



BREXIT – WHAT HAPPENS TO EU CITIZENS IF THERE IS NO DEAL?

On 28 January, the Home Secretary set out his plans for EU citizens coming to the UK after the UK's exit from the EU in the event of 'no deal'. The key aspects are as follows:

- If there is no deal, the government will seek to end free movement promptly and has introduced an Immigration Bill to achieve this.
- Post Brexit, and for a transitional period only, EEA citizens (including Swiss citizens) and their family members, will still be able to come to the UK for visits, work or study and enter the UK as they do now.
- To stay longer than 3 months, it will be necessary to obtain 'European Temporary Leave to Remain', which would be valid for 3 years.
- To stay for longer than 3 years, permission under the new skills-based future immigration system, which is set to begin in 2021, will be needed.

The above policy does not apply to those in the UK before exit day as their rights to live and work will be protected by the EU Settlement Scheme.

What is the EU Settlement Scheme?

In the event of a Brexit deal, the Home Office provided in a statement of intent¹ issued last year, that there would be a transition period from when the UK leaves the EU (which is currently expected to be on 29 March 2019) until 31 December 2020, during which EU nationals will retain free movement rights in the UK.

- EU citizens and their families who arrive in the UK before midnight on 31 December 2020 and have been continuously and lawfully living in the UK for five years will be entitled to stay indefinitely by obtaining 'settled status'.
- EU citizens and their families who arrive before midnight on 31 December 2020 but have not been in the UK for five years will be able to apply for 'pre-settled status'. Once they have reached the necessary five years they will be required to apply for full settled status.

The new settled status scheme will afford the same rights of residence, access to work and benefits as EU nationals currently have under freedom of movement provisions.

The scheme is currently being rolled out and will be fully open by 30 March 2019. The deadline for applying will be 30 June 2021, or 31 December 2020 in the event of a no deal Brexit, although it may be possible to apply after this date if joining a family member in the UK.

Key points if there is no deal:

- The government will seek to end free movement as soon as possible.
- EU nationals arriving in the UK **after** 30 March 2019 wishing to stay for longer than 3 months will need to apply for 'European Temporary Leave to Remain', which would be valid for 3 years.
- EU nationals residing in the UK **before** 30 March 2019 will be able to continue their residence and apply for 'settled status' once they meet the criteria

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf

Eligibility for Settled Status

To be eligible for settled status, an applicant will need to:

- ✓ be an EU citizen, or a family member of an EU citizen
- ✓ have been living in the UK continuously for 5 years
- ✓ have started living in the UK before 31 December 2020, or 30 March 2019 in the event of a no deal Brexit
- ✓ have no serious criminal convictions

Applying for Settled Status

Applications can be made online, via an app or on paper. Applicants will need proof of their:

- identity (e.g.: valid passport, national identity card or biometric residence card)
- residence in the UK (unless they have a valid permanent residence document or indefinite leave to remain)
- relationship to a family member from the EU living in the UK (if the applicant is from outside the EU)

Applicants will also need to upload a recent digital photograph of their face.

Further steps are required for Non-EU applicants (e.g. a family member) who will need to provide their fingerprints and a photograph of their face at a UK application centre as part of their application, unless they already have a biometric residence card.

What Practical Steps Can Businesses Do To Prepare?

Employers may be able to support staff by explaining the process for obtaining an immigration status document, as well as arranging guidance on which document to apply for. Employers may also undertake an internal audit of their workforce to identify which workers rely on the UK's membership to the EU to work in the UK. This will help identify possible areas of vulnerability.

British Citizenship

As settled status may be lost if the holder stays outside the UK for a continuous period of more than five years, a successful applicant may wish to apply to naturalise as a British citizen as a precautionary measure. Before applying, an applicant should check whether the advantages of British citizenship will outweigh any potential disadvantage(s) for example in relation to tax status and/or loss of another citizenship.

Full details of the proposed scheme are still subject to approval by parliament

Key Points if there is a deal:

- EU nationals residing in the UK before 1 January 2021 will be able to continue their residence and apply for 'Settled Status' once they meet the criteria
- EU nationals who hold a document certifying permanent residence will only need to swap their document for settled status

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