

1. *What is the immigration position of EEA nationals living in the UK after 31 December 2020 when the Brexit transition period ends?*

The free movement rights of EEA nationals and their family members will end at 11pm on 31 December 2020, which is the end of the Brexit transition period. This means that after this date EEA nationals will be subject to UK immigration control and require leave to enter or remain in UK.

The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations are due to come into force at the end of the transition period. They are commonly being referred to as the 'Grace Period Regulations' as they provide a grace period to EEA nationals and their family members to make an application under the EU Settlement Scheme (EUSS). The grace period begins at 11pm on 31 December 2020 and ends on 30 June 2021.

Essentially these regulations preserve the rights of residence of EEA nationals and their family members previously provided for by the Immigration (EEA) Regulations 2016. This means that those EEA nationals and their family members who are **lawfully resident** in the UK immediately before the end of the transition period will continue to have the right to reside in the UK, which includes a continuation of their current entitlements including the right to work, until 30 June 2021. Anyone wishing to remain living in the UK beyond 30 June 2021 will need to make an application to the EUSS before that date.

2. *Can I apply for pre-settled or settled status whilst I am outside the UK?*

It is possible to make an application for pre-settled or settled status outside of the UK. The app, EU Exit: ID document check, can be downloaded within the EU. You can then use this app to verify your ID using a biometric passport or UK issued biometric residence card, and complete the online form. You still need to be able to meet the requirements for a grant of settled or pre-settled status when applying.

Generally, for pre-settled status you need to show you are:

- An EEA citizen who is resident in the UK for a continuous qualifying period before 31 December 2020 and whose continuity of residence has not been broken;

Broadly speaking, for settled status you need to show that you are :

- An EEA citizen who is resident in the UK for a continuous 5 year qualifying period before 31 December 2020; and
- No supervening event has occurred (i.e. an absence of more than 5 years since acquiring permanent residence, an exclusion/deportation or removal decision).

In addition to the above, applicants also need to satisfy the suitability requirements. This generally means not being subject to an exclusion or deportation order or exclusion/deportation decision. Applicants may also be refused on suitability grounds where they have made false/misleading information, representations or documents in relation to an EUSS application; previously received a removal decision for failing to exercise or misuse their rights or where there is some previous criminality which is sufficiently serious to warrant a refusal of their application.

It is important to note that your continuity of residence will be broken where you have been absent from the UK for more than 6 months in any 12 month period, or where you have been absent for one single period of absence which does not exceed 12 months which was for an

important reason such as child birth, pregnancy, serious illness, study, vocational training or an overseas posting.

If you are not currently in the UK and have been absent from the UK for more than 6 months, and thus have broken your period of continuous residence (and have not acquired permanent residence), we would advise that you return to the UK before 11 pm 31 December 2020 and take up residence in order to be eligible to apply for pre-settled status.

However, those individuals who have previously acquired permanent residence can be absent from the UK for up to 5 years without losing their right of residence in the UK. This means that EEA nationals with permanent residence could return to the UK after 31 December 2021 and still be eligible to apply for settled status.

Please note it will be for the individual to provide evidence of their residence for the purposes of their application. If you would have evidential difficulty in proving you have not broken your continuity of residence/acquired permanent residence, it would be advisable to return to the UK with a view to making an application before the end of the transition period.

Example Scenario

*An individual who left the UK in March 2020 and has remained outside the UK working remotely will not be eligible to apply for pre-settled status if they had not acquired permanent residence before their departure from the UK in March 2020. This is because their continuity of residence would be considered broken. **Anyone in this situation must urgently consider returning to the UK before 11pm 31 December 2020 and immediately submit a pre-settled status application.***

- 3. I have not made an application for settled or pre-settled status. Do I need to make an application before 31 December 2020?*

The deadline for EEA nationals resident in the UK before 31 December 2020 to make an application for pre-/settled status is 30 June 2021. However, only EEA nationals who are lawfully resident in the UK under the Immigration (EEA) Regulations 2016 immediately before the end of the transition period (11pm 31 December 2020) will continue to be considered lawfully resident in the UK between 1 January 2021 and 30 June 2021 (or when they are granted pre-/settled status). In order to be lawfully resident, an EEA national would need to be a qualified person e.g. worker, self-employed, jobseeker, self-sufficient or a student. Those relying on being self-sufficient or a student would need to have comprehensive sickness insurance.

If in doubt about your status as a qualified person, it is advisable to make your application before the end of the year.

- 4. I am not currently in the UK. Do I have to return before 31 December 2020 in order to make an application?*

This will depend on your individual circumstances.

If you:

- have already acquired permanent residence (and can prove it) and have not been absent from the UK for more than five years, you will be able to return to the UK after 31 December 2020 and make an application to the EUSS in relation to an EUSS application before 30 June 2021; or
- do not have permanent residence, but are outside the UK but have not broken your continuity of residence, we would advise you make the application for pre-/settled status before 31 December 2020, even if outside the UK. You might need to provide evidence of your residence in the UK with your application; or
- do not have permanent residence, and have broken your continuity of residence, you will need to return to the UK **before 31 December 2020** and make an application. If you do not return by this date, you will not be eligible to apply as you would not be classed as resident in the UK immediately before the end of the transition period i.e. 11pm 31 December 2020.
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5. *Will I need a visa to re-enter the UK from 1 January 2021?*

No. EEA nationals will still be able to enter the UK using their EEA national passports until 30 June 2021.

However, this does not mean that EEA nationals will be permitted to work. Only those EEA nationals with pre-/settled status, or who were lawfully resident in the UK immediately before the end of the transition period will continue to have the lawful right to work in the UK. It should however be noted that employers are not permitted to ask for anything more than an EEA national's passport or national ID card as proof of their right to work until after 30 June 2021. But if an employer knows that their employee is not lawfully resident, they may be committing an offence of knowingly employing a person without the right to work, and the individual would also be working in breach of the immigration laws and committing an offence.

6. *Can I enter using e-gates after 1 January 2021?*

Technically you can but our advice is that you do not. There is a possible risk that an EEA national entering the UK using an e-gate could be granted entry to the UK as a visitor. The e-gate will not be able to distinguish between newly arriving EU nationals or returning residents who have a lawful right to reside but have yet to apply for pre-/settled status. Whilst being stamped in as a visitor wouldn't supersede the protection offered to EEA nationals during the grace period, it could cause practical difficulties e.g. accessing benefits or proving right to work to employer.

Further Examples:

1. *1. You first moved to the UK in 2018 to take up employment here. You have not applied for pre settled status. You left the UK in April 2020 and have been working from home in Vienna.*

You have not acquired permanent residence under the Regulations. You would be eligible for pre settled status. In order to apply for pre-settled status, you will need

to return to the UK before 31 December 2020. If you return after this date you will not be eligible to apply for pre-settled status. This is because your period of absence from the UK since April 2020 will have broken your continuity of residence. You would therefore need to apply for leave to enter/remain under the domestic immigration rules e.g. the skilled worker route (formerly known as Tier 2). It would mean you could not continue to work in the UK unless your employer sponsored you under the new skilled worker route.

2. *You have a document certifying permanent residence under the Regulations but have not applied for settled status. You left the UK in April 2020 and have been working from home in Vienna.*

You should be able to apply for settled status either from overseas or the UK. This is because you had acquired permanent residence in the UK through your previous residence and have not been absent from the UK for more than 5 years since acquiring permanent residence. Your deadline to apply to the EUSS will be June 2020.