

EU Settlement Scheme – Current Issues

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Issues to be covered

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Statistics

Latest published statistics accurate up to 30 April 2020

<https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

- Total number of applications submitted: **3,536,000**.
- Total number of applications concluded: **3,220,100**.
- Of these, **58%** were granted settled status and **41%** were granted pre-settled status.
- Of the remaining applications, 25,800 received a withdrawn or void outcome, 10,200 were invalid and 700 were refused. Of the total refusals, 99% were refused on eligibility grounds and 1% were refused on suitability grounds.

Refusals and delays

Home Office April 2020 statistics:

“Many of these eligibility refusals relate to cases that had been under consideration for several months and, in most cases, subject to repeated unsuccessful attempts to obtain missing evidence or information from the applicant.”

Delays may result from: request for further information; application being a minor not lined to an adult application; paper application; relevant criminal record; ongoing prosecution or police investigation; non-EEA national applying based on a relationship they haven't previously relied on in an application to the Home Office.

The effect of the COVID-19 pandemic

9 April 2020, Home Office: “*applications to the EUSS continue to be processed, but during this challenging time they will take longer than usual to process*”.

- Online / app applications & email support: stayed operational.
- Telephone helpline & postal route: re-opened since 22 May 2020
- Scanning service locations: still closed.

- Applications in April 2020 were 46% below March 2020
- Decisions in April 2020 were 51% below March 2020

The Home Secretary said on 29 April 2020 that “*we see no reason to extend the deadline when there’s still over a year to apply*”.

Absences and pre-settled status

EU citizens and family members qualify for “settled status” after completing “a continuous qualifying period of five years of residence” in the UK.

Those living in the UK for less than five years qualify instead for “pre-settled status”, and then “upgrade” to settled status after five years.

A “continuous qualifying period” = a period of residence that began before 11pm on 31 December 2020 and which has not been broken by:

1. Absence(s) from the UK exceeding a total of 6 months in any 12-month period, subject to exceptions;
2. A prison sentence;
3. A deportation, exclusion or removal decision or order.

Absences and pre-settled status

How many days is 6 months?

“Month” not defined in Appendix EU, Immigration Rules generally, or legislation, but Home Office guidance on long residence applications for ILR: month = 30 days. To be safe, assume a total of 6 months = 180 days not 182 days.

What is a day?

A whole day. Parts of a day don't count. Leaving on 23 May, returning on 24 May, does not count as a day of absence.

Who's counting?

No need to list the exact dates of travel. Simply self-certify that absences do not exceed 6 months (although the Home Office can check border records).

Exceptions to the six-month rule

- A single period of absence which did not exceed 12 months and was for an important reason (such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting); or
- any period of absence on compulsory military service; or
- any period of absence on a posting on Crown service or (as a spouse, civil partner, durable partner or child) any period of absence accompanying a person on a posting on Crown service; or
- any period spent working in the UK marine area (as defined in section 42 of the Marine and Coastal Access Act 2009)

Some absence issues

Consequence of exceeding the limit?

The “continuous qualifying period” needed to obtain “settled status” is broken, and the clock starts again from the date of return to the UK as long as the return is before 11pm on 31 December 2020 (and the person re-applies for pre-settled status upon return).

Coronavirus-related absences?

No provision at the moment for absences prolonged by Coronavirus, but there is word of a possible amendment coming in to deal with this.

Absences after “continuous qualifying period” achieved?

After 5-year continuous period achieved, a person can spend up to 5 years outside the UK without losing entitlement to settled status.

Grants of settled status and ongoing EEA appeals

Ammari (EEA appeals - abandonment) Tunisia [2020] UKUT 124 (IAC) (2 March 2020)

The grant of settled status does not result in an appeal against an EEA decision under the 2016 EEA Regs being treated as abandoned (unlike the former position in relation to EEA appeals brought under section 82(1) of the NIAA 2002).

Why does this matter? A permanent residence card can have advantages over settled status when it comes to proving legality of residence in citizenship applications.

Surinder Singh

- British Citizen moves to another EU country, meets a partner or other family member there, and moves back with them to the UK. The British Citizen is treated as an EU migrant who can sponsor a family member.
- To use this route: UK citizen needs to be resident abroad exercising free movement rights before 31 December 2020, and must return to the UK before 29 March 2022 as long as their relationship began before Exit Day (31 January 2020). If the relationship began during the transition period, the deadline for return is 31 December 2020.
- Can only make paper application (form is 61 pages long).

<https://www.freemovement.org.uk/new-statement-of-changes-to-the-immigration-rules-hc-120/>

What criminal offences will disqualify an applicant?

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

- Pre-Brexit offending (inc. in 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 Dec 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 settled or pre-settled 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.

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, 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 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)
- Right of appeal to FTT (full merits review) if refused status.

What if you miss the deadline for applying?

- Deadline: 30 June 2021 (unless extended, e.g. due to Coronavirus ...)
- Article 18(1)(d) of the Withdrawal Agreement:

“where the deadline for submitting the application ... is not respected by the persons concerned, the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline”

Nothing in Appendix EU or guidance about this, but statement from Government in January 2020 that people can apply after if “good reason”:
<https://www.bbc.co.uk/news/uk-politics-51146992>.

Legal challenge to “digital-only” decisions

A legal challenge to decisions on settled status being online only.

Grounds relied on: irrationality; failure to take into account mental health problems; breach of Article 8 ECHR.

Dismissed as unarguable by High Court of Justice of Northern Ireland: *JR96's Application for Leave to Apply for Judicial Review, Re* [2019] NIQB 97.

Thank you for listening

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