

NOTE: This version was updated on 13 February 2024
There may be an updated version on the website at righttoremain.org.uk/toolkit

Illegal Migration Act 2023

A new law called *The Illegal Migration Act 2023* has recently come into force. The Act has brought about significant changes to the UK asylum and immigration system for people who arrive in the UK on or after 20 July 2023. We are in the process of updating the Toolkit to reflect these developments. For now, please be aware that some of the information in the Toolkit may be out-of-date for people who arrived in the UK after that date. To stay up to date with any changes to the Toolkit, please sign up to our newsletter.

EEA Nationals (also known as EU nationals)

The UK left the EU on 31 January 2020. The EU Settlement Scheme (EUSS) was the scheme set up by the government after Brexit to secure the immigration status of EEA citizens in the UK. If you are an EEA or Swiss national, you were in the UK before 11pm on 31 December 2020, and you want to stay in the UK, you need to apply to the EUSS. This page explains the EUSS.

The EEA consists of the EU member states, plus Iceland, Liechtenstein and Norway.

On this page, you will find the following information:

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Moving on from Settled Status

What is the EU Settled Status scheme?

The UK left the European Union (EU) on 31 January 2020. This process was called Brexit. As a result of Brexit, and the Withdrawal Agreement which followed, laws were introduced to protect the rights of EEA citizens living in the UK. The EU Settlement Scheme (EUSS) was the scheme set up by the government after Brexit to secure the immigration status of EEA citizens in the UK. The EUSS is a unique part of the UK immigration system, because it is based on the Withdrawal Agreement.

If you are an EEA/Swiss national, you were resident (living) in the UK before 11pm on 31 December 2020, and you wish to stay in the UK, you may still be able to apply to the EUSS. This scheme may allow you to stay in the UK (with certain conditions – see below).

This page of the Toolkit provides an outline of the EUSS. If you would like more information, the charity Settled provides information, advice and support services to help EU citizens who have made a home in the UK. Their website has plenty of resources and answers to frequently asked questions (FAQs) which you can access here: <https://settled.org.uk/faqs/>

Who can apply?

People from EEA countries and their family members can apply to the EUSS. The EEA consists of the EU member states, plus Iceland, Liechtenstein and Norway. People from Switzerland can also apply, but the timeframes are slightly different. Read the information on the Home Office website here for more information.

If you were in the UK before 11pm on 31 December 2020, in most circumstances the deadline to apply to the Settled Status scheme was 30 June 2021. The deadlines for family members to apply depends on the circumstances – read more here: <https://www.gov.uk/settled-status-eu-citizens-families/join-EU-EEA-Swiss-family-member> If you entered the UK after 11pm on 31 December 2020, the standard immigration process will apply to you.

Although the deadline to apply to the EUSS was 30 June 2021, you can still apply if that deadline did not apply to you, or you have “reasonable grounds” for not applying by the deadline. See below for reasons a late application may be considered.

If your family members were with you in the UK before 11pm on 31 December 2020, or were outside of the UK but their relationship with you began before 31 December 2020, they may also apply under the Settled Status scheme. For more information on what qualifies as a durable partner under the EUSS, read this blog by Free Movement here: <https://freemovement.org.uk/who-qualifies-as-a-durable-partner-under-the-eu-settlement-scheme/>

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Applying after the deadline

The deadline to apply to the EUSS was 31 June 2021, but the scheme is still open to applications. Applications to the EUSS made after the 30 June 2021 deadline may still be considered, if you have what the Home Office considers to be “reasonable grounds” for missing the deadline. This section will outline what this means and how you can show this applies to you.

Now, the Home Office will first consider your reasons for making a late application and then consider if the application itself is valid. If the Home Office thinks that there are no reasonable grounds for delay in your application, your application will be rejected with no right of appeal or administrative review.

It’s helpful to view this as a two-stage process. First, you have to show that you have reasonable grounds for applying after the deadline. Only if you are able to do this will your application move to the second part of the process, in which your application under the EUSS is considered.

The Home Office has listed some of the things that could be considered “reasonable grounds”. This list does not cover every situation, so you may have reasonable grounds even if your reason isn’t in this list. Read the latest Home Office guidance from 16 January 2024 for a list of examples of reasonable grounds. It includes the following situations:

- children who did not know they needed to apply, or whose parent, guardian or local authority didn’t apply for them
- you had a medical condition, or you have a physical or mental capacity issue meaning you couldn’t apply
- you couldn’t apply because of Coronavirus restrictions
- you are a victim of modern slavery
- you have issues with your physical or mental capacity or additional care/support needs
- you are in an abusive or controlling relationship
- you didn’t have internet access or the digital skills to make the application
- you served or are serving a prison sentence
- “another compelling practical or compassionate reason” prevented you applying
- The Home Office caseworker guidance from January 2024 also added scenarios which are not considered to be reasonable grounds for a late application.

These include:

- if you were unaware of the requirement to apply (unless there are very compelling reasons)
- if you made a previous application (which was rejected)

If you are making a late application to the EUSS, the advice is get help. For more information about making a late application to the EUSS, see the3million’s resources here:

<https://the3million.org.uk/node/1100851315>

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Evidence of reasonable grounds

The Home Office guidance says that you will need to provide evidence of each reasonable grounds reason for missing the deadline. The evidence must explain the reason or reasons you could not apply and it must cover why you could not apply by the deadline as well as the entire time period since the deadline passed. The type of evidence that the Home Office prefers for this is similar to its general views on “good” evidence. It says that it is looking for ‘objectively verifiable evidence’ (which means very strong evidence) to support a late application.

Evidence

If you are making a late application to EUSS, you will need to provide very good evidence to show why your application is late. Here are some actions you could take, depending on your circumstances:

- Gather evidence such as a letter from a doctor, carer or other healthcare professional, to show your medical grounds or care needs
- Provide court documents or a letter from an organisation supporting victims of domestic violence, to show you were in an abusive or controlling relationship
- Ask for a letter from a charity or homeless shelter explaining your circumstances
- If the application is for a child, and you have a parent, guardian, or local authority that did not know they needed to apply for you, provide a letter explaining this

If your application is rejected with no right to appeal

If you made a late application to the EUSS and the Home Office does not accept that you have reasonable grounds for applying after the deadline, your application will be refused with no right to appeal or administrative review.

You will receive a letter from the Home Office explaining this. This letter can be misleading, as it can imply that you cannot make another application. This is not true, but you must provide very strong reasonable grounds evidence if you do so.

If you have presented all the information available about the reasons for your late application, you may want to speak to a lawyer about a judicial review.

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Read more about a judicial review here: <https://righttoremain.org.uk/toolkit/jr/>

If your application under the EUSS is rejected, you may be without status and subject to immigration enforcement. You may have to make a different immigration application to stay in the UK, such as based on your human rights:
<https://righttoremain.org.uk/toolkit/humanrights/>

How to apply for Settled and Pre-Settled Status

Most people will apply to the EU Settled Status scheme online (using a computer or smartphone). You can visit the EUSS application website here: <https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status>

The online form has a free text box, where you can make a statement explaining your reasonable grounds reason(s) for making a late application.

In general, you can just provide your National Insurance (NI) number and there is an automated check of tax and some benefits records. These should show whether you have been resident in the UK for the required period of time (see below). If these checks do not show this, you may be required to submit extra information.

The application to EUSS is free. You do not need to pay the Immigration Health Surcharge if you are applying to the EUSS.

Pre-Settled Status

If you were in the UK before 11pm on 31 December 2020, applied to the Settled Status scheme before 30 June 2021, and have lived in the UK for less than five years continuously (or cannot prove you have lived for five years or more continuously), you are likely to have been granted Pre-Settled Status. You may be able to apply even after the 30 June 2021 deadline if you had “reasonable grounds” to miss the deadline. See page 37 onwards of the Home Office guidance here:

https://assets.publishing.service.gov.uk/media/65a64d87640602000d3cb6fa/EU_Settlement_Scheme_EU_other_EEA_Swiss_citizens_and_family_members.pdf

If you are granted Pre-Settled Status, you can stay in the UK for a further five years from the date you get the status. You can then apply for Settled Status once you have reached five years’ continuous residence in the UK even if you reach the five years’ residence after the main 30 June 2021 deadline. Read more on the Home Office website here:

<https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

With Pre-Settled Status, you can work and study in the UK. To apply for benefits with a residence condition, such as Universal Credit, you will need to show that you have the “right to reside” beyond just having Pre-Settled Status. Not all benefits have this residence condition. See more here: <https://www.citizensadvice.org.uk/benefits/check-if-you-have-the-right-to-reside-for-benefits/>

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“Continuous residence” in the UK is considered to be broken by absence(s) from the UK that are more than a total of 6 months in any 12-month period. There are some exceptions to this – continuous residence may not be broken by one period of up to 12 months if you were outside of the UK for an “important reason”. The Home Office gives the examples of childbirth, serious illness, study, vocational training or an overseas work posting. The exceptions to breaking continuous residence also include compulsory military service of any length, time you spent abroad as a Crown servant (this means someone employed by the state), or as the family member of a Crown servant, and time you spent abroad in the armed forces, or as the family member of someone in the armed forces.

Continuous residence is considered to be broken by a prison sentence, and by deportation or similar removal decisions.

When you have Pre-Settled Status, you can travel in and out of the UK. You can spend up to two years in a row outside of the UK without losing your Pre-Settled Status. Remember, you will also need to be careful not to break your continuous residence (see above) if you wish to qualify for Settled Status.

What happens if you had Pre-Settled Status but forgot to make an application for Settled Status?

As a result of a legal challenge in December 2022, if you have Pre-Settled Status but you do not make a second application to EUSS before the expiry of their pre-settled status, you will not lose your residence rights. If this applies to you, from September 2023, your Pre-Settled Status will be automatically extended by 2 years before it expires.

If you have Pre-Settled Status, you should automatically have permanent residence status once you have been living in the UK for 5 years. Read more about what this means here: <https://the3million.org.uk/faq/wa-permanent-residence>

Some people who are eligible may have their Pre-Settled Status upgraded to Settled Status automatically, beginning in 2024. However, if you previously had Pre-Settled Status and you are now eligible for Settled Status, you should still make an application for Settled Status.

For more information on the change from Pre-Settled to Settled Status, see this helpful Q&A document from the3million: <https://the3million.org.uk/publication/2023072501>

Settled Status

If you were in the UK before 11pm on 31 December 2020, applied to the Settled Status scheme before 30 June 2021, and have lived in the UK for five years or more continuously, you should have been granted Settled Status.

You may be able to apply even after the 30 June 2021 deadline if you had “reasonable grounds” to miss the deadline. See the section on late applications above for more information.

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You can also apply to upgrade your Pre-Settled Status to Settled Status after the 30 June 2021 deadline.

When you have Settled Status, you can live in the UK as long as you wish, unless that status is revoked (taken away). With Settled Status, you can work and study in the UK, and can access benefits.

If you have Settled Status, you can spend up to five years in a row outside the UK without losing your status, or up to four years if you are a Swiss national.

Challenges

People who get their Pre-Settled or Settled Status have been experiencing some issues.

One of the main difficulties is the fact that when you are granted status, it is digital, so there is no physical proof of status. This means that if your application was accepted, you can only view your Pre-Settled or Settled Status online. Although you still won't have any paper documentation which proves your status, your details should be entered into a Home Office database. This means that potential employers or landlords should be able to check your status with your share code. You can read Home Office guidance on digital status here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093405/Your immigration status an introduction for EU EEA and Swiss citizens.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093405/Your_immigration_status_an_introduction_for_EU_EEA_and_Swiss_citizens.pdf)

Settled has a help page for people struggling with the digital system. You can access it here: <https://settled.org.uk/eusshelp/i-have-settled-or-pre-settled-status-but-im-struggling-with-the-digital-system/> If you have problems with your digital status, you can use the 3million's Report It Tool: <https://the3million.org.uk/node/1100849886>

The charity Settled, which focuses on making EU citizens feel at home in the UK, has many resources to help and provide information on accessing your rights if you have Pre-Settled or Settled status. You can access them here: <https://settled.org.uk/eusshelp/help-and-information-on-accessing-your-rights/>

The Independent Monitoring Authority is also gathering information about problems with the EUSS: <https://ima-citizensrights.org.uk/>

If you are refused

If your application for Pre-Settled Status or Settled Status is refused, there are a few options for what to do next. Remember that if you make a late application and you do not provide clear and detailed information about the reason for your late application, or if the Home Office does not consider your grounds to be reasonable, **your application will be rejected with no right of appeal or administrative review.**

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Administrative review

If you made an in-time application to the EUSS, you request an administrative review. For more information, see the government website here: <https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review>

Appeal

If you made an in-time application to the EUSS, you could appeal the decision. For more information, see the government website here: <https://www.gov.uk/immigration-asylum-tribunal>

Deportation

If you have Settled Status or Pre-Settled Status in the UK (or are eligible to apply), you could still be at risk of deportation from the UK if you are convicted of committing a criminal offence.

If the criminal offence was committed before the end of 2020, the Home Office will need to consider the pre-Brexit rules on EU nationals. This means it would have to show that deporting you is in the interests of “the public good, public health or public security”. The threshold (this means the level) for showing that deportation is in one or more of these interests was generally higher for EEA nationals than the “public good” arguments for deportation of non-EEA nationals. The threshold is also determined by the length and permanence of your residence in the UK – for example, the threshold is higher for those with the right to permanent residence in the UK.

If the criminal offence was committed after 2020, or you did not have or were not eligible for Pre-Settled Status or Settled Status, the normal rules on deportation will apply to you.

Moving on from Settled Status

If you have Settled Status, you may then wish to consider applying for British Citizenship.

To apply for British Citizenship, you will need to have Settled Status for a year unless you are married to a British citizen.

You will also need to pass the “good character” test, and meet the knowledge of English and life in the UK test requirements. At the time of writing, people who did not have Comprehensive Sick Insurance when they were required to do so under UK law may be refused on the basis of the good character test. If this applies to you, it is a good idea to get legal advice. If you want to know more about the general requirements for naturalising as a British Citizen, see this eBook by Free Movement: <https://www.freemovement.org.uk/downloads/naturalising-british-citizen-guide/>

To learn more about Pre-/Settled Status, and what comes next for EU citizens in the UK, visit the Settled website which has lots of information on practical steps you can take to

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access your rights (like healthcare), cope with struggles with the digital system, or have family members join you from outside the UK.