligible for settled status, if their parent is granted settled status, without the child having to meet the 5 year residency requirement. However, parents still need to make a separate settled status application, on behalf of each child under 21.

There are exceptions allowed for certain absences from the UK. These are:

- one period of up to 12 months for an important reason (such as childbirth, serious illness, study, vocational training or an overseas work posting)
- compulsory military service of any length

If you are a European citizen and you have to stop working permanently because of an accident or illness, you and your family members may be able to get settled status if either:

- you have lived continuously in the UK for the 2 years immediately before you had to stop work
- the permanent incapacity was the result of an accident at work or an occupational disease that entitles you to a pension from a UK institution

If you are a European citizen you and your family members may be able to get settled status if you reach State Pension age and either:

- you worked continuously or were self-employed for 1 year before reaching State Pension age and you have lived continuously in the UK for 3 years
- your spouse or civil partner is a British citizen

If you are a European citizen you and your family members may be able to get settled status if you retire early and either:

- you worked continuously (for someone other than yourself) for 1 year before retirement and have lived continuously in the UK for 3 years
- your spouse or civil partner is a British citizen

If you're a European citizen you and your family members can get settled status if you start work or self-employment in another EU country and you both:

- have lived and worked or been self-employed in the UK continuously for 3 years beforehand
- usually return to your UK home once a week

If your EU family member worked or was self-employed in the UK at the time of their death, you may be eligible for settled status. You must have been living with them just before their death and either:

- they lived continuously in the UK for at least 2 years before their death
- their death was the result of an accident at work or an occupational disease

2.3 What evidence do I need if I want to rely on one of the exceptions to the continuity of residence requirement?

You will need evidence to show that the exception applies to you to you. If you were away from the UK for a period of between 6 – 12 months, the evidence you will need depends on the reason for your absence:

- due to pregnancy or serious illness – a letter or other records from a qualified medical professional
- due to studying, training or an overseas posting – a letter or other records from the educational establishment where you studied or from your employer
- due to compulsory military service – a letter or other records from the relevant Government body

If you are relying on one of the retirement exceptions, you will need:

- evidence of your retirement - such as a relevant HMRC form, a letter from your employer or pension statements
- evidence of employment in the UK for at least 12 months before retirement – such as pay slips or a letter from your employer
- evidence that you were continuously resident in the UK for 3 years (see section 2.1 above regarding evidence of continuous residence)

If you are relying on permanent incapacity, you will need:

- evidence of being continuously resident in the UK for 2 years (see section 2.1 above regarding evidence of continuous residence)
- evidence of your permanent incapacity to work - such as a letter from your hospital consultant
- evidence of an accident at work or an occupational disease work - such as a letter from your hospital consultant
- if you have an occupational disease, evidence that the occupational disease entitles you to a pension payable from a UK institution - such as a letter from the pension provider or pension statements

If you are relying on being a worker in another EU country who has retained a place of residence in the UK you will need:

- evidence that you were continuously resident in the UK for 3 years (see section above regarding evidence of continuous residence)
- evidence that you were a worker in the UK for at least 3 years - such as pay slips or a letter from your employer
- evidence of retaining a place of residence in the UK, such as utility bills
- evidence that you return to this place of residence at least once a week, such as travel tickets

If you are relying on being a family member of a relevant European citizen who has died, you will need:

- a copy of the European citizen's death certificate
- evidence that you lived with the European citizen in the UK at the time of their death (see section above regarding evidence of continuous residence but you will only need documents showing that you both lived at the same address at the time of the person's death)
- evidence that the European citizen was resident in the UK as a worker at the time of their death - such as pay slips or a letter from the employer
- evidence that the European citizen was continuously resident in the UK for a period of at least 2 years before their death (see section above regarding continuous residence) or that the death was the result of an accident at work or an occupational disease - such as a letter from a qualified medical professional or other medical documents

3. NON EU FAMILY MEMBERS OF EU CITIZENS

3.1 Which family members of European citizens can apply?

Family members who are European citizens can apply for settled status in their own right. This section is likely to only be relevant for family members who are not European citizens.

You can apply if you are a spouse, civil partner or an unmarried partner. If you are an unmarried partner, you have to be in a durable relationship, normally this means living together in a relationship similar to marriage for at least 2 years or other significant evidence of a durable relationship. Unmarried partners also need a UK immigration document (see section 3.2)

You can also apply if you are related to a European citizen, their spouse or civil partner as their:

- child, grandchild or great-grandchild under 21 years old
- dependent child over the age of 21
- dependent parent, grandparent or great-grandparent
- relative living with or being cared for (in the sense of needing personal care on serious health grounds) by the EU citizen (with an immigration document to prove the relationship – see section 3.2)
- dependent relative (with an immigration document to prove the relationship – see section 3.2)
- former spouse or civil partner if you were resident in the UK at the time of the termination of the marriage/civil partnership and you meet one of the conditions set out below

Child includes adopted children and children born through surrogacy (where recognised in UK law).

Dependent means that, taking into account their financial and social conditions or health, the family member cannot meet their essential living needs without financial or material support from the European citizen (or the European citizen's spouse or civil partner).

If you are the former spouse or civil partner of a European citizen, you must meet one of the following conditions:

- before the termination proceedings started, the marriage/civil partnership had lasted for at least 3 years and both of you had been continuously resident in the UK for at least one year during the marriage/civil partnership
- you have custody of a child of the European citizen
- you have the right of access to a child of the European citizen, where the child is aged under 18 and a court has ordered that the access must take place in the UK
- your continued right of residence is warranted by particularly difficult circumstances, such as where you or another family member has been a victim of domestic violence or abuse during the marriage or civil partnership

Where the EU family member has died (in circumstances other than the exception to the 5 year residence requirement set out in section 2.2 above);

- children of the EU family member who are still in education can apply
- other family members can apply if they were living in the UK as the family member of the EU citizen for a least they year before the EU citizen died

There are also several categories of people who have rights under arising from cases decided by the European Court of Justice, who are entitled to apply for settled status. In brief, these are:

- family members of British citizens where the family relationship was formed when the British citizen was living in another EU country ('Surinder Singh' cases)
- family members of certain dual British/EU citizens ('Lounes' cases)
- those lawfully resident in the UK under a 'derivative right' to reside including 'Chen carers' (the primary carer of a self-sufficient EU citizen child), 'Ibrahim and Teixeira' cases (a child of a former EU citizen worker who is in education in the UK and their primary carer) and 'Zambrano carers' (the primary carer of a British citizen child or dependent adult)

3.2 What is a UK Immigration Document

At the time of writing, unmarried partners and extended non EU family members (i.e. relatives other than children, parents, grand-parents and great-grandparents) of EU citizens need to have an immigration document to prove that they can live in the UK. This might take the form of a family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card.

More information about how to apply for a UK Immigration document is available at: <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-or-residence-card-for-an-extended-family-member-form-eea-efm>

3.3 What additional evidence do non EU family members need?

If you do not have a valid permanent residence document, then you will also need to provide:

- evidence of your European citizen family member's identity
- evidence that your European citizen family member has 5 years continuous residence in the UK or has been granted settled status already
- if you are aged over 21, evidence that you have been continuously resident in the UK for 5 years (see section 2.1 on continuous residence above)
- proof of your relationship to your European citizen family member - for example, a birth, marriage or civil partnership certificate

If you are an unmarried partner, you will need a UK immigration document and evidence of a durable partnership, normally evidence that you have lived together for at least 2 years. This could take the form of: bank statements or utility bills in joint names at the same address, rental agreements, mortgage contracts or official correspondence sent to both of you at the same address. Current Home Office guidance indicates that other significant evidence of a durable relationship, such as evidence of the joint responsibility for a child will be sufficient. This evidence could take the form of the child's birth certificate or a custody agreement showing that you are co-habiting and sharing parental responsibility.

Dependent children over 21 (but not parents or grand-parents) will need evidence of their dependency. This might take the form of bank statements showing money transfers from the European citizen (or their spouse or civil partner) or documents showing that the dependent child is in full-time education.

Where your application is being made because of the death of a person, you will normally need a copy of their death certificate.

4. LEGAL & POLITICAL ISSUES

4.1 Brexit and EU workers

The right of freedom of movement dates back to the Treaty of Rome, which established the European Economic Community, in 1957. The Treaty of Rome established four fundamental freedoms of the common market: free movement of goods, services, capital and workers.

While the UK remains in the European Union, EU workers and their family members have extensive rights of free movement within the EU under EU law. They are able to move freely between all EU countries and the various national immigration laws do not apply to them.

The Office for National Statistics (ONS), has estimated, based on the Annual Population Survey in 2017, that there were 3.8 million EU citizens resident in the UK in 2017. This figure is for all EU citizens including those who are unemployed or economically inactive. The ONS estimate of the number of EU citizens working in the UK during the period July to September 2018, based on the Labour Force Survey, is 2.25 million.

4.2 Countries where freedom of movement applies (until it is brought to an end in the UK)

The right of freedom of movement extends to nationals of those countries which are not part of the EU but are part of the European Economic Area (EEA): Iceland, Liechtenstein and Norway.

Switzerland is not a member of the EEA but the EU has concluded a separate agreement with Switzerland giving freedom of movement rights to Swiss nationals similar to those of other EEA states.

This means that nationals from the following countries have the right of freedom of movement:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

4.3 Pre- Brexit legal rights of EU citizens in the UK

The relevant EU Directive is Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member states.

The UK has implemented the Directive into UK law in the form of the Immigration (European Economic Area) Regulations 2016, which also apply to Swiss nationals.

An EU citizen who is a 'qualified person' currently has a right to reside in the United Kingdom for as long as they remain a qualified person. In broad terms, a qualified person means:

- a worker – i.e. a person who has a job in the UK
- a self-employed person working in the UK
- a job seeker – i.e. a person who is genuinely looking for work in the UK and has a realistic chance of getting it
- a worker who is temporarily unable to work as the result of an illness or accident

- a worker who has become involuntarily unemployed (if the worker has not worked in UK for 12 months then he/she must have registered as a jobseeker or embarked on vocational training)
- a worker who has voluntarily ceased work and embarked on vocational training related to his/her previous employment
- a retired worker, subject to conditions
- a self-sufficient person working in the UK
- a student

After living in the UK for 5 years, EU citizens currently can acquire the right to reside in the United Kingdom permanently. In broad terms, this right applies to people in the following categories:

- an EU citizen who has lived in the UK, under the regulations, for a continuous period of five years
- a family member who has lived in the UK with an EU citizen, who is a qualified person, for a continuous period of 5 years
- a family member of an EU citizen who has died and who resided with the EU citizen immediately before the death provided that the EU citizen was a qualified person and had either resided continuously in the UK for at least 2 years before their death or died as a result of an accident at work or an occupational disease
- a person who has lived in the UK under the regulations for a continuous period of 5 years and was, at the end of that period, a family member who has retained the right of residence

A family member means:

- a spouse, civil partner or a partner in a durable relationship
- direct descendants i.e. children, grandchildren, great grandchildren etc. (of either the EU citizen or their spouse/civil partner) who are aged under 21 or parents, grandparents, great grandparents etc. who are dependent
- extended family members who are dependent on the EU citizen (or their spouse or civil partner)

The right of permanent residence is lost if the person is then absent from the United Kingdom for more than two years.

4.4 Temporary continuation of EU law after Brexit

The Immigration (European Economic Area) Regulations 2016 were made under powers conferred by both section 2 (2) of the European Communities Act 1972 and section 109 of the Nationality, Immigration and Asylum Act 2002.

The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 with effect from the date the UK leaves the EU. However, section 2 of the European Union (Withdrawal) Act 2018 says that any enactment (which is defined in section 20 to include regulations) made under section 2(2) of the European Communities Act 1972 is not affected by the repeal.

Therefore, most of the rights contained in The Immigration (European Economic Area) Regulations 2016, and the underlying directive, will remain in place after Brexit, unless and until the Government legislates to remove or alter them.

However, the Queen's speech, on 19 December 2019, included confirmation that there will be a new Immigration and Social Security Co-Ordination (EU Withdrawal) Bill, which will bring an end to free movement with effect from January 2021.

4.5 EU Withdrawal Agreement

In October 2019, the UK agreed a new Withdrawal Agreement with the EU.

On 19 December 2019, the European Union (Withdrawal Agreement) Bill passed its second reading and it is likely that the Bill will become law in January 2020.

Part two of the Withdrawal Agreement deals with citizen's rights. It applies to all EU citizens and their family members lawfully residing in the UK by 31 December 2020.

Under the Withdrawal Agreement, EU citizens who have been living in the UK continuously and lawfully for five years by 31 December 2020 would have the right to reside permanently in the UK. Their family members would have the same rights. Family members not living in the UK on 31 December 2020 could join a person with settled status in the UK after that date, if the family relationship existed on 31 December 2020 and still exists.

Under the Withdrawal Agreement, EU citizens who have not yet resided continuously and lawfully for 5 years in the UK by 31 December 2020 would be able to stay until they reach the 5 year threshold at which point they would have the right to reside permanently (subject to the UK's right to restrict the rights of serious or persistent criminals or those who seek to abuse or defraud the system).

4.6 Legal basis of the settled status scheme

Section 3(2) of the Immigration Act 1971 empowers the Secretary of State to lay before Parliament statements of the rules, or of any changes in the rules, as to the practice to be followed in regulating the entry into and stay in the United Kingdom of persons who are not British citizens.

The rules of the Settled Status scheme rules are set out in Immigration Rules Appendix EU (www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu).

Concerns have been expressed that the relative ease with which immigration rules can be issued and changed, without the level of scrutiny which would apply to an Act of Parliament, leaves those who are subject to those rules in a vulnerable position.

However, assuming that the UK leaves the EU under the terms of the Withdrawal Agreement, any subsequent change to the rules, which did not give full effect to the rights contained in the Withdrawal Agreement, would potentially be unlawful.

4.7 The settled status scheme in operation

According to statistics published by the Home Office in December 2019, by the end of November 2019 there had been 2,592,800 applications for settled status and 2,230,900 applications had been processed. The outcome of the processed applications was that 59% of applicants were granted settled status and 41% were granted pre-settled status. Five applications have been refused on suitability grounds.

Therefore, at the time of writing, more than 1 million EU citizens have not yet applied for settled status and around 361,900 applications for settled status have been made but not yet dealt with.

4.8 Problems with the settled status scheme

Home statistics, published on 22 August 2019, show a 26% increase in applications for British citizenship by EU citizens over the previous 12 months. This is likely to reflect a lack of confidence in the degree of security afforded by a successful application for settled status.

A key concern is the fact that some people, who are entitled to settled status, have only been given pre-settled status because the automated check of their national insurance numbers has failed to pick up evidence of their residence in the UK and they have not selected the option to provide their own evidence.

Another, even more serious concern, is the position of vulnerable people who may not apply for settled status before free movement ends on 31 December 2020. Vulnerable people at risk of not applying include: children and very long term residents (who may not be aware that they need to apply), those who have already been granted permanent residence (who may, quite reasonably, but incorrectly believe that they do not need to apply) and people who are worried that they are ineligible (for example due to minor criminal convictions).

Other groups who may struggle with the application process include: victims of domestic abuse, victims of exploitation, people living in poverty, people without stable housing, people with disabilities, unpaid carers and people working cash in hand.

Alarming, in October 2019, a Home Office Minister said that those who did not apply for settled status before the 31 December 2020 deadline could face deportation, unless they could show that they had reasonable grounds (as yet undefined) for missing the deadline.

If such a policy were to be imposed, vulnerable EU citizens could find themselves facing the same draconian effects of the 'hostile environment' policies as the victims of the Windrush scandal.

4.9 Tackling the problems with the settled status scheme

The Government said, in April 2019, that it had allocated funding of up to £9 million to 57 charities and community organisations to support 200,000 vulnerable or hard to reach EU citizens. It is not yet clear how effective this will be.

Campaign groups, such as the 3 million (www.the3million.org.uk), are calling for change. In particular, they argue the Home Office should adopt a declaratory system, i.e. it should pass legislation to protect the rights of all EU citizens living in the UK before Brexit, regardless of whether or not they apply for settled status before 31 December 2020.

They are also calling for all European citizens who successfully apply for settled or pre-settled status to be given hard copy confirmation of their status.

4.10 Can the Government be held to its promises?

As explained above, one of the concerns about the settled status scheme is the lack of clear protection for EU citizens set out in primary legislation, i.e. in an Act of Parliament.

The Government has made reassuring statements. For example, in his first Commons statement as Prime Minister, Boris Johnson said:

'Mr Speaker, I also want therefore to repeat unequivocally our guarantee to the 3.2 million EU nationals now living and working among us. I thank them for their contribution to our society – and for their patience – and I can assure them that under this Government they will have the absolute certainty of the right to live and remain.'

Assuming that the European Union (Withdrawal Agreement) Bill is passed, then the rights contained in the Withdrawal Agreement would become enforceable in the UK courts.

Another possible ground of challenge, if an EU citizen were to be left inadequately protected by the settled status scheme, might be legitimate expectation. The basis of the legitimate expectation jurisdiction is the prevention of abuse of power and the promotion of good and transparent public administration. There has as yet been no comprehensive consideration of the legitimate expectation by the Supreme Court and so the extent of the jurisdiction is currently uncertain.

Governments are entitled to change their policies. However, the courts are entitled to consider whether the frustration of the legitimate expectation by the public authority was so unfair as to amount to an abuse of power. The burden of proving that the frustration of the expectation was justified lies on the public authority. The role of the court is to weigh the impact of the frustration of the expectation on the individual or group against the wider public interest in departing from it.

Therefore, it is possible that the Government's assurances could be relied on in a future legal challenge. It would not be the first time the Supreme Court has had to intervene to prevent an abuse of power by a conservative Government. However, the outcome of such a challenge would depend on the circumstances of the individual(s) bringing the challenge and is not certain.

Therefore, unless changes are made to the settled status scheme, all European citizens living in the UK need to apply for settled status, in order to protect their rights.