

# Appendix EU – An Overview

**Matthew Fraser**

**mfraser@landmarkchambers.co.uk**

**4 July 2019**

## MATT

---



*'Another group of EU citizens  
trying to sneak out of the UK'*

## What?

Appendix EU is in the Immigration Rules.

It is the UK's implementation of the Withdrawal Agreement.

Under Appendix EU, affected persons must apply for a new immigration status called “settled status” (for those who have been living here continuously for over 5 years), or “pre-settled status” (for those who haven't).

“Continuously resident” means not having left the UK for more than six months at a time (unless there is a single period of absence not exceeding 12 months and there was an important reason – pregnancy, childbirth, serious illness, study, vocational training – OR compulsory military service for any period).

## Who?

All EEA citizens and Swiss Nationals and their family members in the UK (except the Irish) who don't have British Citizenship or Indefinite Leave to Remain must apply, even those who have acquired “permanent residence” under EU law

## When?

By 30 June 2021, or 31 December 2020 in the event of a No Deal Brexit.

(Subject to extension if Brexit is delayed)

Where?

Smartphone\* App, then online form.

App is called: *EU Exit: ID Document Check*

\*Won't work on iPhones until 2020

Or: go to government/council office

Or: post ID

Why?

If you want to have the right to remain in the UK as an EU citizen after Brexit.

## Will it still apply if there's a No Deal Brexit?

Yes, although the scheme would only apply to those who arrived by Exit Day (whereas if there's a Deal, arrivals by 31 December 2020 will be able to apply).

## What if you don't apply under the scheme?

You lose your right to remain and work in the UK.

You become an "overstayer" at risk of removal.

## How to qualify?

Three requirements of an application:

1. Proof of identity and nationality as an EEA national or family member.
2. Proof of **residence** in the UK since before the “cut-off” date (DEAL = 31 December 2020, NO DEAL = 31 October 2019) **continuously** for **5 years** if seeking “settled status” rather than “pre-settled status”) (*NB. No need to be working, or studying, or have comprehensive sickness insurance etc like under the existing EU rules, nor any need to be physically present when making the application*).
3. Criminal record check.

## What criminal offences will disqualify an applicant?

The rules distinguish between pre-Brexit and post-Brexit offending.

- Pre-Brexit offending (inc. any transition period) will be subject to existing EU law on deportation due to previous criminal convictions.
- Post-Brexit offending will be subject to current UK deportation rules.

## Pre-Brexit offending

Proportionality assessment triggered by:

- Receiving any prison sentence within the last five years
- Receiving a prison sentence of at least 12 months for a single offence at any time
- Receiving three or more convictions in the last three years, if not resident in the UK for five or more years.
- Prior involvement in serious deception such as sham marriage or assisting unlawful immigration

Where a person was previously considered for deportation but this was not pursued, they will not be re-considered for deportation.

## Pre-Brexit offending

Any disqualification on criminal grounds must be **proportionate**, having regard to the individual facts of the case, e.g. length of residence, family ties, nature of the offences, degree of rehabilitation.

*See EEA decisions taken on grounds of public policy (v. 3.0, 14 De 2017).*

Warning: applications may be refused if false/misleading information that is material to the decision is submitted: para. EU16(a).

## Post-Brexit offending

- Either status can be taken away based on post-Brexit offending, and the person can face deportation action.
- Ordinary deportation rules apply – far weaker protection than EU rules:
  - 4+ years imprisonment: deportation unless very compelling circumstances
  - 1-4 years imprisonment: deportation unless private life or family life exceptions engaged, or very compelling circumstances
  - Less than 1 year, non-persistent, no serious harm: no automatic deportation, but still may be deported if conducive to the public good.

## Do EEA family members in the UK have to apply?

Yes, every EEA national (except British citizens) who is a family member must make an individual application, including children (though a parent can apply on child's behalf), and applications by different family members can be linked together.

## Can non-EEA family members get status?

- Family members of EEA nationals (known as “the sponsor”) are entitled to settled status / pre-settled status on the same basis as EEA nationals. Same deadlines and application process apply as for EEA nationals.
- Family member:
  - Close family: spouse, civil partner, under 21 child, parent, grandparent;
  - Extended family: durable partners and dependent relatives
- If relationship formed before 31 December 2020 (or 31 October 2019 if no deal), then family member can join from abroad in the future after that date. If formed after, then normal family visa rules apply.
- In cases of death/divorce, family member can apply without sponsor.

## What about those with Indefinite Leave to Remain?

They don't need to apply, but may do so anyway. Two key benefits:

- Up to date proof of residence right
- Better family reunion rights

How much will it cost?

£0.000

Unless submitting offline through government office.

## How to evidence residence?

Home Office Guidance (<https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>) sets out a long list of:

- Preferred evidence (i.e. easier to upload), e.g. bank statement
- Alternative evidence, e.g. utility bills
- Unacceptable evidence, e.g. a diary

## How long does it take to get a decision?

- As little as 1 hour for simple applications
- Where additional documents submitted, current waiting times are 5-9 days

## What happens if the application is refused?

- An application should not be refused without an opportunity to submit further evidence
- Right to re-submit new application (**if in time**) or seek **administrative review** (different person, still Home Office, refundable £80 fee, with option of submitting new evidence, 28 day time limit) if refused or granted incorrect status (unless serious offence has prompted deportation)
- In event of a DEAL, right of appeal to FTT (full merits review) if refused status
- In event of NO DEAL, no right of appeal unless from Switzerland, Norway, Liechtenstein or Iceland. Therefore, must bring judicial review application in UT (limited to reviewing error of law)

## Special cases

- “Surinder Singh” cases (non-EU family members of British citizens where relationship formed in another EU country) – can get status through scheme, but using paper form that is not publicly available.
- Non-EU carers of UK/EU citizens who have a “derivative right” (Zambrano, Chen, Ibrahim/Teixeira – can get status through the scheme.

## Losing status

- In addition to deportation grounds:
  - Settled status can be lost if more than 5 years spent abroad;
  - Pre-settled status can be lost if:
    - Not converted into settled status by application
    - More than 2 years spent abroad.
- Remember also: if person with pre-settled status spends more than 6 months in a 12 month period abroad, loses chance to acquire settled status.

## Useful resources

- Appendix EU: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>
- Appendix AR (EU) (administrative review):  
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-eu>
- Appendix EU (Family Permit): <https://www.gov.uk/guidance/immigration-rules/appendix-eu-family-permit>
- Government guidance:
  - <https://www.gov.uk/settled-status-eu-citizens-families>
  - <https://www.gov.uk/government/collections/eu-settlement-scheme-applicant-information>
  - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791153/Main-EUSS-guidance-29-March-v1.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791153/Main-EUSS-guidance-29-March-v1.0.pdf)
  - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791597/EUSS\\_suitability\\_guidance\\_v1.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791597/EUSS_suitability_guidance_v1.0.pdf)

**Thank you for listening**

© Copyright Landmark Chambers 2019

**Landmark Chambers**

Registered office:  
180 Fleet Street, London  
EC4A 2HG | DX: 1042 (LDE)

**London**

+44 (0) 20 7430 1221

**Birmingham**

+44 (0) 121 752 0800

**Contact**

clerks@landmarkchambers.co.uk

[www.landmarkchambers.co.uk](http://www.landmarkchambers.co.uk)

 @Landmark\_LC