

# Helping residents and employees apply to the EU Settlement Scheme – a briefing for housing associations

**This briefing paper is for housing associations, about changes affecting EU citizens living in the UK and how to help. The NHF has worked with immigration advice charity Settled to produce this guidance for housing association members. It explains what action needs to be taken to secure the rights of staff and residents to continue to live and work in the UK.<sup>1</sup>**

## Summary of EU Settlement Scheme:

- EU/EEA/Swiss citizens (referred to in the report as EU citizens<sup>2</sup>) and their non-EU/EEA/Swiss family members (referred to as third country nationals) arriving in the UK before 11pm on 31 December 2020 need to apply to the EU Settlement Scheme (EUSS) by 30 June 2021 in order to maintain lawful residence.
- To maintain lawful residence from 30 June 2021 a person must be granted one of two immigration statuses under the EUSS – either settled status (otherwise known as indefinite leave to remain) or pre-settled status (otherwise known as limited leave to remain).
- Citizens with a permanent residence card will need to apply to the EUSS because that status will not be valid after the 30 December 2020.
- All family members, who are not already British, must make individual applications, they are not automatically included at the point at which the EU citizen applies.
- The Home Office has so far ruled out an extension to the 30 June 2021 deadline.

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<sup>1</sup> With thanks to law firm Seraphus for their input and verification of the contents of this briefing. <https://www.seraphus.co.uk/>

<sup>2</sup> The European Economic Area (EEA), consists of the Member States of the European Union (EU) and three countries of the European Free Trade Association (EFTA) (Iceland, Liechtenstein and Norway; excluding Switzerland). In this report we use the term EU citizens to describe EU, EEA and Swiss citizens.

- If a person misses the deadline, they may find themselves unlawfully resident in the UK and will be at risk of immigration enforcement.
- **Housing associations can help support affected tenants and staff by identifying individuals who need help and signposting them for assistance.**

The provision of advice on the EUSS is regulated by the Office of the Immigration Services Commissioner (OISC). The provision of generic information via websites, letters, or redirection to agencies that can help is permitted. This is because providing advice on the EUSS is against the law unless you are registered with the OISC or the Solicitors Regulation Authority and housing association staff need to be aware of this when talking to their tenants. Settled can help to train and register housing association staff if needed.

## Recommendations for housing associations:

- Housing associations should raise awareness of the scheme among staff and tenants and where possible, identify EU citizens and third country national family members eligible to apply.
- Encourage eligible people to apply as soon as possible and not close to the deadline because they might need additional time to renew expired ID documents and/or gather further evidence.
- Provide applicants with evidence of their residence such as a letter confirming the length of their tenancy.
- Refer and signpost eligible people who need support with their applications to organisations funded by the Home Office (listed at the end of this report).
- Remind applicants with pre-settled status they need to apply for settled status once they reach their five years of continuous residence in the UK or before their pre-settled status expires.

Across the social housing sector, The English Housing Survey 2017-2018 reports 4% of all renters as being from the EU. EU citizens will also be employed by housing associations. They tend to be more highly represented in support worker roles (supported, sheltered schemes) and in maintenance and development roles.

## What is the EU Settlement Scheme?

The EU Settlement Scheme is a process for obtaining a new immigration status following Brexit, for those EU citizens who were in the UK before 30 December 2020. All EU citizens and their third country national family members living in the UK before 11pm on 31 December 2020 (the end of the transition period) must apply for pre-settled or settled status under the EUSS in order to carry on living lawfully in the UK. Everyone, including children, must apply to the EUSS on or before **30 June 2021**.

## What is pre-settled and settled status?

**Settled status** allows a person to stay in the UK permanently as long as they don't leave the country for more than five continuous years (four years for Swiss citizens) or commit a criminal offence. It gives its holder the same right to work, rent, access NHS services and social benefits as a British citizen.

**Pre-settled status** is generally given to applicants who have lived in the UK for less than five years. Pre-settled status is not a permanent status and is **only valid for five years from the date of grant**. Currently, the person is required to apply for settled status under the EUSS once they have five years of continuous residence in the UK or, before their pre-settled status expires. To be eligible for settled status, the person should maintain their continuity of residence in the UK, i.e. not being outside of the UK for longer than a total of six months in any 12 months during the five years continuous residence. There are some exceptional reasons for which this length of time can be extended to 12 months.

Whilst both status holders can access contributory benefits and child benefit, provided they are ordinarily residents in the UK, pre-settled status holders have to pass another test, the habitual residency test, in order to access means-tested benefits.<sup>3</sup>

Currently, those with pre-settled status are required to demonstrate that they have an alternative right to reside, under the Immigration (European Economic Area) Regulations 2016, to pass the habitual residency test. Pre-settled status holders will have to prove they are workers or are self-employed, have retained worker status, are a student, retired, self-sufficient (strict rules apply) or have a right of permanent residence under EU law, or be a family member of one of the above.

There have been cases where pre-settled status claimants were wrongly denied Universal Credit but did not know how to challenge it. There were also cases where they did not meet the criteria as they were new arrivals, did not apply for Universal Credit immediately after being made redundant, or were not considered to have been in genuine and effective work (zero-hour contract, low wages, new self-employment). There is an ongoing legal challenge to excluding pre-settled status from qualifying as right to reside by The Child Poverty Action Group currently pending appeal at the High Court.<sup>4</sup>

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<sup>3</sup> <https://www.citizensadvice.org.uk/benefits/claiming-benefits-if-youre-from-the-EU/>

<sup>4</sup> <https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status>

## Background to the EUSS

Currently, EU citizens can settle in the UK under the Freedom of Movement.<sup>5</sup> The same principles apply to EEA and Swiss citizens. EU citizens who come to live, work or study in the UK, can do so by showing their EU passports or national ID cards, as long as they are a resident before the end of the transition period (which ends at 11pm on 31 December 2020).

Freedom of movement will end on 1 January 2021 and new immigration rules will be in place for EU citizens who want to move to the UK on or after this date. For EU citizens and their third country national family members who are resident before 11 pm on 31 December 2020, the EUSS is the process for obtaining a UK immigration status (pre-settled or settled status). The EUSS protects their lawful residence in the UK and will distinguish persons who have pre-settled and settled status from EU citizens who move to the UK on or after 1 January 2021 who will have different, rights and entitlements.<sup>6</sup>

## The application Process

### Key points:

- The application process is free.
- The application is mainly made online and the status granted is accessible online.
- The application process checks identity, criminality, and length of residence in the UK.
- A person who has been in the UK for five continuous years or more at the time of applying or at the time the application is decided is likely to get settled status. An applicant who has been in the UK for less than five years will get pre-settled status.
- Pre-settled status is valid for five years from the date of award, and those applying for settled status will need to submit a second application for this before the settled-status expires or at the point at which five years of continuous residency in the UK has been achieved.
- Whilst settled status gives its holder the same rights as British citizens to access benefits, pre-settled status does not qualify as a 'right to reside' for benefits purposes.
- Until 30 June 2021, it is unlawful for landlords and employers, to request sight of settled or pre-settled status. EU citizens will continue to be able to apply for work, to

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<sup>5</sup> <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons>

<sup>6</sup> <https://www.freemovement.org.uk/what-happens-if-i-miss-the-eu-settlement-scheme-deadline/>

rent properties and to open bank accounts in the same way as now – by providing their national ID card or passport.

To effectively process and grant a status to many people at once, the Home Office created a simplified mostly online process to implement what is set out in the Withdrawal Agreement.<sup>7</sup> The application is free, and if straightforward, can be completed in as little as 15 minutes.

**The application process follows four steps:**

1. Document checks.
2. Confirming personal details and family relationship (if it's a family member applying).
3. Suitability and criminality check.
4. Length of residence check.

The first stage requests applicants to use the 'EU Exit: ID document check application' to confirm their identity and nationality by scanning their ID document. Eligible applicants need a smart phone, either Android 6.0 (or above) or iPhone 7 (or newer) with Near Field Communication (NFC) chip, an email address, a valid identity document (passport or national ID card) with a chip in order to apply.

After verifying their identity with the app, applicants can complete the rest of the online process and submit their application online via the gov.uk website using any type of device or computer. Applicants who do not have the right phone or no chip in their passport, can attend one of the scanning centres (check opening times online as they will close in case of lockdowns) or send their paperwork by post to the Home Office.

If the applicant enters their National Insurance Number (NI number), the system performs an automated check on the HMRC and Department of Work and Pensions (DWP) databases to attempt to confirm a person's length of residence in the UK. If there are sufficient tax and benefit records to confirm the actual length a person has resided in the UK, the online application will confirm eligibility for pre-settled status (if less than five years of residence and HMRC/DWP records) or settled status (if five years of residence and HMRC/DWP records).

If no NI number is available, or the applicant declines to input their NI number, or HMRC/DWP records could not confirm the actual length of residence, then more evidence of residence is required. Applicants will be invited to scan and upload additional proof of their UK residence for the periods required by the Home Office.

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<sup>7</sup> <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

Once the application is completed and submitted, the applicant will receive a confirmation email saying that their application has been submitted and a reference number. They will need to quote the 16-digit number when tracking their application with the Home Office EU Resolution Centre Customer Contact Centre, the helpline set up by the Home Office to check the progress of applications and assist with applicants' queries. A Certificate of Application (COA) will also be emailed, once the validity of the application has been checked, which confirms the rights of the applicant to work, rent, etc. until a decision is made.

## Processing the application

Application processing times vary depending on the complexity of the application, for example, an application by a third country national family member will take longer to process. Additionally, the coronavirus outbreak has affected processing times.

When the Home Office have considered the application, the outcome will be emailed to the applicant. The email will confirm which of pre-settled and settled status has been granted. The email will also have attached an outcome letter outlining the status, the rights and entitlements accompanying that status, and how to log in and access the online status. The letter and email are not proof of pre-settled or settled status.

## Appealing the outcome and reapplying

If the applicant is not happy with the outcome, they can choose to reapply or appeal so long as they received their decision before 30 June 2021. If the applicant receives the decision after 30 June 2021, then they will not be able to re-apply, they must appeal the decision. **This is why we encourage housing associations to help residents apply early.**

## Applying for third country nationals and other derivative rights to reside

All family members, who are not already British, must make individual applications, **they are not automatically included at the point at which the EU citizen applies.** This includes children and third country national family members. They will need to link their application with the EU citizen, who is considered the main applicant, and provide proof of their family relationship such as their biometric residence permit, marriage certificate, or birth certificate.

There are also complex applications which will require further legal assistance and may also be required to apply using a paper application sent by post. These include:

- People with a criminal record.

- Those with a derivative right to reside (Zambrano carer, i.e. a non-EEA citizen who derives their right to reside from caring for a British child).
- Those with retained rights of residence (i.e. a divorced third country national).
- Family members of dual EU/British citizens.

Such persons are recommended to speak to a lawyer who is funded to provide free EUSS legal advice.

## What to do if you already have a permanent residence card

Citizens with a permanent residence card will need to apply to the EUSS because that status will not be valid after the end of the transition period. Those already in possession of Indefinite Leave to Remain (ILR) status have a choice to apply to the EUSS. Doing so has benefits, for example, settled status under the EUSS allows a person to be outside the UK longer while retaining that status – up to five years, as opposed to two years with ILR status). There are other benefits, such as family reunification in the UK. **If a person is not sure if or what benefits apply to them, it is recommended they apply to the EUSS.** It is free and easy to do so and will not impact their pre-existing ILR. Irish citizens and citizens of Northern Ireland do not need to apply but can if they want to.

## What is the deadline for applications?

To be eligible to apply under the scheme, applicants need to be a resident in the UK before **11pm on 31 December 2020** (end of the transition period), and third country national family members need to have an existing relationship with the EU citizen before that time and date.

**The deadline to submit applications is 30 June 2021.** Despite setbacks such as the coronavirus crisis, which impacted the Home Office's services and availability of scanning facilities and biometric appointments, there is no indication from the government that this deadline will be extended.

**Applicants who fail to apply before the deadline without a good reason, could find themselves unlawfully resident in the UK after 30 June 2021.** This means a person will be dismissed from their employment, will have difficulties accessing healthcare, their benefits will stop, their tenancy agreement could be terminated and other such services in the UK will end.

## EUSS: a digital-only status

EU citizens granted a status under the scheme will receive a digital only status. From 30 June 2021 they will be expected to prove their immigration status digitally. No physical

document or card is issued under the scheme unless a person is a third country national family member.

The status holder needs to ensure they keep their personal details up to date online and they will need to let the Home Office know when they renew their passport or national ID card. This is because the status is linked to the identity document of the individual.

## Potential issues with the application process

Some organisations have raised concerns over the online format of the application. Requirements to prove identity, criminal history and residency, could make the process inaccessible for some individuals with vulnerabilities, dependency issues, or lack of access to a computer. They might fail to apply for the EUSS. Those whose resulting status is pre-settled may find themselves with no access to benefits should they lose their job, or they may become an unlawful resident in the UK if they do not apply for settled status later.

Although a system of grant-funding for community organisations has been put in place by the Home Office to provide help to vulnerable applicants, grant recipients have raised concerns over vulnerable people and hard to reach groups including:

- Older people.
- Children (in particular, children in care and young care leavers).
- Digitally excluded groups.
- Domestic abuse survivors.
- Victims of human trafficking.
- Homeless people.
- People with mental health issues.
- People who might not realise they need to apply (such as long-term residents).
- Third country national family members of EU Citizens.
- People reluctant to apply or who refuse on principle to do so.

These groups are likely to require additional help and, for some, access to specialist immigration assistance due to lack of capacity, absence of paperwork, evidence, level of complexity of applications, or simply lack of knowledge of the EUSS. **With the deadline now less than one year away, and the complexity of their application likely to lead to a longer processing time, housing association should seek to identify and support vulnerable applicants, or they might not submit applications in time.**

In addition, coronavirus has affected the running of the scheme, which has operated more slowly over the lockdown period. This has led to longer processing times and resulted in a backlog of applications that the Home Office is processing at the time of writing.



## Common problems encountered among some social housing residents so far have included:

- A lack of knowledge of the scheme.
- Language barriers.
- No valid ID documents, particularly among older tenants or young children.
- The belief that permanent residency cards mean no action is required.
- No suitable mobile phone to allow applicants to download the application and poor IT skills.
- Not knowing that children need to apply for the scheme.
- The need for additional evidence of continuous residency because HMRC and DWP checks did not work. A request for further evidence is usually emailed by the Home Office following the application. This email can sometimes be missed by applicants who do not check their mailbox following an application, including their junk mail. An unanswered request can lead to the closure of the application, although the Home Office allows time for the request to be answered.
- Generally, there can be a lack of understanding over the difference between the two statuses, with some applicants accepting pre-settled status when they are entitled to settled status. This can have far-reaching consequences as pre-settled status in itself does not give a right to reside for benefits purposes. In addition, there is a risk that if the applicant fails to submit their application for settled status, they could become unlawful resident in the UK, unless they have good reasons for missing the deadline.

## Who still needs to apply for EUSS?

It is hard to know how many individuals have yet to apply as there is no clear data on the number of affected people in the UK. Experts predict that as many as hundreds of thousands of EU citizens will miss the deadline<sup>8</sup>.

## Right to rent

Current right to rent guidance<sup>9</sup> will continue to apply and housing associations will need to carry out right to rent checks for those tenancies awarded under their own criteria as opposed to those based on statutory duties. They will not be able to request sight of the EUSS status until 30 June 2021.

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<sup>8</sup> Colin Yeo, Colin Yeo, Welcome to Britain: Fixing our Broken Immigration System, 2020.

<sup>9</sup> <https://www.housing-rights.info/right-to-rent-checks.php>

Most housing associations carry out benefits checks (tenancy sustainment checks) when allocating a tenancy, so this will enable them to verify eligibility for benefits. Employers and landlords do not need to carry out retrospective checks on their tenants or workforce.

The EU's current social security co-ordination rules will continue to apply to those EU citizens who arrive in the UK before 31 December 2020. At the time of writing, the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020,<sup>10</sup> that retain the amended Immigration (European Economic Area) Regulations 2016, had been laid before parliament but had not yet been made a UK Statutory Instrument. These citizens, if pre-settled status holders, will be required to continue passing the right to reside test in order to qualify for means-tested benefits, including Universal Credit.

Information so far from the Home Office and other government departments is that nothing will change for EU citizens until the end of the grace period, 30 June 2021, and that job centres will continue to check eligibility for benefits in the same way.

Post 30 June 2021, EU citizens will need to provide evidence of their EUSS status and housing associations, along with other organisations, will be able to request sight of settled or pre-settled status.

## Get in touch with Settled

Settled is a charity founded in 2019 to help EU citizens and their family members in the UK to secure their post-Brexit rights. Settled staff and volunteers are OISC accredited and authorised to give immigration advice limited to the EUSS. Settled has helplines in nine European languages and also provides advice via email at [advice@settled.org.uk](mailto:advice@settled.org.uk).

Settled have a referral procedure to assist organisations with cases, please email [info@settled.org.uk](mailto:info@settled.org.uk). Settled also provides training on the EUSS scheme to other organisations, including Housing Associations.

For more information, visit: <https://settled.org.uk/en/>

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<sup>10</sup> <https://www.legislation.gov.uk/ukdsi/2020/9780348212204/contents>

## Available support for applicants

The Home Office EU Resolution Centre: helpline telephone number 0330 123 7379.

For a list of local organisations providing free support and events across the UK, visit the EU Delegation to the UK website, EU Rights at: <https://www.eurights.uk/>

There are also pro-bono legal organisations, such as Here for Good, available for referrals of complex cases, such as those with a criminal record: <https://www.hereforgoodlaw.org/>

The [Housing Rights Information Website](#) set up by the CIH and BME National, provides advisors with housing rights information based on applicants' immigration status, in England, Wales and Scotland.