

Answers to Questions following the Young Europeans and EU Delegation/Seraphus December webinar on the EU Settlement Scheme

This document was written in collaboration with Christopher Benn (Seraphus).

Assistance with EU Settlement Scheme applications

- EU Settlement Resolution Centre - call 0300 123 7379 between Monday to Friday (excluding bank holidays), 8am to 8pm, Saturday and Sunday, 9:30am to 4:30pm
- Postcode finder - to find closest charity / voluntary organisation www.gov.uk/help-eu-settlement-scheme
- Charity / community organisations - the Home Office has funded charity / voluntary organisations to assist vulnerable applicants with their EUSS applications for free, search on: www.eurights.uk
- Identity Scanning Locations - search gov.uk for a list of Local Authority locations. (Note that these are currently closed due to Covid-19 so if you can't use your mobile devices to scan your documents, you may need to send your Identity documents by post)
- Assisted Digital Service - call 03333 445 675 or text "VISA" to 07537 416 944

Questions and Answers

Q1: Are there any exceptions to the rule that pre-settled status will be lost if one spends more than two years outside of the UK? For example, what if my employer asks me to work abroad?

A1: If you have pre-settled status and you spend more than a period of 2 continuous years outside of the UK, your pre-settled status will be lost. There are no exceptions made to this rule. With regards to continuous residence (i.e. that you must reside in the UK for at least 6 months in any 12 months period for at least 5 years to be able to convert your pre-settled status to settled status), however, there is an exception in that you are allowed to have one single absence of up to 12 months for an important reason. If, however, you exceed this, you will lose your ability to convert your pre-settled status to settled status.

You may also find this tool to check absences useful: t3m-settledstatus-absences.paperform.co

Q2: Will I lose my pre-/settled status if I travel for holidays? Will a visa be required for me to return to the UK?

A2: No, you will not lose your pre-/settled-status. With pre-settled status, you are able to stay outside the UK for up to 6 months in any 12-month period without losing your continuous residence period in the UK. If you spend more than a total of 6 months in any 12-month period outside the UK, however, you will not be able to convert your pre-settled status to settled status (indefinite leave to remain). If you already have settled status, you can stay outside the UK for a period of up to 5 years without losing your status.

Q3: Do I need to be working to apply for the EU Settlement Scheme?

A3: No, you do not need to be working to apply for pre/settled status. The only requirement to apply is that you are a resident in the UK before the 31st December 2020.

The EU Settlement Scheme checks for residency, not activity in the UK. It does not matter if you are self-employed, not in work, self-sufficient or a student during your qualifying period. For pre-settled status, residence in the UK before the 31st December 2020 will suffice. For settled status, you must demonstrate you have been physically present and living in the UK at least 6 months every 12 months for 5 years in a row.

The list of documents that can be used to prove residency can be found here:

www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence

Q4: What evidence can I use to apply for the EU Settlement Scheme?

A4: The government's website provides a list of documents you can use to prove your residence in the UK. This list is not exhaustive and is meant as a guide for applicants as to what documents will be the most helpful. You can still apply to the EU Settlement Scheme even if you do not have the documents in this list.

www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence

Q5: How can I prove my residence in the UK if I have not kept my documents?

A5: You may still be able to prove your residence through the Settlement Scheme's automatic check based on your National Insurance Number (NINo). If, however, you were not working, you may be asked for evidence to prove your presence in the UK. The government's website has a list of documents you can use to prove your residence.

www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence

If you do not have any of the documents listed, you may need to apply for pre-settled status with your most recent document and work towards obtaining your previous documents from authorities or wait until you have sufficient evidence to prove a total of 5 years' residence. If you do not have many documents to show you have been living in the UK then it may be a good idea to talk to one of the Home Office-funded charity / voluntary organisations.

Please remember, you need to make an application to the scheme before 30 June 2021 and prove that you were in the UK before the 31st December 2020 to be granted status under the EU Settlement Scheme.

Q6: Will children born to parents with pre/settled status have to apply for the EU Settlement Scheme as well?

A6: Children are not automatically given status under the EU Settlement Scheme just because their parents have status themselves. This means that children are required to make an application to the EU Settlement Scheme (or a parent must apply on their behalf), for the child to be granted status.

It may be useful for you to watch this video to see how you can link a child's application to the parent's. The child will get the same status as the parent if you link the applications: www.youtube.com/watch?v=2CMEhJ4Ox5s

However, there will be some cases where a child does not need to apply to the EU Settlement Scheme because they are born a British citizen. Unfortunately, it is not straightforward to know when a child is exempted from applying as this will depend on where the child is born (the UK or overseas), as well as the status of the parents (whether they have pre-settled or settled status) at the time the child was born. If you are not sure, follow this link for more information: www.gov.uk/settled-status-eu-citizens-families/apply-settled-status-for-child

Q7: How can my non-EU family members join me in the UK?

A7: If you are an EU citizen who holds pre-settled status or settled status (or is eligible to hold either status), you can be joined by your family members in the UK at any time in the future. If your family member is applying to join you from 1 July 2021 onwards then you must have your status granted before they can apply.

A10 has a list of eligible family members who can apply to join you in the UK. From 1 January 2021, family members who want to join you in the UK must apply to enter the UK under the EU Settlement Scheme. In many cases this will involve applying for an 'EUSS family permit' and then applying for pre-settled status once they have arrived in the UK. However, in some cases family members can apply directly for pre-settled status or settled status before they travel to the UK. More information on family permits can be found here: www.gov.uk/family-permit/eu-settlement-scheme-family-permit

Q8: What can I do if I have not received a response from the Home Office regarding my pre/settled status application?

A8: The Home Office has information about how long applications to the EU Settlement Scheme should take. Please note this information has not been updated since May 2020 and so may not accurately reflect current processing times which have been impacted by the pandemic:

www.gov.uk/government/publications/eu-settlement-scheme-application-processing-times/eu-settlement-scheme-pilot-current-expected-processing-times-for-applications

If you have not received a response regarding your application and you think there is a delay, you can contact the EU Settlement Scheme Resolution Centre and see whether they have a record of your application and what its status is:

www.gov.uk/contact-ukvi-inside-outside-uk/y/inside-the-uk/eu-settlement-scheme-settled-and-pre-settled-status

The Home Office states that "There's no change to your status in the UK while your application is processed".

Q9: Can I use the evidence from a hotel/Airbnb stay to apply for the EU Settlement Scheme?

A9: Yes, you can use this type of evidence to apply. You can find a full list here: www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence

Q10: Are my EU and/or non-EU family members allowed to join me in the UK after the 31st December 2020 if I already have pre/settled status? Will they have the same status as me?

A10: If you have settled or pre-settled status, you will be able to be joined by certain family members in the future.

This includes:

- Your spouse or civil partner (as long as they were already your spouse or registered partner at the end of the transition period, 31 Dec 2020)
- Your or your spouse/partner's children under the age of 21
- Your or your spouse/partner's dependants
- Your or your spouse/partner's direct ascendant relatives (parents, grandparents etc).

When they join you in the UK, they will need to apply to the EU Settlement Scheme within three months of arrival.)

Family members of EU citizens who have been granted a status under the EU Settlement Scheme do not automatically have the same status as their relatives. If the family member has been living in the UK with the EU citizen, then they might get settled status if the EU citizen is granted this status. If the family member is joining the EU citizen in the UK, then they will be granted pre-settled status. Please be aware that if the family member is applying to join the EU citizen in the UK, then they will need to make an EU Settlement Scheme application to enter the UK before travelling.

For more information visit: www.gov.uk/settled-status-eu-citizens-families/eligibility

Q11: To get settled status, I need to be in the UK for at least 6 months every year. Do the 6 months need to be in a row or can they be spread out throughout the year?

A11: To get settled status, you need to be residing in the UK for at least 6 months in any 12 month period for a total of 5 years. It does not matter if you take multiple trips outside of the UK as long as this does not exceed 6 months in total over a 12 month period. For example, if you take a two week holiday at the beginning of the year and then another two week holiday in the autumn, your time outside the UK does not combine to exceed 6 months and so you have not broken your continuous qualifying residence. However, if you are away for e.g. 4 months August-November one year and 3 months March-May of the next year, you WILL have broken your continuity of residence, as absences in ANY 12 month period are looked at, not just separate calendar years. We have developed an absence calculator which you can use to check: t3m-settledstatus-absences.paperform.co

Q12: If I have pre-settled status and spend more than 2 years outside the UK, can I re-apply for pre-settled status or will I lose my rights?

A12: If you have pre-settled status and spend more than 2 years outside the UK, you will lose your EU Settlement Scheme rights and would need to enter the UK using the new Immigration System. However, it is also important to remember that if you have pre-settled status and you spend more than 6 months outside the UK, you will not be able to convert your pre-settled status to settled status (indefinite leave to remain), and you will not be able to apply for fresh pre-settled status either. To preserve your continuous residence in the UK, you must reside in the UK at least 6 months in any 12 month period until you are able to qualify for settled status, which is secured after 5 years of residence in the UK.

Q13: Do family members applying for pre/settled status need proof of address as well or simply proof of relationship with the main applicant?

A13: Family members of EU citizens will need to provide proof of their residence in the UK and also their relationship with the relevant EU citizen. You can see the list of documents to show UK residence here:

www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence

And the list of evidence to show your relationship to an EU citizen here:

www.gov.uk/guidance/eu-settlement-scheme-evidence-of-relationship-to-an-eu-citizen

Q14: Do EU family members who already have a card under EU regulations need to replace this card or will this card be valid until it expires?

A14: Family members - both EU and non-EU - of relevant EEA citizens must apply to the EU Settlement Scheme even if they already hold an EU residence card. This is because the EU residence card was issued under EU free movement law which has now ended. The family member with the EU residence card has until 30 June 2021 to apply to the EU Settlement Scheme to be granted either pre-settled or settled status. Even if the EU residence card does not expire until after 30 June 2021, they must apply to the EU Settlement Scheme by this deadline.

EU family members will not receive a replacement residence card when they apply to the EU Settlement Scheme. Non-EU family members will not get a replacement residence card if their EU residence card is still valid. However, they can apply to swap the card for a new residence card if they want to. More information here:

visas-immigration.service.gov.uk/product/biometric-residence-permit-replacement-service

Q15: I have an exclusion order from the past, can I join my British wife in the UK before the 31st of December 2020?

A15: EU citizens with a criminal record or exclusion orders should seek legal advice as soon as possible as these cases tend to be complex. Please see the list of legal advice charities at the start of this document.

Q16: I am a company director with pre-settled status. If I leave the UK, can I return later?

A16: With pre-settled status, you are able to stay outside the UK for a total of up to 6 months in any 12 month period without losing your continuous residence period in the UK. If you spend more than 6 months outside the UK, however, you will not be able to convert your pre-settled status to settled status (indefinite leave to remain). If you already have settled status, you can stay outside the UK for a period of up to 5 years without losing your status.

Q17: I am a student who started their degree in the UK in September 2019 with a student loan for EU students, but I left the UK due to COVID. I decided to put my second year on freeze and hoped to return in 2021. I have not applied for pre-settled status - is there anything I can still do?

A17: You can apply to the EU Settlement Scheme outside of the UK by downloading the Home Office passport / ID card checking app to your phone. Therefore it is possible to apply for pre-settled status whilst you are overseas. However, you will need to show that you are eligible for status when you apply which means showing that you have not broken your residence period in the UK by being absent from the country for too long. The Home Office has produced a guidance document to assist citizens understand their position under the EU Settlement Scheme if they have had to have an extended period of absence related to the pandemic. The information can be seen here:

www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants

You may also find this tool to check absences useful: t3m-settledstatus-absences.paperform.co

Q18: Will EU citizens with pre-settled status who spend more than 6 months outside the UK for work be able to continue having freedom of movement after the 31st December.

A18: If an EU citizen has pre-settled status and spends more than 2 years outside the UK, they will lose their pre-settled status and will have to use the new Immigration System to enter the UK. However, it is also important to note that if an EU national with pre-settled status spends more than 6 months in any 12-month period outside of the UK, they will lose their continuous residence period and will not be able to convert their pre-settled status to settled status. When their pre-settled status period expires (pre-settled status lasts for 5 years), they will have to use the new Immigration System to enter the UK again. Most importantly, therefore, those with pre-settled status should avoid spending more than 6 months outside the UK.

You may find this tool to check absences useful: t3m-settledstatus-absences.paperform.co

Q19: Is it better for a dual-national who entered the UK on a EU family permit to apply for the EU Settlement Scheme using their non-EU passport or their EU passport?

A19: It is better to make an application based on EU citizenship. The application will ask if you have dual citizenship, in which case you will mention any other citizenship you have.

Q20: My family has pre-settled status and we are awaiting a child, will the child be British?

A20: Children born in the UK to EU parents are automatically British if one of the parents has settled status. If both parents have pre-settled status when the child is born in the UK, the child will not be born British and will have to apply for pre-settled status themselves (or you will apply for them).

Please note, child citizenship is a very complex area of law and there may be other routes available for your child to obtain British citizenship in the future. Please consult our dedicated citizenship factsheet and Q&A at the following links:

t3m.org.uk/t3m_YE_CitizenshipWebinarNov2020_QA

t3m.org.uk/t3m_YE_KeyCitizenshipFacts

Q21: Can I apply for dual nationality?

A21: Dual nationality depends on your country's rules on dual nationality. It is worth contacting your embassy for information on how their legislation affects your ability to have dual nationality.

The Young Europeans have also produced this briefing paper on dual nationality, where you can find information on all EU countries and their respective dual nationality laws:

www.t3m.org.uk/t3m_YE_BarriersToCitizenship_DualCitizenship

Q22: What will happen to me if the Home Office lose my digital file?

A22: This is a good question and we do not know the answer to this. This is one of the reasons why the3million campaigns for a physical backup for our digital immigration status. You can find more information about our campaign at: deniedmybackup.org.uk/

If you experience problems with your digital immigration status, please report them here:

t3m-digitalstatus.paperform.co/

Q23: I have one child who came to the UK at 6 months and one child who was born here. What is the difference in their status?

A23: Children born in the UK to EU parents are automatically British if one of the parents has settled status. However, child citizenship is a very complex area of law and there may be other routes available for your child to become a British citizen. Please consult our dedicated citizenship factsheet and Q&A at the following links:

t3m.org.uk/t3m_YE_CitizenshipWebinarNov2020_QA

t3m.org.uk/t3m_YE_KeyCitizenshipFacts

Q24: Are National Insurance Number (NINo) applications open again?

A24: EU nationals with pre/settled status can now call DWP and order an application form to get a NINo.

First, you need to call 0800 141 2075. DWP will mail callers a form with a link to an online application. This takes up to 7 days. Processing the online application takes another 6 weeks.

You can also get more information from Work Rights Centre:

www.workrightscentre.org/