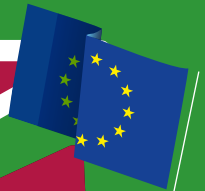


BREXIT

What you need to know
as a non-EU citizen living
in the UK if you have,
or had, a family connection
to an EU citizen



START



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This leaflet has been written with a specific focus on non-EU citizens who have a current or former connection to an EU citizen, as a family member. It complements our general leaflet¹ on the topic.

This leaflet is purely for information purposes and has no legal force. It does not provide any legal interpretation of EU or UK legislation and is not meant to replace specialised legal advice on UK immigration rules.

¹ Brexit – What you need to know as an EU citizen living in the UK, European Commission, 2020. Available at <https://op.europa.eu/fr/publication-detail/-/publication/8f5b72ed-8ada-11ea-812f-01aa75ed71a1/language-en>

1 I am a non-EU citizen in the UK. How will Brexit affect me?

As of 1 February 2020 the UK is no longer part of the EU. The EU and the UK have negotiated the terms of the UK's exit, commonly referred to as the 'Withdrawal Agreement' or the 'Brexit deal'. According to this, EU law – including free movement in the EU² – will continue to apply to and in the UK until the end of an agreed **transition period** (which will end on 31 December 2020).

Once EU law ceases to apply to the UK at the end of the transition period, freedom of movement between the EU and the UK will end (however, see Section 2 for situations covered by the Withdrawal Agreement). The UK has stated clearly that it does not wish to continue the free movement of persons. This will affect EU citizens³ and their family members living in the UK, along with British nationals living throughout the EU.

2 What will happen now that the Withdrawal Agreement has entered into force?

Thanks to the EU–UK Withdrawal Agreement, the residence rights of EU citizens and their family members – including non-EU family members – who arrived in the UK **before the end** of the transition

² Free movement of workers is a fundamental principle of EU law. According to this, EU citizens can look for a job, work without a permit, reside and stay after the end of their employment in another EU Member State. They also enjoy equal treatment with nationals of their host country in terms of access to employment, working conditions and all other social and tax advantages.

³ The purpose of this leaflet is to explain the situation of non-EU family members of EU citizens. However, broadly, the same arrangements are in place for family members of Iceland, Liechtenstein, Norway and Swiss nationals, as there are separate agreements between the UK and these countries.

period⁴ are protected, and as such eligible citizens can apply for a new residence status under UK immigration law. To achieve this, the UK government set up the **EU Settlement Scheme (the Scheme)**, which is based on the Withdrawal Agreement.

The Scheme is a free UK Home Office application process that nearly all EU citizens residing in the UK and their (non-EU) family members must complete to be able to continue to stay lawfully in the UK⁵. If you successfully apply under the Scheme you will be granted **'Settled Status'** or **'Pre-Settled Status'**, depending on how long you have been a family member of an EU citizen and how long you lived as such in the UK before your application. Failure to apply under the Scheme before the application deadline of **30 June 2021** means that your future residence in the UK may be unlawful.

Therefore, all EU citizens and their (non-EU) family members who arrive before the end of the transition period and intend to stay in the UK **after 31 December 2020 must apply for this new UK immigration status before 30 June 2021**.

Even if you have a residence card or a permanent residence card as the family member of an EU citizen that states that it is valid after 30 June 2021, you must apply to the Scheme before 30 June 2021 to ensure you have lawful residence in the UK after that date.

⁴ Some family members who are not resident in the UK before the end of the transition period are also covered by the Withdrawal Agreement. However, this leaflet focuses on those non-EU family members with UK residence before the end of the transition period.

⁵ As a non-EU-citizen family member, if you already hold valid 'indefinite leave to remain' immigration status you have a choice about whether to apply to the Scheme. If you hold British citizenship as well as another nationality you cannot apply to the Scheme, as your British citizenship is your lawful right to live in the UK.

3 As I am not from the EU, how do I know whether I am covered by the Scheme?



It is important to know whether you can apply for status under the Scheme. This means identifying whether you have a qualifying relationship to an EU citizen⁶. Even if you currently do not have a relationship with an EU citizen, you may still be able to apply for status under the Scheme if you had a relationship in the past and certain conditions apply (e.g. you have sole or joint responsibility for a child from a former relationship). Some application categories have complex conditions attached, and you may need to discuss your situation with a qualified adviser to know whether you can apply to the Scheme and what evidence you will need to submit (see Section 6 for details on how to find organisations that will be able to tell you whether you are able to apply to the Scheme).

Non-EU applicants need to fall into one of three broad qualifying categories to be covered by the Scheme. Sometimes applicants fall into more than one category, or they may move between categories when their circumstances change. The Scheme operates in a flexible manner to allow this to happen. Each category has conditions attached, which are expanded upon in the following sections.

Family-member applications cover:

- ▶ family members of an EU citizen (can include former family members in some cases);
- ▶ family members of an EU citizen who has become British since living in the UK whilst also retaining their EU citizenship (can include former family members in some cases).

⁶ This leaflet does not cover the rights of non-EU family members of British citizens who do not also hold an EU citizenship (known as Surinder Singh / Qualifying British Citizen cases) or non-EU carers of British citizens (known as Zambrano cases).

Retained-rights-of-residence applications cover:

- ▶ family members of an EU citizen resident in the UK before they died;
- ▶ children in education of EU citizens (or children of the spouse or civil partner) who have left the UK or who have died;
- ▶ a parent with custody of a child in the situation described above;
- ▶ marriages to or civil partnerships with EU citizens that have ended with a divorce, annulment or dissolution;
- ▶ family members of former spouses or former civil partners;
- ▶ family members who are victims of domestic violence or abuse.

Derivative-rights-of-residence applications cover:

- ▶ primary carers of financially independent EU children;
- ▶ children in education of an EU citizen who used to work in the UK ;
- ▶ primary carers of children in the situation described above;
- ▶ any dependent children of the primary carer.

(i) Who is a family member?

The most straightforward category under which you can apply as a non-EU applicant is one where you have a family relationship to an EU citizen. You can apply if you are in a relationship with an EU citizen as:

- ▶ a spouse or civil partner (this relationship must exist before 31 December 2020);

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- ▶ an unmarried partner, called a durable partner⁷ under the Scheme (this relationship must exist before 31 December 2020 and you must hold a **relevant document** before you apply to the Scheme – see Section 4 for more details, as the application for a relevant document must be **made before 31 December 2020**).

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

- ▶ child, grandchild or great-grandchild under 21 years old;
- ▶ dependent child, grandchild or great-grandchild over the age of 21;
- ▶ dependent parent, grandparent or great-grandparent;
- ▶ dependent relative (you must hold a **relevant document** before you apply to the Scheme – see Section 4 for more details, as the application for a relevant document must be **made before 31 December 2020**).

You do not have to apply at the same time as your sponsoring EU citizen, but the process will be easier if they apply first or you apply at the same time. If you are not applying together with your sponsoring EU citizen and do not know whether they have applied, you will need to prove the identity of the EU citizen, prove your relationship to them and provide evidence of your and their residence in the UK. If you are relying on a relationship that no longer exists you will still need to prove the identity of the EU citizen, prove your relationship to them and provide evidence of your and their residence in the UK.

⁷ Broadly speaking this is where you have cohabited for 2 years or more or there is other evidence of you having a serious relationship, for example if you have a child together.

If your sponsoring EU citizen is also a British national they will not be able to apply to the Scheme themselves, but can sponsor your application if certain conditions are met (these are called 'Lounes' applications following the judgment of the Court of Justice of the European Union of that name). You will need to apply if you are the family member of an Irish citizen, even though they themselves can choose not to apply (Irish citizens have the choice of whether to apply under the Scheme or not). In some cases, if your EU family member is a dual Irish/British national who was born in Northern Ireland, you can be sponsored as a family member.

(ii) Who is a family member with a retained right of residence?

You may be able to apply based on a relationship with an EU citizen who used to live in the UK but has left, or who was living in the UK and has died, or where you were formerly married or in a civil partnership together but this has now ended, or where your relationship has broken down permanently as a result of domestic violence. This is called having a 'retained right of residence'. Your family members may also be covered by this category. It is important to make sure that all the conditions in the category that apply to you are met.

You can apply if you are in education in the UK and you meet one of the following conditions:

- ▶ you are the child of an EU citizen who has left the UK or died;
- ▶ one of your parents is the spouse or civil partner of an EU citizen who has left the UK or died;
- ▶ one of your parents was previously the spouse or civil partner of an EU citizen who has left the UK or died.

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If you qualify through any of these circumstances, your parent is also eligible provided they have custody of you.

You can also apply if your sponsoring EU citizen has died and you lived continuously in the UK as their family member for at least 1 year immediately before their death.

Non-EU citizens who were married or in civil partnerships with an EU citizen but these ended with a divorce, annulment or dissolution whilst living in the UK will have a right of retained residence if one of the following conditions applies:

- ▶ the marriage or civil partnership lasted for at least 3 years before starting divorce proceedings and you had both been living in the UK for at least 1 year during that time;
- ▶ you have custody of the EU citizen's child;
- ▶ you have been given the right of access in the UK to the EU citizen's child (the child must be under 18 years old);
- ▶ you have faced particularly difficult circumstances (for example if you or a family member has been a victim of domestic violence or abuse whilst the marriage or civil partnership was subsisting);
- ▶ you are a family member of the ex-spouse or ex-civil partner in any of the above situations.

If you are a family member of an EU citizen as described in the 'Who is a family member?' section above and you have been the victim of domestic violence or abuse that has led to your relationship breaking down permanently, you may have the right to be granted status under the Scheme.

(iii) What is a derivative right of residence?

You can apply if you are or were the primary carer of a **financially independent** child who is an EU citizen **under 18 years old**. You would have to show that the EU child would be required to leave the UK if you are not granted permission to stay. Any dependent children you have may also be able to apply.

You can also apply if you are or were the primary carer of a child of any nationality who meets the following conditions:

- ▶ is in education in the UK;
- ▶ has an EU parent who worked in the UK while the child lived in the UK;
- ▶ has an EU parent who lived in the UK while the child was in education;
- ▶ has an EU parent who has stopped working in the UK, has left the UK or, in the case of step-children, has ceased to be an EU parent on divorce;
- ▶ the child would have to give up their education in the UK if you are not granted permission to stay.

Any dependent children you have may also be able to apply.

To be someone's primary carer, you must be both:

- ▶ responsible for their day-to-day care, including making decisions about their education, health and finances (someone else can share these responsibilities with you); and
- ▶ a family member or their legal guardian.

These applications are often very complicated and require lots of evidence to be submitted with the application (see Section 6 for details on how to find organisations that will be able to tell you whether you are able to apply to the Scheme).

4 What is the difference between ‘Settled Status’ and ‘Pre-Settled Status’?

As long as you meet the family-relationship criteria to be eligible to make an application to the Scheme, what determines the status you will be given is how long you have been resident in the UK and for how long you have been (or were) a family member.

Applicants who have been continually resident in the UK for at least 5 years should get **‘Settled Status’**⁸. However, time spent in the UK before becoming a family member does not count towards the 5-year residence (e.g. if you held a student visa before marrying an EU citizen, the time before your marriage would not count). The 5-year residence in the UK does not always need to have been in the most recent 5 years, as some non-EU citizens who have previously lived in the UK for 5 years may apply for ‘Settled Status’ even if they do not live in the UK any more. As explained above, your 5 years of qualifying residence do not need to be in the same category, as you can combine periods of residence under different categories. For example, an applicant could start off as a spouse and then become a family member with a retained right of residence after a divorce; a combination of the two categories can be used to build the 5-year qualifying residence required. If you are a child under 21 years old you will be granted ‘Settled Status’ if one of your parents is granted this status even if you have not lived in the UK for 5 years.

Those who have lived in the UK for less than 5 years will have to apply for temporary **‘Pre-Settled Status’**. This will allow them to stay in the UK and apply for ‘Settled Status’ once they achieve the 5 years of

⁸ There are some categories under which an applicant can be granted ‘Settled Status’ with less than 5 years’ UK residence, for example if their sponsoring EU citizen family member meets the conditions of the ‘ceased activity’ category.

continuous residence. During your 5-year qualifying residence you must continue to meet the qualifying conditions of the category under which you fall (as described in Section 3, unless your circumstances change and you fall under a different qualifying category).

Even if you already have a UK-issued EU permanent residence document or card (commonly known as a 'PR' document/card) **you must apply** for 'Settled Status'.

It is also important to remember that if you are applying as a **durable partner** or a **dependent relative** you must hold a valid **relevant document** to be granted status under the Scheme. This means making a separate application to the Home Office under the 'EEA Regulations'⁹ for a relevant document to be issued **before** you apply to the Scheme. If you are already in the UK your application for a relevant document must be made **before 31 December 2020**.

Deadlines. Your application to the Scheme must be made by **30 June 2021**. If an application is refused before this date you have the option to reapply any number of times to remedy the issue or, in some cases, to appeal the decision to an independent immigration judge¹⁰. If your application is refused after **30 June 2021** you cannot reapply and can only appeal the decision.

⁹ For an initial application to the Scheme, a relevant document will be either a family permit, a residence card, a permanent residence document or a card issued under The Immigration (European Economic Area) Regulations 2016, which is a separate Home Office application process.

¹⁰ If your application was made after 31 January 2020.

Applications for your
'Settled Status' or
'Pre-Settled Status'
must be made by

30 June 2021



5 How to apply for ‘Settled Status’ or ‘Pre-Settled Status’

Applying to the Scheme is free, but there can be a cost to enrol biometric information if you are required to do so as part of the application (see subsection (i) ‘Identity’ below). The qualifying category under which you are applying will tell you the way you should apply. If you apply as a **family member** or a **family member with a retained right of residence** you generally have to complete an online application form using a computer, a tablet or a smartphone. If you apply as someone with a **derivative right of residence** or are being sponsored by a **dual British/EU citizen** you must use a paper application form, which you have to request from the Home Office¹¹.

The Home Office application checks four things: (i) your identity, (ii) your qualifying relationship to an EU citizen, (iii) your residence in the UK and (iv) any criminal record you may have.

(i) Identity

You have to confirm your identity and nationality using your passport, your ‘EEA Regulations’ biometric residence card or permanent residence document/ card, or your biometric residence permit issued under a UK immigration category (such as a Tier 2 work permit or Tier 4 student visa). Which identity document you use determines how you are able to apply if you are using the online application process, as described below.

¹¹ At the time this leaflet was drafted it was not clear whether the family members of dual British/Irish citizens born in Northern Ireland will apply online or with a paper form.

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If you have an 'EEA Regulations' biometric residence card or permanent residence card¹², newer Android and iPhone devices will be able to scan this using the **Home Office EU Exit: ID Document Check app**.

If you have an 'EEA Regulations' biometric residence card or permanent residence card as set out above, but you do not have a newer Android or iPhone device, you can go to one of the **scanning locations** listed by the Home Office¹³ to scan your document.

If you are applying using your passport or biometric residence permit issued under a UK immigration category you will have to use the **'postal route'** for verification of your identity. When you apply you will also be asked to make an appointment at a UK Visa and Citizenship Application Services (UKVCAS) service point to **provide your biometric information** (your fingerprints and a photo, or only a photo for children under 5). You must take your identity document to this appointment.

The application form also asks you for your basic information (name, nationality, contact details, National Insurance number (NINO)) and confirmation of who your EU sponsor is or was, including their EU Settlement Scheme reference number if they have applied to the Scheme. As part of the application you have to upload a digital photo of yourself. If you are using a paper application form you will have to send your identity document to the Home Office.

¹² The biometric residence card or permanent residence card must have been issued based on an application to the Home Office made on or after 6 April 2015.

¹³ <https://www.gov.uk/government/publications/eu-settlement-scheme-id-document-scanner-locations/locations-offering-chip-checker-services>

(ii) Qualifying relationship to an EU citizen

As your application will rely on a relationship to or connection (current or former) with an EU citizen, you will be required to provide evidence of their identity, your relationship to them and their UK residence. What you will need to provide will depend on which qualifying category you are applying under and whether you have previously made an application to the Home Office, or the EU citizen has done so.

If you have been issued with a permanent residence document or card then you are not required to provide evidence of your sponsoring EU citizen's identity, your relationship to them or evidence of their residence in the UK. If you do not have a permanent residence document or card then you will have to show these three things when you apply. This is why it can be an advantage for the EU citizen to apply to the Scheme first or at the same time, as it should help to establish some of these requirements.

Some examples of family-relationship documents that may be required for the application are listed below (these are not the only documents that can be provided, as other documents may also be accepted):

- ▶ for spouses and civil partners – a marriage or civil partnership certificate;
- ▶ for children under 21 / dependent parents – a birth certificate;
- ▶ for dependent children – a birth certificate and evidence of dependency for financial or health reasons;
- ▶ for durable partners – a relevant document and evidence that confirms ongoing cohabitation (bank statements, utility bills in joint names at the same address, tenancy agreements, mortgage statements, official correspondence, etc.);

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- ▶ where the family member has died – a death certificate.

If you have already been issued, by the Home Office, an 'EEA Regulations' document that is not a permanent residence document or card but that confirms your relationship to an EU citizen, this can also be used as confirmation of your family relationship during your application to the Scheme.

Evidence of the identity of the EU citizen can be their valid passport or national ID card, or confirmation that they have been granted their own status under the Scheme. There are some situations in which you may not be able to provide a valid passport or national ID card for the EU citizen – for example if your relationship has permanently broken down – in which case you will need to explain the situation when you make your application and provide alternative evidence of the EU citizen's identity, where possible.

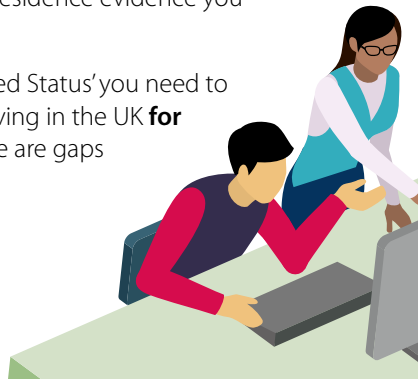
Evidence of the EU citizen's UK residence will depend on the category under which you are applying and whether the EU citizen has been granted status under the Scheme themselves. In some cases the fact that the EU citizen has been granted status under the Scheme will be sufficient to demonstrate that their UK qualifying residence period is the same period as yours. However, in other cases more evidence will be requested during the application process to show that the EU citizen has been resident in the UK for the period of residence on which you wish to rely. The following section covers the type of evidence that can prove UK residence for you and the EU citizen on whom you are relying.

(iii) Residence in the UK

Generally, you can only include UK residence in your qualifying period **after** you become the family member of an EU citizen. For example, if you have lived in the UK for 5 years but have only been married to an EU citizen for the past 2 years, your qualifying residence will begin on the date that you are married. If you had a relevant document issued as durable partner before you married your sponsoring EU citizen, you can start your qualifying residence period from the time the relevant document was issued and add it to your time as a spouse (effectively you add the two residence periods together).

You have to prove your residence in the UK by providing your NINO, if you have one, or by using documentary evidence. If you already hold valid indefinite leave to remain, or a permanent residence document or card, this can help you to prove your UK residence without having to produce other evidence. If you give your NINO when you apply, the application process will automatically check your tax and benefit records over the past 7 years to see whether there are records of your presence in the UK. Sometimes these checks do not show that you have been in the UK even when they should. The checks will not show that you have been in the UK if you are relying on UK residence from more than 7 years ago. In this situation you will be asked to provide documents to show that you are, or have been, living in the UK. Whether you are applying for 'Settled Status' or 'Pre-Settled Status' determines how much UK residence evidence you need to provide.

If you are applying for 'Settled Status' you need to show that you have been living in the UK **for 5 continuous years**. If there are gaps



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in your 5-year automatic NINO residence check, or if you do not have a NINO, you may need to provide additional documents (such as utility bills) to fill in the gaps. You can scan and upload these documents during your online application.

If you are applying for 'Pre-Settled Status' because you have not lived in the UK for 5 years then your automatic NINO check or documentary evidence must show that you have been living in the UK **at some point in the last 6 months**. If you are asked to provide documents these can be uploaded during your online application.

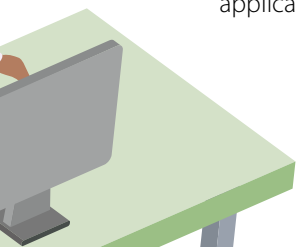
If there are still gaps in your UK residence you should be contacted by email or telephone with a request that you provide more documentary evidence.

(iv) Criminality

You will be asked about your criminal record. If you have only been convicted of a minor crime you will still be eligible for 'Settled Status' or 'Pre-Settled Status'. Any dishonest answer could have a negative impact on your application.

6 Who can help me with the application?

The Home Office has provided funding to charities and voluntary organisations across the UK to provide free help and information to vulnerable citizens applying to the Scheme. This includes assistance for vulnerable non-EU citizens who need help applying. Some applications for non-EU citizens can be complex (particularly when relying on retained rights or derivative rights), and therefore applicants in these categories may need legal assistance to make their application.



The support provided by these organisations varies, and includes individual practical support and advice to assist citizens with their applications. A list of these funded organisations and contact details of how you can get in touch to discuss your situation is provided on the gov.uk webpage at the following link:

<https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>



To help you find the organisation closest to you there is a postcode search facility at the following link:

<https://www.gov.uk/help-eu-settlement-scheme>

If you are not able to receive support from a funded organisation but you still feel that you need legal advice to help you make your application, please be aware that only regulated immigration advisers are allowed to charge money to provide legal advice in the UK.

7 How can I prove that I hold ‘Settled Status’ or ‘Pre-Settled Status’?

If your application is approved you will be granted ‘Settled Status’ or ‘Pre-Settled Status’ depending how long you have lived in the UK. You will receive a confirmation email and an attached PDF letter telling you which status you have been granted (this itself is not evidence of your status). Non-EU citizens granted such a status are issued with a physical biometric residence card as proof of this status, **unless they already have** an existing biometric residence card, biometric permanent residence card or biometric residence permit. You can apply to the Home Office for a new biometric residence card if the one you have expires or is lost or stolen (there is a fee to replace the document).

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The status grant is also issued digitally, which means proof of your status is stored online and can be accessed through the gov.uk website. To access your digital status you will need:

- ▶ details of the identity document you used when you applied;
- ▶ your date of birth;
- ▶ access to the mobile number or email address you used when you applied, as you will be sent a one-time-use security code for logging in.

You can update the details contained in your digital status if they change. The details that you should keep up to date in your online profile are:

- ▶ your mobile phone number;
- ▶ your email address;
- ▶ your name;
- ▶ your UK address;
- ▶ your passport or residence card number.

You may be asked to prove that you hold 'Settled Status' or 'Pre-Settled Status' by organisations such as the National Health Service (NHS), the Department of Work and Pensions (DWP), local authorities, the Driver and Vehicle Licensing Agency (DVLA), employers, banks or landlords. The Home Office is developing online ways for you to provide information about your digital status to these organisations, but you can also use your physical ID card as proof of your rights. When you travel in and out of the UK you **must have your physical biometric residence card or permit and your passport** to ensure that you are able to re-enter the UK without any problems.

8 Will travelling to the EU change for me?

After the transition period ends, non-EU citizens who are current family members of EU citizens **will no longer be able** to automatically enter the EU visa-free using residence cards issued by the UK government under the 'EEA Regulations'. This will be the case even if the residence card has an expiry date after **31 December 2020**.

Non-EU citizens travelling to the EU who have a biometric residence card confirming they hold 'Settled Status' or 'Pre-Settled Status' **must check the visa requirements** of the EU Member State to which they intend to travel before making travel arrangements. This applies even if they are travelling to the EU **during the transition period**.





Questions / Information

If you have questions, feel free to ask us on our Facebook page @EUinUK — immigration lawyers contracted by the EU Delegation will answer your question.

More information on “Pre-Settled” and “Settled Status” from the UK Government:

<https://www.gov.uk/settled-status-eu-citizens-families>

<https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

More information on your rights under the Withdrawal Agreement in a questions and answers document at Commission’s questions and answers document at <https://bit.ly/2LlcxeM> and https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/implementing-withdrawal-agreement/citizens-rights_en

More information on organisations that may be able to assist you apply for “Pre-Settled” and “Settled Status”:

www.eurights.uk

Disclaimer

Please note that this document has been drawn up for information purposes only and has no legal force. It cannot provide any legal interpretation of EU or UK legislation and is not meant to replace specialised legal advice on UK immigration rules. While best efforts have been made to provide accurate information, the European Union cannot be held responsible. The responsibility for the information on the EU Settlement Scheme and future immigration arrangements lies entirely with the UK Government which should be the first contact point for the latest information.

The information provided does not reflect the official opinion of the EU.

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