

FAQs - continuity of residence under EUSS and Appendix Skilled Worker

Breaks in continuity for EEA nationals and their non-EEA family members under the EUSS

1. Should I apply for pre-settled or settled status?

All EEA nationals and their family members in the UK must make an application to the EUSS by 30 June 2021 (unless they already have indefinite leave or are Irish citizens). Which application you make will depend on how long you have been residing in the UK.

Pre-settled status is granted to EEA nationals and their family members who were residing in the UK before the end of the transition period (i.e. before 2300 GMT on 31 December 2020) and at the point of applying have resided in the UK for fewer than 5 continuous years. Pre-settled status is granted for 5 years, regardless of how long the applicant has been residing in the UK.

Once you have been residing in the UK for 5 continuous years (including time with pre-settled status), where your residence began before 2300 GMT on 31 December 2020, you will be eligible to apply for settled status.

2. I want to apply for settled status.

A) What is the continuous qualifying period for EU settled status applications?

As above, the “continuous qualifying period” for settled status (indefinite leave to remain) for EEA nationals and their family members under the EU Settlement Scheme is 5 years; meaning that applicants must generally have resided in the UK for 5 continuous years to be eligible to apply for settled status, and that residence in the UK must have started before the end of the transition period (i.e. before 2300 GMT on 31 December 2020).

B) Will absences from the UK of less than 6 months impact my continuous qualifying period?

Absences (combined or singular) from the UK of less than 6 months in any 12 month period will not break continuous residence.

C) What if I have a single absence from the UK of more than 6 months but less than 12 months?

Under Home Office guidance, a single absence of more than 6 months and less than 12 months will not break continuous residence if it is for an “important reason.” The examples they provide are:

- i) The absence was due to not being able to travel because you were self-isolating due to being ill yourself with COVID-19, under quarantine conditions, sharing a home with someone who had COVID-19, or were required to self-isolate due to being, or being in contact with someone who is, in a vulnerable or high-risk category

- ii) If you are a student studying in the UK and your absence is due to you studying outside the UK due to COVID-19.
- iii) The absence is due to childbirth.
- iv) The absence is due to serious illness.
- v) The absence is due to study, vocational training or an overseas work posting.

The Home Office guidance also states that your continuous qualifying period will not necessarily be affected if you were impacted by coronavirus public health restrictions. By way of further examples, the Home Office states that possible reasons for being absent from the UK include where you had coronavirus overseas and could not return to the UK, or imposed travel restrictions meant you were absent from the UK for longer than planned (providing the period does not exceed 12 months).

D) What if I have had more than one absence of between 6 months and 12 months?

More than one such absence will break your continuity of residence. If you were outside the UK during the second of such absences, the 5 year qualifying period will have restarted when you returned to the UK (which must have been before the end of the transition period, 31 December 2020).

E) What if I had an absence of more than 12 months?

Absences of more than 12 months will always break continuous residence. Your 5 year qualifying period will restart when you returned to the UK (which must have been before the end of the transition period, 31 December 2020).

F) I was furloughed due to COVID-19. Will that break my continuous residence?

No. For settled and pre-settled applications the main requirement is residence in the UK rather than the activity you were engaged in.

This issue is relevant, however, to naturalisation applications where you need to demonstrate lawful residence in the UK during the 5 year (or 3 year, if married to or in a civil partnership with a British citizen) qualifying period in naturalisation applications. If you were a worker who was furloughed due to COVID-19 restrictions, you will be treated as being a worker during this period so long as both of the following are satisfied:

- i) You were in genuine and effective employment immediately prior to being furloughed;
- ii) You remained under contract with your employer.

This means that time spent in the UK while furloughed will count towards 5 years continuous residence. You may also have retained worker status as a result of being made redundant due to coronavirus.

G) I had a period where I was unable to work due to being ill with coronavirus. Will that break my continuous residence?

No, if you remained in the UK during that time. For settled and pre-settled status applications the issue is residence in the UK rather than what activity you were engaged in.

This issue is relevant, however, to the question of whether residence was lawful during the 5 year (or 3 year, if married to married to or in a civil partnership with a British citizen) qualifying period in naturalisation applications. If you were either a worker or self-employed and were temporarily unable to work due to being ill with coronavirus - or lost your job because of being ill with coronavirus - the Home Office “may” hold that you retained your worker or self-employed status throughout that period if given satisfactory evidence (such as a letter from your employer confirming the reasons for your involuntary unemployment).

3. I want to apply for pre-settled status

A) Is there a qualifying period for pre-settled status?

The only residence requirement for pre-settled status is that the applicant was residing in the UK before the end of the transition period (i.e. before 2300 GMT on 31 December 2020). Applicants will be granted pre-settled status rather than settled status when they have resided continuously for fewer than 5 years at the point of applying.

Importantly, the deadline for you to apply for pre-settled status is 30 June 2021.

B) What are the consequences of absences from the UK on pre-settled status applications?

Since there is no continuous residence requirement for pre-settled status, absences from the UK will not impact your entitlement to a grant of pre-settled status, so long as you were residing in the UK before the end of the transition period and can satisfy the Home Office that you were residing in the UK within the 6 months prior to applying.

Please note that absences may have consequences for your future application for settled status, since that application requires 5 years continuous residence in the UK. Please see the above questions about settled status for information about how absences could impact your future settled status application.

4. I have settled status in the UK. What absences am I permitted before I lose it?

If you spend more than 5 continuous years residing outside the UK, you will lose your settled status.

5. I have pre-settled status in the UK. What absences am I permitted before I lose it?

Pre-settled status is granted for a period of five years. Absences from the UK for 2 years or more will cause you to lose your pre-settled status. Absences of fewer

than 2 years may have a consequence for your settled status application (see below).

6. What periods of absence am I permitted without endangering my application for settled status?

As explained in Question 2 above, absences of less than 6 months in any 12 month period will not break the 5 year continuous residence qualifying period and absences greater than 12 months will always break the 5 year continuous residence period. The Home Office will waive a single absence of more than 6 months and less than 12 months only where it is for an “important reason” (see Question 1(C) above for what constitutes an important reason).

It is important to note that where your continuous residence is broken due to absences occurring *after* the transition period ended on 31 December 2020, the clock will *not* restart towards your 5 year continuous residence period for settled status.

7. Do the same rules apply if I decide to apply to naturalise as a British citizen?

No, the rules for naturalisation are different. Please see our FAQs on this here: [XX](#).

Breaks in continuity of residence for “skilled workers”

1. What period of continuous residence do I need to demonstrate for indefinite leave to remain as a skilled worker?

Under the new Appendix Skilled Worker, you will be entitled to apply for indefinite leave to remain after having spent a continuous period of 5 years in the UK in any of the following categories: Skilled Worker, Global Talent, Innovator, Tier 2 Minister of Religion, Tier 2 Sports person, Representative of an Overseas Business, or Tier 1 Migrant (other than graduate entrepreneur).

The five year qualifying period is calculated by counting back 5 years from whichever of the following dates is most beneficial to the applicant (i.e. whichever contains the fewest absences, if necessary to satisfy the requirement):

- a) The date the indefinite leave to remain application is made; or
- b) Any date up to 28 days after the date of the application; or
- c) The date of the Home Office decision.

2. How many absences are permitted during the continuous 5 year period?

The general rule is that you cannot have been absent from the UK for more than 180 days during any 12 month period, with the 12 month periods calculated as explained below.

3. How are absences calculated during the continuous 5 year period?

The calculation of your absences changes depending on when they took place during the 5 year qualifying period:

- a) If the qualifying period includes leave granted before 11 January 2018, absences that took place during that period of leave are considered during fixed 12 month periods, each ending on the day and month the indefinite leave to remain application was made.

Example:

If an application is made on 30 June 2021 and the 5 year qualifying period relied on includes a grant of limited leave from 1 July 2016 to 28 July 2019, absences during that period of leave are considered in consecutive 12 month periods ending 30 June of each year (so the periods are 1 July 2016 - 30 June 2017, etc)

- b) For any grants of leave in the qualifying period commencing after 11 January 2018, any absences that took place during any rolling 12 month period occurring during the grant of leave.

4. What absences are excluded from the 180 day calculation?

Certain absences will not be included in the calculation of continuous residence. This is where they were for one of the following specific reasons:

- i) The applicant was assisting with a national or international humanitarian or environmental crisis overseas and their sponsor agreed to the absence for that purpose;
- ii) There was travel disruption due to natural disaster, military conflict or pandemic;
- iii) There were compassionate personal circumstances, such as the life-threatening illness of the applicant, or life-threatening illness or death of a close family member;
- iv) The absence whilst as a skilled worker was for research activity that was approved by their sponsor (in specific categories);¹

¹ 2111 Chemical scientists

2112 Biological scientists and biochemists

2113 Physical scientists

2114 Social and humanities scientists

2119 Natural and social science professionals not elsewhere classified

- v) The absence was for research activity undertaken by a person the Global Talent route (endorsed by specific academies and societies).

This means that any absences that were for the above reasons can be deducted from the overall calculation, which may bring you back within the permitted 180 days.

5. Other than absences of more than 180 days that are not exempt, are there other ways that my continuity of residence be broken?

Yes. Your continuity of residence will be broken if any of the following applies throughout the qualifying period:

- i) You received a conviction and are sentenced to a period of imprisonment or directed to be detained in an alternative institution (e.g. under a hospital order). Periods spent in prison or detention will not count towards continuous residence.
- ii) You are made the subject to a deportation order, exclusion order or exclusion direction
- iii) You are made the subject to removal directions
- iv) You are in the UK without leave to remain, i.e. overstaying (see exceptions to this below). Periods spent in the UK without leave, unless falling under one of the exemptions below, do not count towards continuity of residence.

6. Are there occasions when periods spent without leave to remain (“permission to stay”) will not break my continuity of residence?

Yes. The Rules permit the following exceptions:

- i) If you made a successful application for leave to remain within 14 days of your leave expiring and there was a good reason beyond your control for the delay
- ii) If you made a successful application for leave to remain following a refusal, and the application was made within 14 days of (a) the refusal, (b) the expiry of leave under section 3C Immigration Act 1971 (leave that has been automatically extended while an application is under consideration or appeal), (c) the expiry of the time-limit to apply for administrative review or to appeal the decision if not exercised, or (d) from the conclusion of the administrative review.
- iii) If your overstaying occurred between 24 January 2020 and 31 August 2020

- iv) If you had leave to remain when you left the UK, then successfully applied for entry clearance before, or within 14 days of, that leave expiring
- v) If your period without leave occurred prior to making a successful application for leave to remain/enter before 24 November 2016, continuity of residence will not be broken if either of the following applies:
 - a) You made a successful application (inside or outside the UK) within 28 days of the expiry of your leave, or
 - b) You left the UK before your leave expired, and then made a successful application for entry clearance before your leave expired.