



Home Office

# **EU Settlement Scheme: Statement of Intent**

21 June 2018



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# Foreword

Securing the rights of citizens has always been our priority in negotiations with the European Union (EU). We have delivered on this commitment and reached an agreement with the EU guaranteeing the rights of EU citizens living in the UK and of UK nationals living in the EU. EU citizens living in the UK, along with their family members, will be able to stay and continue their lives, with the same access to work, study, benefits and public services that they enjoy now. Existing close family members living overseas will be able to join them here in future.

I am delighted to be publishing further details about how our EU Settlement Scheme will work and how simple and straightforward it will be for EU citizens and their families to secure their long-term status in the UK.

To obtain settled status EU citizens will generally need simply to have lived continuously in the UK for five years. This means for example that stay-at-home parents, retired people and students can all be eligible. Those with less than five years' continuous residence will be granted pre-settled status and be able to apply for settled status once they reach the five-year point.

The new application system will be streamlined and user-friendly and draw on existing government data, to minimise the burden on applicants to provide evidence of their residence. This streamlined process will take applicants through three simple stages: proving their identity, checking they are not a serious criminal, and evidencing their residence in the UK.

To make the process as simple as possible for the great majority of EU citizens, we will check employment and benefits records for proof of residence. Applicants who wish to submit additional evidence will be able to provide a wide range of documentation, reflecting the variety of people's individual circumstances, and they will generally be able to upload scans or photos rather than sending us hard copies. We will work with applicants to help them avoid any errors or omissions, and we will work with longer-term residents without official documentation to establish their eligibility under the scheme from the material they have. For those who wish to complete the application entirely online, we will also have an optional app which will allow EU citizens to verify their identity.

Throughout, we will be looking to grant, not for reasons to refuse, and caseworkers will be able to exercise discretion in favour of applicants where appropriate, to minimise administrative burdens.

Applications will cost £65 and be half that cost for children under 16. The process will be particularly straightforward for those who already hold a valid permanent residence or indefinite leave to remain document, which they will be able to swap for settled status free of charge.

EU citizens and their family members do not need to do anything immediately: there will be no change to their current rights until the end of the implementation period on 31 December 2020, and the deadline for applications to the scheme for those resident here by the end of 2020 will be 30 June 2021.

The EU Settlement Scheme will be opening from later this year and we continue to engage closely with EU citizens about its design through working groups, our direct mailing list and ongoing community engagement.

I do not underestimate the scale of the challenge, but the Home Office already issues around seven million passports and three million visas each year and so processing applications on the scale required is not new to us. As is now standard for the launch of new services in government, there will be a private beta phase to enable us to test the system and processes at scale so we can ensure that they work effectively, followed by a phased roll-out from late 2018. We will set out further details of this over the summer. The scheme will be open fully by 30 March 2019.

This publication marks an important point in our preparations for the scheme. We will be seeking comments from the user groups we have established to help us develop the scheme and from other stakeholders on the details set out here. We look forward to hearing their views and will make improvements where we can.

We will also continue to expand our wider communications to ensure that EU citizens and their family members living in the UK are aware of the EU Settlement Scheme and our plans for how it will operate, but are also reassured that, in line with our agreement with the EU, they will have plenty of time in which to apply for status.

The agreement we reached with the EU also protects UK nationals living there. The Government continues to press for further details from our EU partners of the arrangements that will be in place for UK nationals.

Rt Hon Sajid Javid MP  
**Home Secretary**

# Summary

This Statement of Intent sets out the basis of the EU Settlement Scheme we plan to begin opening later this year to enable EU citizens resident in the UK and their family members to continue living here permanently.

The scheme set out in this Statement of Intent will deliver on our commitments for a straightforward, user-friendly system for EU citizens and their family members to obtain UK immigration status. The majority of applicants will only need to prove their identity and that they are resident in the UK, and we will check that they are not a serious criminal. But the scheme will also cater for the wide variety of personal circumstances protected by the draft Withdrawal Agreement.

In line with the draft Withdrawal Agreement with the European Union published in March, the EU Settlement Scheme will mean that:

- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for 'settled status', enabling them to stay indefinitely.
- EU citizens and their family members who arrive by 31 December 2020, but will not yet have been continuously resident here for five years, will be eligible for 'pre-settled status', enabling them to stay until they have reached the five-year threshold. They can then also apply for settled status.
- EU citizens and their family members with settled status or pre-settled status will have the same access as they currently do to healthcare, pensions and other benefits in the UK.
- Close family members (a spouse, civil partner, durable partner, dependent child or grandchild, and dependent parent or grandparent) living overseas will still be able to join an EU citizen resident here after the end of the implementation period, where the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK. Future children are also protected.

This will enable EU citizens and their family members living in the UK to continue their lives here much as before, with the same entitlements to work, study and access public services and benefits, determined according to the same rules as now.

There will be plenty of time for EU citizens and their family members to apply for their UK immigration status. There will be no change to their current rights under EU law until 31 December 2020, and the deadline for applications to the scheme for those resident here by the end of 2020 will be 30 June 2021.

# 1. Introduction

1.1. The Government values highly the contribution that EU citizens and their family members have made to the UK and the many ways in which they have enriched our society. We want those who have chosen to make their home in this country to stay here permanently. This Statement of Intent sets out the basis of the EU Settlement Scheme we plan to open from later this year to enable them to do so.

1.2. Safeguarding the rights of EU citizens and their family members living in the UK and ensuring reciprocal protections for UK nationals living in the EU was our first priority for the negotiations with the EU.<sup>1</sup> We therefore welcome the fact that we have reached agreement with the EU on citizens' rights and this has been formalised in the draft text of the Withdrawal Agreement, published on 19 March 2018.<sup>2</sup>

1.3. We know that certainty and security of status are important. So we want to make it as easy as possible for EU citizens and their family members in the UK to secure their rights under the Withdrawal Agreement through a simple, online process.

1.4. Under the agreement EU citizens and their family members resident here before the UK leaves the EU on 29 March 2019 will be able to continue to live and work in the UK permanently. Their rights to healthcare, work arrangements and access to benefits will continue, and their existing close family members currently living outside the UK will be able to join them here in future in the same way as they can now.

1.5. The agreement also covers what happens during the period immediately after the UK leaves the EU, known as the implementation period. This period will run from 30 March 2019 to 31 December 2020. The agreement with the EU extends the same protections to EU citizens and their family members arriving in the UK during the implementation period. This ensures that those planning to come to the UK after March next year know what the arrangements will be, and so do their employers.

1.6. In line with the draft Withdrawal Agreement, the EU Settlement Scheme set out in this Statement of Intent will mean that:

- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for 'settled status', enabling them to stay indefinitely.
- EU citizens and their family members who arrive by 31 December 2020, but will not yet have been continuously resident here for five years, will be eligible for 'pre-

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1 In June 2017, we published a document – “Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU” (Cm 9464) – which set out our proposals. These included a new settled status in UK law for EU citizens and their family members resident here, generally for five years.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691366/20180319\\_DRAFT\\_WITHDRAWAL\\_AGREEMENT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf)

settled status', enabling them to stay until they have reached the five-year threshold. They can then also apply for settled status, where they have remained continuously resident here (see paragraph 3.4, below) and, from April 2019, free of charge (see paragraph 4.6, below).

- EU citizens and their family members with settled status or pre-settled status will have the same access as they currently do to healthcare, pensions and other benefits in the UK, according to the same rules as now.
- Close family members (a spouse, civil partner, durable partner, dependent child or grandchild, and dependent parent or grandparent) living overseas will still be able to join an EU citizen resident here after the end of the implementation period, where the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK. Future children are also protected (see paragraph 2.5, below).

1.7. This will enable EU citizens and their family members living in the UK to continue their lives here much as before, as reflected in the Withdrawal Agreement, with the same entitlements to work (subject to any relevant occupational requirements), study and access public services and benefits, according to the same rules as now. It is a fair and comprehensive deal which respects the rights that individuals are exercising based on life choices they made before the UK's withdrawal from the EU. It will provide them with certainty about their future rights and, most importantly, allow them to stay in the country where they are now living.

1.8. In addition, the Government has committed to incorporate the agreement covering the UK's withdrawal from the EU fully into UK law and make sure that citizens can rely directly on the citizens' rights part of the agreement. To do this, the Government will introduce in Parliament a Withdrawal Agreement and Implementation Bill. This will mean that the practical arrangements we make for EU citizens and their family members to apply for their new UK immigration status will have, then and in the future, to reflect in full the agreement on citizens' rights reached with the EU.

1.9. The draft Withdrawal Agreement sets out that citizens' rights are to be monitored in the UK by a new Independent Monitoring Authority (IMA). Primary legislation will be required to create the IMA. Ahead of that, the implementation of the EU Settlement Scheme will be monitored by the Independent Chief Inspector for Borders and Immigration (ICIBI). The ICIBI inspects all elements of the UK borders and immigration system, and is independent of the Home Office, providing impartial reports for the Home Secretary which are laid in Parliament.

1.10. Whilst the agreement with the EU does not cover the citizens of the non-EU European Economic Area states (Iceland, Liechtenstein and Norway) and Switzerland, we have been clear that we want to secure a similar deal for citizens of these states living in the UK and for UK nationals living there. Talks with all four states are progressing well



and pending final agreement being reached with each on the detail of the arrangements, the Government intends that the scheme described in this Statement of Intent will be open to other EEA citizens and Swiss citizens (and their family members) on a similar basis as for EU citizens.

1.11. The rest of this document sets out how the Government intends that the EU Settlement Scheme for EU citizens and their family members will work in practice, and includes a draft of the Immigration Rules by which it is proposed that the scheme will operate, so that we can discuss the detailed arrangements for the scheme with our user groups and other stakeholders. The draft Rules are necessarily technical: they are secondary legislation and they need to cater for a wide variety of individual circumstances, but only a subset of the Rules will apply to each individual. The Immigration Rules for the scheme which are laid before Parliament in due course may differ from the approach set out in this document and in the draft Rules which it contains, including in light of those discussions. As well as the Immigration Rules, we will need to lay regulations before Parliament to enable us to take and securely process biometrics from applicants and to set the level of the fees for the scheme.

1.12. The EU Settlement Scheme will be delivered through a streamlined, digital application process which will be implemented from late 2018 so that EU citizens and their family members can begin to obtain their new UK immigration status at their earliest convenience. However, EU citizens and their family members will not be required to apply immediately; there will be no change to their current rights until the end of the implementation period on 31 December 2020, and the deadline for applications to the scheme by those resident here by the end of 2020 will be 30 June 2021.

1.13. We are designing the online application form for the scheme so that it is short, simple and user-friendly. It will be accessible by computer, tablet or smartphone using internet browsers. There will be three core criteria which applicants will need to meet:

- **Identity** – verifying their identity and nationality, generally through (for any applicant) their passport, or (for EU citizens) their national identity card or (for non-EU citizens) a biometric residence card or biometric residence permit.
- **Eligibility** – establishing that the applicant is resident in the UK and, if appropriate, is a family member of an eligible EU citizen. Where possible, the application process will help the applicant to establish their continuous residence here and whether it amounts to the five years generally required for settled status, on an automated basis using data held by HM Revenue & Customs and in due course also the Department for Work and Pensions. This will keep the documentary evidence the applicant is required to provide to a minimum in most cases, but applicants will be able to upload additional evidence to fill in gaps in residence or where there is no government data. Applicants who have been resident in the UK for less than five years at the date of application will generally be eligible for pre-settled status. The application process we are designing will be particularly

straightforward for applicants for settled status who already hold a valid permanent residence or indefinite leave to remain document.

- **Suitability** (criminality) – the overwhelming majority of EU citizens and their family members have made a positive contribution to the UK and will be unaffected by this criterion. But it is right that we identify any serious or persistent criminals, or anyone who poses a security threat, to protect all of us who live in the UK. We will therefore conduct checks against UK criminality and security databases and conduct overseas criminal records checks as appropriate.

1.14. Establishing whether an applicant holds a valid identity document is crucial to minimising fraud and abuse, but we recognise that being without an identity document for a significant period can impact on people's lives. For those who wish to complete the application entirely online, there will be an optional app which will allow EU citizens to confirm the relevant details remotely using a mobile phone or tablet so that they do not need to send us the physical document. We are exploring options to enable people to attend a location where they could use the identity verification app or be helped to do so. More details about this will be published over the summer. Those who do not wish to or cannot use the app, or whose identity document is not compatible with it, will need to send us the document by post. We are establishing a dedicated team to check these documents and we will aim to return them to the applicant as soon as we can, to avoid delays if other aspects of the application need further consideration. Our services will also include an assisted digital service for those who need support to make an online application.

1.15. The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. User-friendly guidance will be available online to guide applicants through each stage of the application process.

1.16. The Home Office is designing the EU Settlement Scheme with input from users to ensure it is as streamlined and effective as possible. We will continue to discuss it at our monthly meetings with stakeholders which have been running since the autumn, consisting of EU citizen representative groups and community groups, the EU27 embassies and consulates in the UK and the European Commission, employers and legal practitioners, as well as with our new group which particularly focuses on the needs of vulnerable users. In addition, these representatives have nominated individuals to test the prototypes of the application process in one-to-one sessions, so that we can learn from their experiences. This individual user testing will continue as we develop the application process.

1.17. The publication of this Statement of Intent and the draft Immigration Rules will enable us to discuss the details of the scheme with stakeholders. We will also use their feedback to inform what we publish online, including the scheme application guidance which we plan to publish in English and also in the other 23 official languages of the EU.

1.18. An application under the scheme will cost £65 (the same as the current fee for a permanent residence document), which will part-fund the cost of the scheme. For children under the age of 16 the fee will be £32.50. Where an applicant is granted pre-settled status under the scheme, there will, from April 2019, be no fee when they apply for settled status, generally once they have accumulated five years' continuous residence. We will send a reminder to people to do so before their pre-settled status (five years' limited leave to remain) expires. Applications will also be free of charge for those previously issued a permanent residence document or granted indefinite leave to remain (see paragraph 4.6, below).

1.19. There will be plenty of time – until 30 June 2021, six months after the implementation period ends on 31 December 2020 – for all those resident here by 31 December 2020 to apply for status under the EU Settlement Scheme, and they will remain protected by the Withdrawal Agreement pending the outcome of such an application made by 30 June 2021. Close family members joining an EU citizen here after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021). We have agreed with the EU that, where someone misses the deadline for their application for a good reason, they will be given a reasonable further period in which to apply.

1.20. There will be more information shortly on when the EU Settlement Scheme will be open and how to apply. We do not underestimate the scale of the challenge, but the Home Office already issues around seven million passports and three million visas each year and so processing applications on the scale required is feasible, providing we get the scheme design and the communications right. As is now standard for the launch of new services in government, there will be a private beta phase to enable us to test the system and processes at scale and ensure that they work effectively, followed by a phased roll-out from late 2018. We will set out further details of this over the summer. The scheme will be open fully by 30 March 2019.

1.21. In the meantime, there is no need for EU citizens and their family members who are here before the UK withdraws from the EU on 29 March 2019 to seek residence documentation now under current free movement rules, unless they intend to apply for British citizenship as soon as they are eligible to do so or they wish to sponsor their family member's visa application under the Immigration Rules.

1.22. The draft Withdrawal Agreement also protects the rights of EU citizens who are frontier working in the UK (that is who are working here and resident elsewhere) before the end of the implementation period on 31 December 2020 (and their resident family members). They may continue to frontier work in the UK. They may be resident in the UK

for sufficient periods in the course of their work here to be eligible for the scheme. They may otherwise be subject to a requirement to obtain a document to evidence their right to enter the UK and work as a frontier worker from that date. Further details will be provided in due course.

1.23. EU citizens and their family members can sign up for email updates on our gov.uk page:

<https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-whatyou-need-to-know>

## 2. Who can apply under the EU Settlement Scheme?

2.1. EU citizens and their family members resident in the UK before the end of the implementation period on 31 December 2020 will be able to apply for UK immigration status under the EU Settlement Scheme.

2.2. People considered to be 'resident in the UK' will include those here before midnight on 31 December 2020. It will also include those previously resident in the UK who are outside the UK on that date but who have maintained continuity of residence here, generally as set out in current free movement rules for those who have not already acquired EU permanent residence rights, and up to five years' absence for those who have (see paragraph 3.4, below). So, for example, those who are continuously resident in the UK but who happen to be abroad on business or holiday or living overseas temporarily on 31 December 2020 will still be protected.

2.3. Otherwise, those applying under the EU Settlement Scheme will not be required to show that they meet all the requirements of current free movement rules, such as any requirement to have held comprehensive sickness insurance or generally to detail the exercise of specific rights (e.g. the right to work) under EU law. The UK has decided, as a matter of domestic policy, that the main requirement for eligibility under the settlement scheme will be continuous residence in the UK.

2.4. In addition, the scheme will also be open to close family members resident overseas on 31 December 2020. Under the agreement on citizens' rights reached with the EU, an EU citizen resident in the UK by 31 December 2020 will be able to be joined after that date by close family members<sup>3</sup> resident overseas, if the relationship existed at that date and it continues to exist when the person wishes to come to the UK.

2.5. The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme.

2.6. Irish citizens enjoy a right of residence in the UK that is not reliant on the UK's membership of the EU. They will not be required to apply for status under the scheme (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) will be able to obtain status under the scheme without the Irish citizen doing so.

2.7. More detail on the family members who can apply under the EU Settlement Scheme is set out in section 6.

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<sup>3</sup> A spouse, civil partner, durable partner, dependent child or grandchild (including of the spouse or civil partner), or dependent parent or grandparent (including of the spouse or civil partner).

### 3. What requirements must be met for status to be granted under the scheme?

3.1. The UK has decided that the main requirement for status to be granted under the EU Settlement Scheme will be residence in the UK, generally in line with current free movement rules on the continuity of that residence.

3.2. The person will also need to make a valid application under the scheme (see section 4) and not fall to be refused because of serious or persistent criminality or other public policy reasons, as set out in the agreement on citizens' rights reached with the EU (see section 5).

3.3. Otherwise, where the EU citizen or their family member has been continuously resident in the UK for five years (less in some particular circumstances: see paragraph 3.7, below), they will be eligible under the scheme for settled status under UK immigration law, which is referred to under the Immigration Act 1971 as indefinite leave to remain or ILR (and which will be granted under Appendix EU to the Immigration Rules: see Annex B).

3.4. Where the EU citizen or their family member has been continuously resident in the UK for less than five years, they will be eligible under the scheme for pre-settled status under UK immigration law, which is referred to under the 1971 Act as limited leave to remain or LTR (and which will also be granted under Appendix EU to the Rules).

#### What does 'continuously resident' mean?

**If the person has been continuously resident in the UK for less than five years**, it generally means that they have not been absent from the UK for more than six months in total in any 12-month period. There is no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period.

There are some exceptions:

- A single period of absence of more than six months but which does not exceed 12 months is permitted, where this is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.
- Any period of absence on compulsory military service is permitted.

Continuity of residence is broken (and restarts from scratch on release, where this is before the end of the implementation period on 31 December 2020) where the person served or is serving a sentence of imprisonment of any

length in the UK, unless:

- The person has resided in the UK continuously for at least 10 years (and has the right of permanent residence in the UK under the EEA Regulations)<sup>4</sup> and the Home Office considers that they had forged integrating links with the UK which were not broken by imprisonment and that, overall, it would not be appropriate to treat imprisonment as breaking continuity of residence.

Continuity of residence is likewise broken if for example a deportation order, exclusion order or exclusion decision is made, or the person is removed from the UK under the EEA Regulations, unless this has been set aside or no longer has effect.

**Once the person has been continuously resident in the UK for five years**, this means that they will be eligible for settled status where, since completing that period, they have not been absent from the UK for more than five consecutive years (as set out in the draft Withdrawal Agreement, rather than for more than two consecutive years as set out in the Free Movement Directive) when they apply under the scheme.

It also means for example that, since completing that five-year period, a deportation order, exclusion order or exclusion decision has not been made against them and they have not been removed from the UK under the EEA Regulations, unless this has been set aside or no longer has effect.

3.5. Pre-settled status means that the person will (in all cases) be granted five years' limited leave to remain, and they will be eligible to apply for settled status (indefinite leave to remain) as soon as they have completed five years' continuous residence in the UK (less in some particular circumstances: see paragraph 3.7, below) and, from April 2019, free of charge (see paragraph 4.6, below). In the meantime, as reflected in the Withdrawal Agreement, they will continue to have the same entitlements as now to work, study and access public services and benefits, according to the same rules as now.

3.6. We are considering carefully how we can ensure that EU citizen family members of HM Forces personnel, and EU citizen Crown servants and their family members and the EU citizen family members of British citizen Crown servants, are not unfairly disadvantaged under the scheme by absences from the UK as a result of overseas postings. Further details will be published in due course.

3.7. In some particular circumstances, an EU citizen or their family member resident here will be eligible for settled status (indefinite leave to remain) with less than five years'

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<sup>4</sup> The Immigration (European Economic Area) Regulations 2016

continuous residence in the UK where some particular detailed requirements, set out in the Free Movement Directive, are met:

**When is a person eligible for settled status with less than five years' continuous residence in the UK?**

**If the person is an EU citizen continuously resident in the UK**, they will be eligible for settled status with less than five years' continuous residence, if they:

(a) were a worker or self-employed person<sup>5</sup> in the UK and then terminated that activity, having reached the age of entitlement to a state pension (or having been a worker, having taken early retirement), and, immediately before that, they had been a worker or self-employed person in the UK for at least the preceding 12 months and had been continuously resident in the UK for more than the preceding three years; or

(b) stopped being a worker or self-employed person owing to permanent incapacity to work, having been continuously resident in the UK for more than the preceding two years or the incapacity having resulted from an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the UK; or

(c) were continuously resident in the UK for at least three years as a worker or self-employed person, immediately before becoming a worker or self-employed person in another EU country, while retaining a place of residence in the UK to which they return, as a rule, at least once a week.

The conditions as to length of residence and of employment in (a) and (b), above, do not apply where the EU citizen is the spouse or civil partner of a British citizen.

**If the person is a family member of an EU citizen granted settled status as described above in this table**, they will also be eligible for settled status with less than five years' continuous residence if they:

- were that person's family member at the point that person met the conditions in (a), (b) or (c), above; and
- are continuously resident in the UK.

**If the person is a family member of an EU citizen who has died and the EU citizen was resident in the UK as a worker or self-employed person**

<sup>5</sup> Within the meaning of the EEA Regulations.



**at the time of their death**, they will be eligible for settled status with less than five years' continuous residence if:

- the EU citizen was continuously resident in the UK for at least two years before their death, or their death was the result of an accident at work or an occupational disease; and
- the family member was resident in the UK with the EU citizen immediately before their death, and is continuously resident in the UK.

**If the person is a child<sup>6</sup> under the age of 21 years of an EU citizen (or of their spouse or civil partner) who is continuously resident in the UK**, they will be eligible for settled status with less than five years' continuous residence if:

- the relevant EU citizen (or their spouse or civil partner) has been or is being granted settled status under the scheme (or, in the case of an Irish citizen, they would be so if they made a valid application under the scheme).

3.8. Where an EU citizen or their family member has ceased to be continuously resident in the UK, they will be eligible for pre-settled status (limited leave to remain) under the scheme where they start a new period of continuous residence in the UK by 31 December 2020.

3.9. An EU citizen continuously resident in the UK before 31 December 2020 will be able to be joined after that date by close family members<sup>7</sup> resident overseas, if the relationship existed at that date and it continues to exist when the person wishes to come to the UK (see section 6). The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme.

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<sup>6</sup> A grandchild or great-grandchild will be able to qualify for settled status on the same basis as other family members.

<sup>7</sup> A spouse, civil partner, durable partner, dependent child or grandchild (including of the spouse or civil partner), or dependent parent or grandparent (including of the spouse or civil partner).

## 4. How will a valid application under the scheme be made?

4.1. Before we can consider whether a person is eligible for status under the EU Settlement Scheme, we need to receive a valid application from them.

4.2. The requirements for an application under the scheme to be valid will be as straightforward as possible. If a person submits an application which is missing any of the components required for it to be valid, it will not be rejected as invalid without the person being prompted or contacted by the Home Office and given a reasonable opportunity to provide what is needed to avoid this.

4.3. There will be four requirements for a valid application.

4.4. First, it will need to be made, initially at least, in the UK and made using the **required application process**.<sup>8</sup> This will be the digital application process which will be provided on GOV.UK, or the assisted digital application process for those who need assistance to complete the online application process, for applicants under the scheme who are covered by the Withdrawal Agreement.<sup>9</sup> Consideration is also being given to the particular circumstances in which the provision of a paper application form may be appropriate. We will also confirm the scope, beyond a parent applying on behalf of a child or a local authority on behalf of a 'looked after' child,<sup>10</sup> for the application process to be completed on behalf of a person without the capacity to complete it themselves.

4.5. Work on the design of the digital application process is well under way and is being informed by the views of the user groups the Home Office has established to support the development of the EU Settlement Scheme. The user groups include representatives of EU citizens resident in the UK, of the embassies and consulates of the other 27 Member States, of business and community groups, and of external stakeholders who represent the needs of potentially vulnerable individuals. EU citizens who have volunteered to do so are testing the online application process so that we can learn from their experience and make it as clear and user-friendly as possible. The views of the user groups on the assistance which some applicants may require to complete the online application process are informing our thinking about the support we offer.

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<sup>8</sup> We are considering the scope for overseas applications under the scheme and more information will be provided in due course. We are also considering how best to deal under the scheme with any in-country scenarios in which a person without leave to enter the UK may be granted leave under the scheme.

<sup>9</sup> Given the mainly digital nature of the application process, there may be no or limited scope to withdraw an application made under it.

<sup>10</sup> Within the meaning of section 22(1) of the Children Act 1989, section 17(6) of the Children (Scotland) Act 1995, section 74(1) of the Social Services and Well-being (Wales) Act 2014 or article 25(1) of the Children (Northern Ireland) Order 1995.

4.6. Second, a valid application will involve **payment of any required fee**. Subject to Parliamentary consideration of changes to the Immigration and Nationality (Fees) Regulations, we propose that:

- The application fee will be £65 (the same as the current fee for a permanent residence document) for a person aged 16 or over. The fee for those aged under 16 will be £32.50.
- There will be no application fee for settled status (indefinite leave to remain) where the applicant has previously been issued a permanent residence document (that is a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations) and this status:
  - has not lapsed or has done so through absence from the UK for a period of more than two consecutive years (as set out in the Free Movement Directive) but not more than five consecutive years (as set out in the draft Withdrawal Agreement); and
  - has not been lost (for example because a deportation order has been made in relation to the person).
- There will be no application fee for settled status (indefinite leave to remain) where the applicant has previously been granted indefinite leave to enter or remain in the UK (as evidenced by a biometric residence permit, other valid document or endorsement issued by the Home Office or Home Office records) and this status has not lapsed (through absence from the UK for more than two consecutive years) or been revoked or invalidated.
- There will, from April 2019, be no application fee for settled status (indefinite leave to remain) where the person already has pre-settled status (limited leave to remain) granted under the scheme.
- There will be no requirement for an application fee where a child is being 'looked after' by a local authority.
- The Home Office may, as in other routes, retain an administrative fee (and, if so, the amount will be confirmed in due course) where an applicant pays an application fee but otherwise fails to submit a valid application, after being contacted by the Home Office and given a reasonable opportunity to provide what is needed for the application to be valid and avoid it being rejected as invalid.

4.7. Applicants under the scheme will not be required to pay the Immigration Health Charge.

4.8. Third, the applicant will need to **provide the required proof of their identity and nationality**. For an EU citizen, this will be a valid<sup>11</sup> passport or a valid national identity card. For a non-EU citizen family member, this will be a valid passport, a valid biometric residence card issued under the EEA Regulations or a valid biometric immigration document, commonly known as a biometric residence permit. The Home Office may accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

4.9. The means by which the applicant will be able to provide the required proof of their identity and nationality will include:

- As part of the digital application process (through a smartphone app which facilitates the reading of the chip in a biometric document), either using a personal device or at a location established to enable the applicant to use the app or be helped to do so; or
- By a secure postal route in the UK, by which we will aim to return the document to them as soon as we can, to minimise delays if other aspects of the application need further consideration.

4.10. Fourth, the applicant will need to **enrol their facial image** so that we can compare this with the photograph in their identity document and be satisfied that they are one and the same person. An EU citizen will be able to upload a passport-style photograph of themselves as part of the digital application process (but this should not be the same photograph as appears in their passport). So too will a non-EU citizen family member previously issued a biometric residence card under the EEA Regulations. A non-EU citizen family member who has not already done so for the purposes of being issued a biometric residence card under the EEA Regulations will need to attend one of our application centres in the UK to enrol their fingerprints and their facial image (to the technical standard required for the image to be reproduced on a biometric residence document: see section 7).

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<sup>11</sup> This means that the document is genuine and has not expired or been cancelled or invalidated.

## 5. How will the application process work?

5.1. The application process we are designing for EU citizens and their family members applying for status under the EU Settlement Scheme will be straightforward and streamlined. The scheme will be delivered through a digital application process which will be available from late 2018 so that EU citizens and their family members can begin to obtain their new UK immigration status at their earliest convenience. There will be assistance available for those who need it to complete the online application process.

5.2. The online application form will be short, simple and user-friendly. Most applicants will need only to demonstrate that they are an EU citizen or family member and their continuous residence in the UK (and that of the EU citizen if they are a non-EU citizen family member). Where possible, the application process will help the applicant to establish their continuous residence and whether it amounts to five years, on an automated basis using data held by HM Revenue & Customs (HMRC) and in due course also the Department for Work and Pensions (DWP). This will keep the documentary evidence the applicant is required to provide to a minimum.

5.3. The process will be particularly straightforward for **those EU citizens and their family members who have previously been issued a permanent residence document** (that is a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations).<sup>12</sup> They will be able to exchange this free of charge for settled status (indefinite leave to remain) under the scheme, subject only to criminality and security checks and to confirming that this status has not lapsed or has done so through absence from the UK for more than two consecutive years (as set out in the Free Movement Directive) but not more than five consecutive years (as set out in the draft Withdrawal Agreement: see paragraph 3.4, above). The assessment of their previous UK residence which we will have done before issuing their permanent residence document will not be repeated.

5.4. **Otherwise, where the applicant is an EU citizen** and the automated checks of HMRC and DWP data indicate that they have been continuously resident in the UK for a period of five years, they will be granted settled status (indefinite leave to remain), subject to criminality and security checks. We expect that, for the majority of EU citizens who are or have been working, we will be able to help them confirm their residence in this way.

5.5. Where the automated checks of HMRC and DWP data do not indicate that the EU citizen has been continuously resident in the UK, or indicate that they have been continuously resident here for a period of less than five years, the applicant will then be able to upload documentary evidence of their continuous residence (or evidence that they

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<sup>12</sup> Or the person has previously been granted indefinite leave to enter or remain in the UK (as evidenced by a Biometric Residence Permit, other valid document or endorsement issued by the Home Office or Home Office records) and this status has not lapsed (through absence from the UK for more than two consecutive years) or been revoked or invalidated.

are in one of the categories eligible for settled status with less than five years' continuous residence, as described in paragraph 3.7, above). Where appropriate, they will be granted settled status (indefinite leave to remain), subject to criminality and security checks. Otherwise, where the HMRC and DWP data and/or their documentary evidence establish that they have been continuously resident here for a period of less than five years, they will be granted five years' pre-settled status (limited leave to remain), subject to criminality and security checks.

5.6. We will publish a list of the type of documentary evidence which the applicant will be able to provide of their continuous residence in the UK. A draft of this list is at **Annex A** to this document. We will seek to guide applicants to use the evidence they may have which most readily evidences their continuous residence. But this guidance will not be prescriptive or definitive. We recognise that some applicants may lack documentary evidence in their own name for various reasons, and we will work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them.

5.7. Applications made by families at the same time will be considered together. However, **where the applicant is an EU citizen who is here as a family member of an EU citizen (or British citizen) resident in the UK**, they will be able to rely on their own continuity of residence as an EU citizen to apply for status under the settlement scheme. Where they are the family member of an EU citizen, they will not need to provide evidence of their family relationship to that person, unless they are relying on that relationship in one of the categories eligible for settled status with less than five years' continuous residence, as described in paragraph 3.7, above; they are relying on a retained right of residence after that relationship has ended, as described in paragraph 6.9, below; or they became an EU citizen within a period of continuous residence in which they otherwise rely on having been a family member of an EU citizen.

5.8. **Where the applicant is a non-EU citizen family member who has not previously been issued a permanent residence document**, we will also use the automated checks and, where necessary, documentary evidence uploaded by the applicant, to establish what status their continuous residence in the UK qualifies them for.

5.9. In addition, because the status here under EU law of such a non-EU citizen family member depends on their current or past family relationship to the EU citizen resident in the UK, the applicant will also need to provide evidence of that relationship for the relevant period (see section 6), the valid passport or national identity card of that EU citizen (or the full birth certificate of an Irish citizen), and evidence of that person's continuous residence in the UK during that period. We will accept alternative evidence of the EU citizen's identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

5.10. Evidence of the EU citizen having been granted status under the scheme will constitute sufficient evidence of that person's identity, nationality and continuous residence (for the period on the basis of which they were granted status). The non-EU citizen family member may therefore prefer, where possible, to apply once the relevant EU citizen has done so and been granted status as this is likely to make it easier and quicker for the family member to demonstrate their eligibility.

5.11. Subject to those requirements and to criminality and security checks, the non-EU citizen family member will, as appropriate, be granted settled status (indefinite leave to remain) or five years' pre-settled status (limited leave to remain). As described in paragraph 3.7, above, a child under the age of 21 will be granted indefinite leave to remain under the scheme where a parent has been or is being granted that status under the scheme (or, in the case of an Irish citizen, would be so if they made a valid application under the scheme), regardless of the length of their continuous residence.

5.12. Where the non-EU citizen family member is granted five years' pre-settled status (limited leave to remain) under the scheme, they will need to demonstrate, if they later apply for settled status (indefinite leave to remain) under the scheme, that they have been continuously resident in the UK for five years as the family member of that EU citizen (or of another EU citizen continuously resident here by 31 December 2020) or as a family member who has retained the right of residence (see paragraph 6.9, below).

5.13. The **requirements set out in the Immigration Rules for the EU Settlement Scheme** (see **Annex B**) will be strictly in accordance with the conditions agreed under the Withdrawal Agreement, except where the UK is applying more favourable criteria (for example, in deciding that the main requirement for status to be granted under the scheme will be residence in the UK, generally in line with current free movement rules on the continuity of that residence).

5.14. There will not be any further discretion to refuse a valid application under the scheme beyond the conditions agreed under the Withdrawal Agreement, and we will minimise administrative burdens by not requiring more information than is strictly necessary to determine whether the requirements set out in the Immigration Rules for the scheme have been met.

5.15. **We will work with applicants to help them avoid any errors or omissions that may impact on the application decision.** Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.

5.16. **As agreed with the EU in the deal on citizens' rights, criminality and security checks will be carried out on all applications for status under the scheme.** In line with the draft text of the Withdrawal Agreement, conduct (including any criminal convictions relating to it) before the end of the implementation period (31 December 2020)

by a person protected by the agreement will be assessed according to the current EU public policy tests for deportation, as set out in the EEA Regulations,<sup>13</sup> while their conduct (including any criminal convictions relating to it) after that period will be considered against UK deportation thresholds.<sup>14</sup> This is a sensible approach to ensure that we identify any serious or persistent criminals, or anyone who poses a security threat, to protect everyone who lives in the UK; we are not concerned here with minor offences, such as a parking fine. It will not affect the overwhelming majority of EU citizens and their family members.

5.17. The draft text of the Withdrawal Agreement makes provision for an applicant for residence status to be issued with a **certificate of application** to confirm they have made an application which is under consideration by the Home Office. We will provide further information in due course about arrangements for this under the scheme.

5.18. A valid application for status under the EU Settlement Scheme will only be refused under the Immigration Rules for the scheme on the basis of criteria which reflect the Withdrawal Agreement or the more favourable UK approach. Where a valid application made is refused under the scheme, we will provide for the right to request an **administrative review** of the decision. A person refused status under the scheme before 31 December 2020 may also make a further application under the scheme at any point before 30 June 2021.

5.19. Primary legislation is required to establish a right of appeal for the scheme, but subject to Parliamentary approval, we intend that those applying under the scheme from 30 March 2019 will be given a **statutory right of appeal** if their application is refused. This will allow the UK courts to examine the decision to refuse status under the scheme and the facts or circumstances on which the decision was based.

5.20. Until the end of the implementation period, applicants refused status under the scheme will still be able to assert their free movement rights and will retain their statutory right of appeal against any restriction of those rights under the EEA Regulations.

5.21. Consistent with the draft text of the Withdrawal Agreement, the draft Immigration Rules for the scheme confirm that, where a person granted status under it also has a right to reside here under the EEA Regulations, their status under the scheme does not have effect to their detriment in so far as it is incompatible with that right.

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<sup>13</sup> This involves consideration as to whether the person is a genuine, present and sufficiently serious threat to the fundamental interests of UK society, on grounds of public policy or security, such as to justify refusal of status and deportation.

<sup>14</sup> The UK Borders Act 2007 creates a presumption that foreign criminals will be deported if they are convicted in the UK of a crime leading to a prison sentence of 12 months or more, unless one of a number of exceptions apply. The exceptions include where deportation would breach our obligations under the European Convention on Human Rights or the Refugee Convention or where the person was under the age of 18 on the date of conviction. Where a foreign criminal does not fall within the scope of deportation under the 2007 Act, for example if the person is convicted of an offence outside the UK, consideration may be given to deportation under section 3(5) of the Immigration Act 1971 on the basis that the individual's deportation from the UK would be conducive to the public good.



## 6. What family members will be eligible for the scheme?

6.1. **Family members who are living with, or join, an EU citizen resident in the UK by the end of the implementation period on 31 December 2020 will be eligible to apply for status under the EU Settlement Scheme.** They will be able to apply under the scheme on their own account, but non-EU citizen family members may prefer, where possible, to apply once the relevant EU citizen has done so and been granted status as this is likely to make it easier and quicker for the family member to demonstrate their eligibility (see paragraph 5.9, above). Applications made by families at the same time will be considered together.

6.2. **In addition, the scheme will be open to EU citizen and non-EU citizen close family members resident overseas on 31 December 2020.** Under the agreement on citizens' rights reached with the EU, an EU citizen resident in the UK by 31 December 2020 will be able to be joined at any point thereafter by close family members<sup>15</sup> resident overseas, if the relationship existed on 31 December 2020 and it continues to exist when the family member applies to come to the UK. The scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme.

6.3. The rest of this section provides more information about who these family members may be and the requirements they will need to meet in applying for status under the EU Settlement Scheme.

6.4. Where the applicant is an EU citizen who is resident here by 31 December 2020 as a family member of an EU citizen (or British citizen) resident in the UK, they will be able to rely on their own continuity of residence as an EU citizen to apply for status under the scheme. Where they are the family member of an EU citizen, they will not need to provide evidence of their family relationship to that person, unless:

- They are relying on that relationship in one of the categories eligible for settled status with less than five years' continuous residence, as described in paragraph 3.7, above.
- They are relying on a retained right of residence after that relationship has ended, as described in paragraph 6.9, below.
- They became an EU citizen within a period of continuous residence in which they otherwise rely on having been a family member of an EU citizen.

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<sup>15</sup> A spouse, civil partner, durable partner, dependent child or grandchild (including of the spouse or civil partner), or dependent parent or grandparent (including of the spouse or civil partner).

6.5. Otherwise, the following family members of an EU citizen<sup>16</sup> who is continuously resident here by 31 December 2020 (as described in section 3, above) will be eligible to apply for status under the scheme, where they are continuously resident in the UK by that date or where (except for dependent relatives<sup>17</sup>) they join the EU citizen here after 31 December 2020:

- The **spouse** or **civil partner** of the EU citizen, where:
  - The marriage was contracted or the civil partnership was formed by 31 December 2020; or
  - The marriage was contracted or the civil partnership was formed after 31 December 2020, but the couple had formed a durable partnership by 31 December 2020<sup>18</sup> and the partnership remained durable at that date.
- The **durable partner** of the EU citizen, where:
  - The partnership was formed and was durable by 31 December 2020; and
  - The partnership remains durable.
- The **child** or **dependent parent** of the EU citizen.
- The child or dependent parent of the spouse or civil partner of the EU citizen, as described in the first bullet point, above.
- Where they are continuously resident in the UK by 31 December 2020, the **dependent relative** of the EU citizen and that family relationship and dependency existed before that date.
- Where both parties were continuously resident in the UK before 1 February 2017, the dependent relative of the spouse or civil partner of the EU citizen, as described in the first bullet point, above, and that family relationship and dependency existed before 1 February 2017.

6.6. The following detailed criteria will apply in respect of each of these categories of family member at the date the person applies under the scheme:

- **Spouse** – the person is party to a marriage with the EU citizen and the marriage is recognised under the law of England and Wales, Scotland or Northern Ireland or is lawfully recognised in the country in which it was contracted;<sup>19</sup> it is not a marriage of

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<sup>16</sup> This includes a dual British-EU citizen in line with the CJEU judgment in Lounes.

<sup>17</sup> As defined in paragraph 6.6.

<sup>18</sup> And the applicant holds a relevant document as the durable partner of the EU citizen, as described in paragraph 6.6, below.

<sup>19</sup> *Awuku v SSHD* [2017] EWCA Civ 178

convenience;<sup>20</sup> and neither party has another spouse, a civil partner or a durable partner with immigration status in the UK based on that person's relationship with that party.

- **Civil partner** – the person is in a civil partnership (under or by virtue of the Civil Partnership Act 2004, or in a same sex relationship registered overseas which is entitled to be treated as a civil partnership under that Act) with the EU citizen; it is not a civil partnership of convenience; and neither party has another civil partner, a spouse or a durable partner with immigration status in the UK based on that person's relationship with that party.
- **Durable partner** – the person is in a durable relationship with the EU citizen, with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and
  - the person holds a relevant document<sup>21</sup> as the durable partner of the EU citizen (which was applied for by 31 December 2020), unless the date of application is after 31 December 2020 and the person was resident outside the UK at that date. Where the applicant is seeking to come to the UK after 31 December 2020, they must provide evidence which satisfies the Home Office caseworker that the durable partnership was formed and was durable before that date and that the partnership remains durable; and
  - it is not a durable partnership of convenience; and neither party has another durable partner, a spouse or a civil partner with immigration status in the UK based on that person's relationship with that party.
- **Child** – the person is the direct descendant of the EU citizen or of their spouse or civil partner<sup>22</sup> (and therefore includes a grandchild or great-grandchild), and:
  - is under the age of 21 years; or
  - is aged 21 years or over and is dependent on the EU citizen (or on their spouse or civil partner). 'Dependent' means<sup>23</sup> that:

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<sup>20</sup> A marriage, civil partnership or durable partnership of convenience is entered into as a means to circumvent:

- (a) any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations; or
- (b) any other provision of UK immigration law or any requirement of the Immigration Rules; or
- (c) any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law.

<sup>21</sup> A family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card which:

- (a) was issued by the UK under the EEA Regulations (and was not subsequently revoked, or fell to be so, because the relationship had never existed or had ceased); and
- (b) has not expired or remained valid for the period of residence relied upon.

<sup>22</sup> As defined in paragraph 6.5.

- (a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EU citizen or of their spouse or civil partner; and
- (b) such support is being provided to the applicant by the relevant EU citizen or by their spouse or civil partner; and
- (c) where the applicant was aged 21 years or over when they came to the UK to join the EU citizen or their spouse or civil partner, the need for such support existed in the applicant's state of origin or in the state from which they came to the UK, but there is no need to determine the reasons for that dependence or for the recourse to that support.

In addition, 'child' includes an adopted child or a child born through surrogacy (where recognised in UK law). It does not currently include a child cared for by the EU citizen (or by their spouse or civil partner) solely by virtue of a legal guardianship order<sup>24</sup> or a formal or informal fostering arrangement,<sup>25</sup> but we are looking further at those and other aspects of the definition.

- **Dependent parent** – the person is the direct relative in the ascending line of the EU citizen or of their spouse or civil partner<sup>26</sup> (and includes a grandparent or great-grandparent), and the dependence of the direct relative in the ascending line on the EU citizen (or on their spouse or civil partner) is assumed.
- **Dependent relative** – the person is a relative of their sponsor but not their spouse, civil partner, durable partner, child or dependent parent; and holds a relevant document<sup>27</sup> as their dependent relative (which was applied for by 31 December 2020). Their 'sponsor' means:
  - (a) an EU citizen who has been or is being granted indefinite leave or limited leave under the scheme (or who would be granted that leave, if they made a valid application under the scheme); or
  - (b) before 1 February 2017, the spouse or civil partner of such an EU citizen.<sup>28</sup>

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<sup>23</sup> In light of the CJEU judgment in Reyes, paragraphs 20-25.

<sup>24</sup> Where the child is a relative of the guardian, they may be able to come within the definition of 'dependent relative' as set out in this paragraph.

<sup>25</sup> This does not prevent an application being made by or on behalf of a 'looked after' child whom the local authority has placed in foster care.

<sup>26</sup> As defined in paragraph 6.5.

<sup>27</sup> A family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card which:

(a) was issued by the UK under the EEA Regulations (and was not subsequently revoked, or fell to be so, because the dependency had never existed or had ceased); and

(b) has not expired or remained valid for the period of residence relied upon.

<sup>28</sup> As defined in paragraph 6.5.

6.7. A family member applying for status under the scheme who does not already hold a permanent residence document will need to provide evidence of the family relationship for the relevant period through the following **required evidence of family relationship**:<sup>29</sup>

- (a) **Spouse** – a relevant document issued under the EEA Regulations as the spouse of the EU citizen, or a valid marriage certificate recognised under the law of England and Wales, Scotland or Northern Ireland or of the country in which the marriage was contracted.
- (b) **Civil partner** – a relevant document issued under the EEA Regulations as the civil partner of the EU citizen; a valid civil partnership certificate recognised under the law of England and Wales, Scotland or Northern Ireland; or the valid overseas registration document for a same sex registered relationship which is entitled to be treated as a civil partnership under the Civil Partnership Act 2004.
- (c) **Child** – a relevant document issued under the EEA Regulations on the basis of the relevant family relationship; their full birth certificate; or other documentation which the Home Office caseworker is satisfied evidences that the applicant is the direct descendant of the EU citizen (or of their spouse or civil partner).<sup>30</sup> The caseworker can accept a short birth certificate if they are satisfied that other evidence corroborates it and they have no concerns about the child’s relationship to the relevant person.
- (d) **Dependent parent** – a relevant document issued under the EEA Regulations on the basis of the relevant family relationship or other documentation which the Home Office caseworker is satisfied evidences that the applicant is the direct relative in the ascending line of the EU citizen (or of their spouse or civil partner), such as their child’s full birth certificate or other documentation which names the applicant as that person’s parent. Where the person on whom the applicant is dependent is their grandchild, the applicant must provide their child’s full birth certificate or other documentation which names the applicant as that person’s parent, and their grandchild’s full birth certificate or other documentation which names their parent.
- (e) **Durable partner** – a relevant document issued under the EEA Regulations as the durable partner of the EU citizen and, unless this confirms the right of permanent residence in the UK under regulation 15 of the EEA Regulations, evidence which satisfies the Home Office caseworker that the durable partnership continues to subsist (or did so for the period of residence relied upon). Or, where the applicant is seeking to come to the UK after 31 December 2020, evidence which satisfies the Home Office caseworker that the durable partnership was formed and was durable before that date and that the partnership remains durable.

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<sup>29</sup> In line with the draft Withdrawal Agreement, where the applicant submits a copy of this evidence, the Home Office caseworker can only require the applicant to submit the original document where the caseworker has reasonable doubt as to the authenticity of the copy submitted.

<sup>30</sup> As defined in paragraph 6.5.

- (f) **Dependent relative** – a relevant document issued under the EEA Regulations as the dependent relative of their sponsor and, unless this confirms the right of permanent residence in the UK under regulation 15 of the EEA Regulations, evidence which satisfies the Home Office caseworker that the relationship and dependency continue to subsist (or did so for the period of residence relied upon).

6.8. In addition, **where the family member applying for status under the scheme is a non-EU citizen without the documented right of permanent residence**, they will need to provide proof of the identity and nationality of the EU citizen of whom the applicant is the family member (or was so for the relevant period). This will be the EU citizen's valid passport or their valid national identity card. The Home Office may accept alternative evidence of the identity and nationality of the EU citizen where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons. They will also need to provide evidence of that EU citizen's continuous residence in the UK as well as their own. Evidence of the EU citizen having been granted status under the scheme will constitute sufficient evidence of that person's identity, nationality and continuous residence (for the period on the basis of which they were granted status).

6.9. Under the Free Movement Directive, **some family members retain the right of residence** after their relationship with an EU citizen resident in the UK has ended. Where they are themselves an EU citizen, they will be able to rely on their own continuity of residence to apply for status under the scheme. Otherwise, these family members will be able to rely on the retained right of residence as well as their earlier continuous residence as a family member of an EU citizen to establish their eligibility for settled status (indefinite leave to remain) after five years' continuous residence in total, or for pre-settled status (five years' limited leave to remain), in the following circumstances:

- The applicant is a **non-EU citizen family member of an EU citizen** who was continuously resident in the UK by 31 December 2020 and **that EU citizen has died**; and the applicant was continuously resident in the UK as their family member for at least a year immediately before their death; or
- The applicant is the **child of an EU citizen** who was continuously resident in the UK by 31 December 2020 and that EU citizen has died (or of their spouse or civil partner immediately before their death) – or is the child of an EU citizen who was continuously resident in the UK by 31 December 2020 and then ceased to be so (or of their spouse or civil partner at that point) – and the child was attending an educational course<sup>31</sup> in the UK immediately before the EU citizen died or ceased to reside in the UK, and continues to attend such a course; or
- The applicant is an EU citizen or non-EU citizen who is the **parent with custody of such a child** (meaning that the child normally lives with them or does so part of the time, and includes arrangements which have been agreed informally and those

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<sup>31</sup> A general educational course, apprenticeship or vocational training course.

which are subject to a court order for determining with whom the child is to live and when); or

- The applicant is a **non-EU citizen who ceased to be a family member of an EU citizen** who was continuously resident in the UK by 31 December 2020 **on the termination of their marriage or civil partnership** with that person; the applicant was resident in the UK at the date of the termination; and one of the following applies:
  - (a) Prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had been continuously resident in the UK for at least one year during its duration; or
  - (b) The applicant has custody of a child of the EU citizen (as above); or
  - (c) The applicant has the right of access to a child of the EU citizen, where the child is under the age of 18 years and where a court has ordered that such access must take place in the UK; or
  - (d) The continued right of residence in the UK of the applicant is warranted by particularly difficult circumstances, such as where the applicant or another family member has been a victim of domestic violence or abuse whilst the marriage or civil partnership was subsisting.

6.10. There are certain other categories who have a right of residence, not under the Free Movement Directive, but under wider EU law, and will have their residence rights protected by the Withdrawal Agreement in line with their current rights. These are Chen carers and Ibrahim and Teixeira children or carers:<sup>32</sup>

- A **Chen carer** is a primary carer of a self-sufficient EU citizen child or children in the UK;
- An **Ibrahim and Teixeira child** is a child of a former EU citizen worker and is in education in the UK, and an Ibrahim and Teixeira carer is the primary carer of such a child; and
- Others who need a right of residence in the UK in order for a Chen or Ibrahim and Teixeira child to remain in the UK (e.g. other children of the primary carer).

6.11. These persons may be EU citizens eligible to apply for status under the EU Settlement Scheme. Otherwise, provision will be made in the Immigration Rules for them to apply for leave to remain, consistent with the Withdrawal Agreement. Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them.

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<sup>32</sup> Referred to by reference to the relevant CJEU judgment; likewise, those referred to in paragraph 6.12.

6.12. In addition, in respect of the following categories involving a British citizen in circumstances which are not protected by the Withdrawal Agreement, we have decided, as a matter of domestic policy, that:

- A non-EU citizen family member of a British citizen who is lawfully resident in the UK by the end of the implementation period on 31 December 2020, by virtue of regulation 9 of the EEA Regulations (the '**Surinder Singh**' route, which leads to a right of permanent residence under EU law), will be eligible to apply for status under the EU Settlement Scheme.
- A non-EU citizen who is the primary carer of a British citizen in the UK and also currently derives a right of residence from wider EU law (a **Zambrano carer**) will be provided for in the Immigration Rules. Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them.



## 7. What will status under the EU Settlement Scheme provide?

7.1. The status granted to EU citizens and their family members under the EU Settlement Scheme – settled status (indefinite leave to remain) or pre-settled status (limited leave to remain), granted under Appendix EU to the Immigration Rules – will enable them to continue their lives in the UK much as before, with the **same entitlements as now** to work (subject, in light of the Withdrawal Agreement, to any relevant occupational requirements), study and access public services and benefits, according to the same rules as now.

7.2. Evidence of this status will be given to EU citizens in **digital form**; no physical document will be issued to them. They will control who they wish to share this with and will be able to continue to use their passport or national identity card as proof of their identity and nationality and, until the end of the implementation period, of their right to live and work in the UK. We have started the roll-out in other immigration routes of a digital status to non-EEA citizens to allow them to prove their right to work. We will monitor this and the digital status issued under the scheme and ensure that we provide the right support to all in using this status.

7.3. As well as this digital means of evidencing their status, non-EU citizen family members in the UK granted status under the EU Settlement Scheme will also be issued with a **biometric residence document**, where they do not already hold a biometric residence card issued under the EEA Regulations. This will provide them with a convenient way of evidencing their status to those who may need to see confirmation of it, such as an employer, landlord or service provider.

7.4. **Settled status (indefinite leave to remain)** under the EU Settlement Scheme will reflect some provisions under the Withdrawal Agreement which are more favourable than those which apply to other forms of indefinite leave to remain:

- The process of obtaining it will be through the streamlined process of the scheme and will not involve meeting the Knowledge of Language and Life in the UK requirement which otherwise generally applies to applications for indefinite leave to remain.
- Holders of settled status (indefinite leave to remain) under the scheme will be able to be absent from the UK for any reason for a period of five consecutive years before their status lapses and they cannot use it to return to the UK. This compares with the absence from the UK of two consecutive years before indefinite leave to

remain generally lapses, under the Immigration (Leave to Enter and Remain) Order 2000.<sup>33</sup>

- EU citizens with settled status (indefinite leave to remain), or pre-settled status (limited leave to remain), under the scheme will be able to be joined in the UK at any time in the future by close family members<sup>34</sup> resident overseas at the end of the implementation period on 31 December 2020, if the relationship existed at that date and it continues to exist when the person wishes to come to the UK. Those family members will not be required to meet the family Immigration Rules in force at that time. Likewise, the scheme will also be open in certain circumstances to a non-British citizen child born in the UK or overseas after 31 December 2020 to (or adopted by) a parent or parents eligible for status under the scheme.

7.5. Holders of **pre-settled status (limited leave to remain for five years)** under the scheme will need to maintain their continuous residence in the UK (as set out in paragraph 3.4, above) and, where relevant, their family relationship, in order to qualify for settled status, generally after five years here. In the meantime, as reflected in the Withdrawal Agreement, they will continue to have the same entitlements as now to work, study and access public services and benefits, determined according to the same rules as now.<sup>35</sup>

7.6. EU citizens granted status under the scheme will be able to **travel to and from the UK** using a valid passport or (at least until 31 December 2025) a valid national identity card.<sup>36</sup> Non-EU citizen family members granted status under the scheme will be able to travel to and from the UK with a valid passport and they will not be subject to a visa requirement; their re-entry to the UK will be facilitated by any biometric residence document issued to them under the scheme. We will make provision in due course for existing close family members to be able to join an EU citizen resident here after the end of the implementation period on 31 December 2020.

7.7. Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for **British citizenship** if they wish and otherwise meet the requirements for this:<sup>37</sup>

- Immediately, if they are the spouse or civil partner of a British citizen (and they have been lawfully resident here for at least three years), or if they were granted

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<sup>33</sup> Subject to Parliamentary approval, we will in due course seek to amend this secondary legislation in respect of indefinite leave to remain granted under the scheme.

<sup>34</sup> A spouse, civil partner, durable partner, dependent child or grandchild (including of the spouse or civil partner), or dependent parent or grandparent (including of the spouse or civil partner).

<sup>35</sup> They will continue to have to provide evidence that they meet the relevant eligibility requirements, e.g. in any benefit claim or application for social housing, supported housing or homelessness assistance.

<sup>36</sup> After 31 December 2025, the UK will be able to require that the national identity card is one with a biometric chip that conforms to international travel document security standards set by the International Civil Aviation Organisation. But the Government is considering a range of options for the future immigration system and no decisions have been taken.

<sup>37</sup> For example, the Knowledge of Language and Life in the UK requirement and the required period of lawful residence in the UK: five years if they are not the spouse or civil partner of a British citizen, the last with no time restriction on their stay in the UK.

indefinite leave to remain in another capacity more than 12 months previously (and this has not lapsed or been revoked or invalidated); or

- 12 months after the date on which they acquired the right of permanent residence under the Free Movement Directive, as evidenced by a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations; or
- Otherwise, 12 months after the date on which they were granted indefinite leave to remain under the scheme.

# Annex A

## Documentary evidence of continuous residence in the UK

As set out in section 5, we expect that many people will have their residence confirmed by automated checks of HMRC and DWP data. However, where those checks indicate that an applicant who does not hold a permanent residence document has been continuously resident in the UK for a period of less than five years – or do not indicate that the applicant has been and remains continuously resident here – the applicant will be able to upload documentary evidence to satisfy the Home Office caseworker that they are continuously resident here and, where appropriate, that they have been so for five years.<sup>38</sup>

This Annex provides a draft list of the type of documentary evidence which the applicant will be able to provide. We will seek to guide applicants to use the evidence they may have which most readily evidences their continuous residence. In many cases it should be possible to confirm five years' residence with five documents or fewer. But the guidance will not be prescriptive or definitive, so that we can take account of individuals' specific circumstances. We recognise that some applicants may lack documentary evidence in their own name for various reasons, and we will work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them. The applicant may submit several types of evidence to cover their claimed period of continuous residence. For example, a dated and signed letter from an employer confirming a 12-month period of UK-based employment which has been undertaken, and confirmation of the employer's status, may be submitted as evidence of residence in that 12-month period and bank statements may be submitted as evidence of residence in the subsequent 12-month period.

The caseworker may request further evidence of residence if appropriate and will ensure that the applicant is given reasonable opportunity to provide it before a decision on the application is made.

The list below is a draft, which we have been discussing with user representatives (particularly those of vulnerable groups) and will continue to refine over coming months.

**Table 1: preferred evidence.** The documents listed below are preferred evidence because a single document may cover a significant period. Where an applicant submits evidence from this list, a single piece of evidence is likely to be sufficient for the period it covers.

- An annual bank statement, or an account summary covering a 12-month period, showing payments received or spending in the UK in at least six months of that year.
- Annual business accounts of a self-employed person.

<sup>38</sup> Or that they are in one of the categories eligible for settled status with less than five years' continuous residence, as described in paragraph 3.7, above.

- A dated and signed letter from an employer, confirming the duration of a period of UK-based employment which has been undertaken, and confirmation of the employer's status (such as registration with HMRC or Companies House). This will be considered evidence of residence for the period of that employment.
- A P60 for a 12-month period (the caseworker may request additional evidence to confirm that the person has been resident in the UK for at least six months of that period).
- A dated and signed letter from an accredited organisation in the UK confirming physical attendance at a course and its duration, or confirming enrolment on a course accompanied by dated and signed evidence of completion (such as a qualification certificate). This will be treated as evidence of residence for the duration of the course.
- A dated and signed letter from a registered care home confirming the period of residence in the home. This will be treated as evidence of residence for that period.
- A dated, addressed invoice from an accredited organisation for school, college or university fees for education requiring physical attendance in the UK, which includes the name of the student, and accompanying evidence of payment. This will be treated as evidence of residence for the relevant academic term(s) or year.
- Documentation issued by the student finance body for England, Wales, Scotland or Northern Ireland or the Student Loans Company that shows a UK address, such as an entitlement notification or repayment statement. This will be treated as evidence of residence for the relevant academic term(s) or year.
- A residential mortgage statement or tenancy agreement, and accompanying evidence of the mortgage or rent being paid (e.g. confirmation from the lender or landlord), will be treated as evidence of residence for the period covered by the statement or agreement.
- A dated, addressed council tax bill will be treated as evidence of residence for the period covered by the bill.
- Evidence of an employer making pension contributions will be treated as evidence of residence for the period covered by the contributions where the employment requires physical presence in the UK.

**Table 2: alternative evidence.** Because the documents listed below cover a shorter period, the applicant will need to submit more of them to evidence that they meet the residence requirement. Where an applicant submits evidence from this list, a single piece of evidence is likely to be sufficient for the period it covers.

- A dated payslip for a UK-based job will be treated as evidence of residence for the period covered by that payslip.

- A dated bank statement showing payments received or spending in the UK. This will be treated as evidence of residence for the period covered by the bank statement.
- A dated invoice for work physically done in the UK. This will be treated as evidence of residence for the month in which it is dated.
- A dated, UK-addressed domestic utility bill featuring the applicant's name will be treated as evidence of residence for the period covered by the bill.
- A dated, UK-addressed domestic bill or contract for a fixed line telephone or for a TV or internet service featuring the applicant's name will be treated as evidence of residence for the period covered by the bill or contract.
- A dated letter from a UK GP or other healthcare professional confirming the applicant's attendance at appointment(s), or a card issued by the healthcare professional confirming those appointment(s). This will be treated as evidence of residence for the period covered by the appointments (or for the month in which a single appointment occurred).
- A dated letter from a UK government department, another UK public body or a UK charity confirming the applicant's physical interaction with them, e.g. Job Centre Plus or Citizens' Advice. This will be treated as evidence of residence for the month in which it is dated, unless it explicitly confirms interactions over a longer period.
- Other dated, UK-addressed domestic bills, e.g. for insurance or home services/repairs, featuring the applicant's name and accompanying evidence of payment will be treated as evidence of residence for the month in which the bill is dated.
- A passport stamp confirming entry at the UK border. This will be treated as evidence of residence for the month of entry.
- A used travel ticket confirming previous inbound travel to the UK. This will be treated as evidence of residence for the month of entry.

**Table 3: unacceptable evidence.** The documents listed below are not from an official or other impartial source, or are not accessible by Home Office caseworkers, and so are not acceptable as evidence of continuous residence for the scheme and should not be provided.

- Character references or testimonials from family and friends.
- Photographs of a wedding or other special occasion.
- Greetings cards or postcards sent or received.
- A personal scrapbook or similar.
- Evidence in multimedia format (CDs, DVDs, USB media sticks etc).

# Annex B

## Draft Immigration Rules for the EU Settlement Scheme

**Set out below is a draft of the Immigration Rules for the EU Settlement Scheme, in a new Appendix EU to those Rules.** This is intended to inform our discussions with our scheme user groups and other stakeholders about the detailed basis on which it is proposed that the scheme will operate. We do not generally expect that applicants will need to consult the Immigration Rules for the scheme, but will be guided by the online application process itself and by supporting user-friendly guidance which will be available on gov.uk.

**A final version of the Immigration Rules will be laid before Parliament under section 3(2) of the Immigration Act 1971.** That version may differ from the draft set out below and from the approach set out elsewhere in this Statement of Intent, including in light of those discussions with stakeholders and others.

**The draft Immigration Rules seek to reflect the basis for the EU Settlement Scheme set out in this Statement of Intent.** Consistent with the draft text of the Withdrawal Agreement, the Immigration Rules for the scheme will enable EU citizens and their family members, and the family members of certain British citizens, to apply for leave under the 1971 Act on a basis which reflects their current EU law rights (e.g. under the Free Movement Directive and the case law of the Court of Justice of the European Union (CJEU)) and the more favourable provision which the UK has decided as a matter of domestic policy to make for them under the scheme.

**The Immigration Rules are secondary legislation and therefore the draft Rules use some different, more technical terms for the policy approach to the scheme set out in this Statement of Intent.** For example, the requirements for being ‘continuously resident’ in the UK set out in paragraph 3.4, above, are reflected in the draft Rules in the terms ‘continuous qualifying period’ (which is defined in Annex 1 to the Rules and which also covers other requirements, such as the circumstances in which that period has to begin by the end of the implementation period on 31 December 2020) and no ‘supervening event’ has occurred (also defined in Annex 1).

The **requirements for the scheme** and the procedure for granting leave under it are set out in **paragraphs EU2 to EU8**.

The requirements for making a **valid application** under the scheme are set out in **paragraph EU9**.

The **eligibility requirements for settled status (indefinite leave to remain)** are set out in **paragraph EU11** (for EU citizens and their family members) and in **paragraph EU12** (for the family members of certain British citizens: ‘Surinder Singh’ cases).

The **eligibility requirements for pre-settled status (five years' limited leave to remain)** are set out in **paragraph EU14**.

The basis on which an application under the scheme will or may be refused on grounds of serious criminality, other public policy considerations or deception, as reflected in the draft text of the Withdrawal Agreement, are set out in **paragraphs EU15 and EU16**.

Appendix EU has been drafted to provide a largely self-contained set of Immigration Rules for the scheme. The terms defined in its Annex 1 will displace any definition of those terms used elsewhere in the Immigration Rules. Work continues on the technical relationship of Appendix EU to other parts of the Immigration Rules and will be reflected as appropriate in the Rules for the scheme to be laid before Parliament.



## Appendix EU: EU citizens and family members

### Purpose

EU1. This Appendix sets out the basis on which an **EU citizen**<sup>39</sup> and their family members, and the family members of a **qualifying British citizen**, will, if they apply under it, be granted indefinite leave to remain or limited leave to remain.

### Requirements and procedure

EU2. The applicant will be granted indefinite leave to remain, where the **decision-maker** is satisfied that:

- A valid application has been made in accordance with paragraph EU9;
- The applicant meets the eligibility requirements for indefinite leave to remain in accordance with paragraph EU11 or EU12; and
- The applicant is not to be refused on grounds of suitability in accordance with paragraph EU15 or EU16.

EU3. The applicant will be granted five years' limited leave to remain, where the decision-maker is satisfied that:

- A valid application has been made in accordance with paragraph EU9;
- The applicant does not meet the eligibility requirements for indefinite leave to remain in accordance with paragraph EU11 or EU12, but meets the eligibility requirements for limited leave to remain in accordance with paragraph EU14; and
- The applicant is not to be refused on grounds of suitability in accordance with paragraph EU15 or EU16.

EU4. Where a person has been granted limited leave to remain under this Appendix:

- They must continue to meet the eligibility requirements for that leave which they met at the date of application or meet other eligibility requirements for limited leave to remain in accordance with paragraph EU14;<sup>40</sup> and
- They remain able to apply for indefinite leave to remain under this Appendix and will be granted this where the decision-maker is satisfied that the requirements in paragraph EU2 are met.

EU5. Where a person has been granted indefinite leave to remain or limited leave to remain under this Appendix and that person also has a right to reside under the **EEA Regulations**, the leave does not have effect to the person's detriment in so far as the leave is incompatible with that right to reside for as long as that person has that right.

EU6. A valid application made under this Appendix which does not meet the requirements for indefinite leave to remain or limited leave to remain will be refused.

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<sup>39</sup> Bold is used once where a term is defined in Annex 1, as a proxy for hyperlinks for now.

<sup>40</sup> This means for example that a person granted limited leave to remain as a family member of a relevant EU citizen will retain that leave if during its currency they become a family member who has retained the right of residence; they will not have to make a further application.

EU7. Annex 1 sets out definitions which apply to this Appendix. Any provision made for those terms elsewhere in the Immigration Rules does not apply to an application made under this Appendix.<sup>41</sup>

EU8. Annex 2 applies to the consideration by the decision-maker of a valid application made under this Appendix.

### **Valid application**

EU9. A valid application has been made under this Appendix where:

- (a) It has been made in the UK using the **required application process**;
- (b) Any required fee has been paid in full in accordance with the required application process;
- (c) The **required proof of identity and nationality** has been provided;
- (d) The **required biometrics** have been provided.

EU10. An application will be rejected as invalid where it does not meet the requirements in paragraph EU9.

### **Eligibility for indefinite leave to remain**

#### **Persons eligible for indefinite leave to remain as a relevant EU citizen or their family member**

EU11. The applicant meets the eligibility requirements for indefinite leave to remain as a **relevant EU citizen** or their family member where the decision-maker is satisfied, including (where applicable) by the **required evidence of family relationship**, that, at the **date of application**, one of conditions 1 to 7 set out in the following table is met:

Condition	Is met where:
1.	The applicant has a <b>documented right of permanent residence</b> and no <b>supervening event</b> has occurred
2.	The applicant is a relevant EU citizen, or a <b>family member of a relevant EU citizen</b> , and there is <b>valid evidence of their indefinite leave to enter or remain</b>
3.	The applicant is (a) a relevant EU citizen, (b) a family member of a relevant EU citizen or (c) a <b>family member who has retained the right of residence</b> , and has completed a <b>continuous qualifying period</b> of five years in any (or any combination) of those categories and since then no supervening event has occurred
4.	(a) The applicant is a relevant EU citizen who is a <b>person who has ceased activity</b> ; and (b) Since they did so, no supervening event has occurred
5.	(a) The applicant is a family member of a relevant EU citizen who is a person who has ceased activity; and

<sup>41</sup> We are continuing to review definitions in paragraph 6 of the Immigration Rules and provisions in Part 1, Part 9 and elsewhere in the Rules to identify any others which need to be used, modified or disappplied for applications under this Appendix.

	(b) The relevant EU citizen has been or is being granted indefinite leave to remain under this Appendix (or would be granted that leave, if they made a valid application under this Appendix); and (c) Sub-paragraph (a) was met at the point at which the relevant EU citizen became a person who has ceased activity; and (d) Since the relevant EU citizen became a person who has ceased activity, no supervening event has occurred
6.	(a) The applicant is a family member of a relevant EU citizen who has died and the relevant EU citizen was resident in the UK as a <b>worker or self-employed person</b> at the time of their death; and (b) The relevant EU citizen was resident in the UK for a continuous qualifying period of at least two years before dying, or the death was the result of an accident at work or an occupational disease; and (c) The applicant was resident in the UK with the relevant EU citizen immediately before their death and since then no supervening event has occurred
7.	(a) The applicant is a <b>child</b> under the age of 21 years of a relevant EU citizen, or of their <b>spouse or civil partner</b> , and either: (i) The marriage was contracted or the civil partnership was formed before the <b>specified date</b> ; or (ii) That person was the <b>durable partner</b> of the relevant EU citizen before the specified date (the definition of durable partner in Annex 1 being met before that date rather than at the date of application) and the partnership remained durable at the specified date; and (b) The relevant EU citizen (or, as the case may be, their spouse or civil partner) has been or is being granted indefinite leave to remain under this Appendix (or, in the case of an <b>Irish citizen</b> who has not made a valid application under this Appendix, they would be granted that leave if they made such an application)

Persons eligible for indefinite leave to remain as a family member of a qualifying British citizen

EU12. The applicant meets the eligibility requirements for indefinite leave to remain as a **family member of a qualifying British citizen** where the decision-maker is satisfied, including by the required evidence of family relationship, that, at the date of application, the applicant is resident in the UK and is a family member of a qualifying British citizen and that condition 1 or 2 set out in the following table is met:

Condition	Is met where:
1.	The applicant has completed a continuous qualifying period of five years, by being in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6), and since then no supervening event has occurred
2.	The applicant is a child under the age of 21 years of the spouse or civil partner of the qualifying British citizen (and the marriage or civil partnership was formed before the specified date); the applicant is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation

	6); and the spouse or civil partner has been or is being granted indefinite leave to remain under this Appendix
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EU13. The reference to the applicant completing a continuous qualifying period of five years:

- In condition 1 in the table in paragraph EU12 can include a period (or combination of periods) during which the applicant was a relevant EU citizen, a family member of a relevant EU citizen or a family member who has retained the right of residence before becoming the family member of a qualifying British citizen; and
- In condition 3 in the table in paragraph EU11 can include a period during which the applicant was a family member of a qualifying British citizen before becoming (as the case may be) a relevant EU citizen, a family member of a relevant EU citizen or a family member who has retained the right of residence.

**Eligibility for limited leave to remain**

EU14. The applicant meets the eligibility requirements for limited leave to remain where the decision-maker is satisfied, including (where applicable) by the required evidence of family relationship, that, at the date of application, condition 1 or 2 set out in the following table is met:

Condition	Is met where:
1.	The applicant is a relevant EU citizen, a family member of a relevant EU citizen or a family member who has retained the right of residence, and is not eligible for indefinite leave to remain under this Appendix solely because they have completed a continuous qualifying period of less than five years
2.	One of the following applies:
	(a) The applicant is a family member of a qualifying British citizen; is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6); and is not eligible for indefinite leave to remain under this Appendix solely because they have completed a continuous qualifying period of less than five years
	(b) The applicant is a child under the age of 21 years of the spouse or civil partner of the qualifying British citizen (and the marriage or civil partnership was formed before the specified date); the applicant is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6); and the spouse or civil partner has been or is being granted limited leave to remain under this Appendix

## **Suitability**

EU15. An application made under this Appendix will be refused on grounds of suitability where any of the following apply at the date of decision:

- (a) The applicant is the subject of an extant **deportation order** or of a decision to make a deportation order; or
- (b) The applicant is the subject of an extant **exclusion order** or **exclusion decision**; or
- (c) The applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights under Directive 2004/38/EC.

EU16. An application made under this Appendix may be refused on grounds of suitability where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application) and the information, representation or documentation is relevant to the decision whether or not to grant the applicant leave under this Appendix.

## Annex 1 – Definitions

Term	Definition
adopted child	means a child adopted in accordance with a decision taken by the competent administrative authority or court in the UK or in a country whose adoption orders are recognised by the UK, or in a particular case in which that decision in another country has been recognised in the UK as an adoption
child	<p>one of the following applies at the date of application:</p> <p>(a) the person is the direct descendant of a relevant EU citizen (or of a qualifying British citizen) or of their spouse or civil partner and is under the age of 21 years; or</p> <p>(b) the person is the direct descendant of a relevant EU citizen (or of a qualifying British citizen) or of their spouse or civil partner, is aged 21 years or over and is dependent on the relevant EU citizen (or on the qualifying British citizen) or on their spouse or civil partner</p> <p>‘dependent’ means here that:</p> <p>(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EU citizen (or of the qualifying British citizen) or of their spouse or civil partner; and</p> <p>(b) such support is being provided to the applicant by the relevant EU citizen (or by the qualifying British citizen) or by their spouse or civil partner; and</p> <p>(c) where the applicant was aged 21 years or over when they came to the UK to join the relevant EU citizen or their spouse or civil partner, the need for such support existed in the applicant’s state of origin or in the state from which they came to the UK, but there is no need to determine the reasons for that dependence or for the recourse to that support</p> <p>in addition:</p> <p>(a) ‘child’ includes an adopted child of, or a child born through surrogacy (where recognised in UK law) for, a relevant EU citizen (or a qualifying British citizen) or their spouse or civil partner, but does not include a child cared for by a relevant EU citizen (or by a qualifying British citizen) or their spouse or civil partner solely by virtue of a legal</p>

	<p>guardianship order or a formal or informal fostering arrangement;<sup>42</sup> and</p> <p>(b) 'direct descendant' also includes a grandchild or great-grandchild, other than for the purpose of meeting condition 7 in the table in paragraph EU11 of this Appendix or condition 2 in the table in paragraph EU12; and</p> <p>(c) 'spouse or civil partner' means (as the case may be) the person described in sub-paragraph (a)(i) of the entry for 'family member of a qualifying British citizen' or in sub-paragraph (a) of the entry for 'family member of a relevant EU citizen' in this table</p>
civil partner	<p>at the date of application:</p> <p>(a) the person is in a civil partnership (which exists under or by virtue of the Civil Partnership Act 2004), or is in a same sex relationship registered overseas which is entitled to be treated as a civil partnership under that Act, with a relevant EU citizen (or with a qualifying British citizen); and</p> <p>(b) it is not a civil partnership of convenience; and</p> <p>(c) neither party has another civil partner, a spouse or a durable partner with (in any of those circumstances) immigration status in the UK based on that person's relationship with that party</p>
continuous qualifying period	<p>a period of residence in the UK:</p> <p>(a) which began before the specified date (or after that date where the person is a family member of a relevant EU citizen and was resident outside the UK at that date); and</p> <p>(b) during which none of the following occurred:</p> <p>(i) absence(s) from the UK which exceeded a total of six months in any 12-month period, except for:</p> <p>(aa) 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</p> <p>(bb) any period of absence on compulsory military service; or</p> <p>(ii) the person served or is serving a sentence of imprisonment of any length in the UK, unless they have resided in the UK continuously for at least 10 years (and have the right of permanent residence in the UK under regulation 15 of the EEA Regulations) and the decision-maker considers that:</p> <p>(aa) before serving a sentence of imprisonment, the person had forged integrating links with the UK; and</p> <p>(bb) the effect of the sentence of imprisonment</p>

<sup>42</sup> See paragraph 6.6, above: we are looking further at these and other aspects of this definition.

	<p>was not such as to break those integrating links; and (cc) taking into account an overall assessment of the person's situation, it would not be appropriate to treat the period of imprisonment as breaking the continuous qualifying period; or (iii) any of the following, unless it has been set aside or no longer has effect in respect of the person: (aa) any decision or order to exclude or remove under regulation 23 or 32 of the EEA Regulations; or (bb) a decision to which regulation 15(4) of the EEA Regulations otherwise refers, unless that decision arose from a previous decision under regulation 24(1); or (cc) an exclusion decision; or (dd) a deportation order, other than under the EEA Regulations; and (c) (where the period is less than five years) which continues at the date of application</p>
custody of a child	means that the child normally lives with the applicant or does so part of the time, and includes arrangements agreed informally and those which are subject to a court order for determining with whom the child is to live and when
date of application	the date on which the application is submitted under the required application process
decision-maker	the Secretary of State
dependent parent	<p>the direct relative in the ascending line of a relevant EU citizen (or of a qualifying British citizen) or of their spouse or civil partner</p> <p>in addition: (a) 'direct relative in the ascending line' includes a grandparent or great-grandparent; and (b) 'spouse or civil partner' means (as the case may be) the person described in sub-paragraph (a)(i) of the entry for 'family member of a qualifying British citizen' or in sub-paragraph (a) of the entry for 'family member of a relevant EU citizen' in this table; and (c) the dependence of the direct relative in the ascending line on the relevant EU citizen (or on the qualifying British citizen), or on their spouse or civil partner, is assumed</p>
dependent relative	<p>at the date of application, the person: (a) is a relative of their sponsor but not their spouse, civil partner, durable partner, child or <b>dependent parent</b>; and (b) holds a <b>relevant document</b> as the dependent relative of their sponsor for the period of residence</p>



	<p>relied upon</p> <p>‘sponsor’ means here:</p> <p>(a) a relevant EU citizen who has been or is being granted indefinite leave to remain or limited leave to remain under this Appendix (or who would be granted that leave, if they made a valid application under this Appendix); or</p> <p>(b) the spouse or civil partner of such a relevant EU citizen, where the application for that relevant document was made before 1 February 2017</p>
deportation order	<p>means, as the case may be:</p> <p>(a) an order made under regulation 32(3) of the EEA Regulations; or</p> <p>(b) an order made under section 5(1) of the Immigration Act 1971 (in respect of conduct after the specified date by a relevant EU citizen or other person eligible for leave under this Appendix); or</p> <p>(c) an order made in accordance with section 32(5) of the UK Borders Act 2007 (in respect of conduct after the specified date by a relevant EU citizen or other person eligible for leave under this Appendix)</p>
documented right of permanent residence	<p>the decision-maker is satisfied from the information available to them that:</p> <p>(a) the person has been issued by the Secretary of State with a document certifying permanent residence or a permanent residence card under regulation 19 of the EEA Regulations; and</p> <p>(b) this document or card was issued or renewed within the last 10 years, and is not invalid under regulation 19(4)(c); and</p> <p>(c) this document or card has not been revoked, and its renewal has not been refused, under regulation 24 (except where this occurred because the person had been absent from the UK for a period of more than two, and no more than five, consecutive years); and</p> <p>(d) the person’s right to reside has not been cancelled under regulation 25</p>
durable partner	<p>at the date of application:</p> <p>(a) the person is in a durable relationship with a relevant EU citizen, with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and</p> <p>(b) the person holds a relevant document as the durable partner of the relevant EU citizen for the period of residence relied upon, unless the date of application is after the specified date and the person was resident outside the UK at that date; and</p>

	<p>(c) it is not a durable partnership of convenience; and</p> <p>(d) neither party has another durable partner, a spouse or a civil partner with (in any of those circumstances) immigration status in the UK based on that person's relationship with that party</p> <p>in addition, to meet condition 6 in the table in paragraph EU11 of this Appendix, the above requirements are to be met with reference to the period immediately before the death of the relevant EU citizen rather than to the date of application</p>
educational course	a general educational course, apprenticeship or vocational training course, as provided by regulation 10(7) of the EEA Regulations
EEA Regulations	the Immigration (European Economic Area) Regulations 2016 (as they have effect at the date of application)
EU citizen	a person who is a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain or Sweden
evidence of birth	<p>means:</p> <p>(a) (in the case of a child) the <b>full birth certificate(s)</b> or other document(s) which the decision-maker is satisfied evidences that the applicant is the direct descendant of the relevant EU citizen (or of the qualifying British citizen) or of their spouse or civil partner, as described (as the case may be) in sub-paragraph (a)(i) of the entry for 'family member of a qualifying British citizen' or in sub-paragraph (a) of the entry for 'family member of a relevant EU citizen' in this table; or</p> <p>(b) (in the case of a dependent parent) the full birth certificate(s) or other document(s) which the decision-maker is satisfied evidences that the applicant is the direct relative in the ascending line of the relevant EU citizen (or of the qualifying British citizen) or of their spouse or civil partner, as described in sub-paragraph (a) above</p>
exclusion decision	means a direction given by the Secretary of State that a person must be refused entry to the UK on the ground that that person's presence here would not be conducive to the public good (in respect of conduct after the specified date by a relevant EU citizen or other person eligible for leave under this Appendix)
exclusion order	means an order made under regulation 23(5) of

	the EEA Regulations
family member of a qualifying British citizen	<p>a person who has satisfied the decision-maker, including by the required evidence of family relationship, that:</p> <p>(a) they are (and for the relevant period have been) or (as the case may be) they were (for the relevant period or at the relevant time):</p> <p>(i) the spouse or civil partner of a qualifying British citizen, and the marriage was contracted or the civil partnership was formed before the specified date; or</p> <p>(ii) the child or dependent parent of a qualifying British citizen; or</p> <p>(iii) the child or dependent parent of the spouse or civil partner of a qualifying British citizen, as described in sub-paragraph (i), above; and</p> <p>(b) they satisfied regulation 9(2) and (4)(a) of the EEA Regulations (as the family member (“F”) to whom those provisions refer) immediately before returning to the UK with the qualifying British citizen (who is to be treated as the British citizen (“BC”) to whom those provisions refer)</p>
family member of a relevant EU citizen	<p>a person who has satisfied the decision-maker, including by the required evidence of family relationship, that they are (and for the relevant period have been) or (as the case may be) they were (for the relevant period or at the relevant time):</p> <p>(a) the spouse or civil partner of a relevant EU citizen, and:</p> <p>(i) the marriage was contracted or the civil partnership was formed before the specified date; or</p> <p>(ii) the applicant was the durable partner of the relevant EU citizen before the specified date (the definition of ‘durable partner’ in this table being met before that date rather than at the date of application) and the partnership remained durable at the specified date; or</p> <p>(b) the durable partner of a relevant EU citizen, and:</p> <p>(i) the partnership was formed and was durable before the specified date; and</p> <p>(ii) the partnership remains durable at the date of application (or it did so immediately before the death of the relevant EU citizen); or</p> <p>(c) the child or dependent parent of a relevant EU citizen; or</p> <p>(d) the child or dependent parent of the spouse or civil partner of a relevant EU citizen, as described in sub-paragraph (a), above; or</p> <p>(e) resident in the UK before the specified date as the <b>dependent relative</b> of a relevant EU citizen</p>

	<p>(or of their spouse or civil partner, where the application for the relevant document referred to in the entry for 'dependent relative' in this table was made before 1 February 2017) and that family relationship and dependency existed before the specified date (or, as the case may be, before 1 February 2017)</p>
<p>family member who has retained the right of residence</p>	<p>a person who has satisfied the decision-maker, including by the required evidence of family relationship, that the requirements set out in one of sub-paragraphs (a) to (d), below, are met:</p> <p>(a) the applicant is a non-EU citizen who:</p> <p>(i) was the family member of a relevant EU citizen (or of a qualifying British citizen) and that person died; and</p> <p>(ii) was resident in the UK as the family member of a relevant EU citizen (or of a qualifying British citizen) for a continuous qualifying period of at least a year immediately before the death of that person; or</p> <p>(b) the applicant is an EU citizen or non-EU citizen who:</p> <p>(i) is the child of:</p> <p>(aa) a relevant EU citizen (or of a qualifying British citizen) who has died or of their spouse or civil partner immediately before their death; or</p> <p>(bb) a person who ceased to be a relevant EU citizen (or a qualifying British citizen) on ceasing to reside in the UK or of their spouse or civil partner at that point; and</p> <p>(ii) was attending an <b>educational course</b> in the UK immediately before the relevant EU citizen (or the qualifying British citizen) died or ceased to be a relevant EU citizen (or a qualifying British citizen), and continues to attend such a course; or</p> <p>(c) the applicant is an EU citizen or non-EU citizen who is the parent with <b>custody of a child</b> who meets the requirements of sub-paragraph (b); or</p> <p>(d) the applicant ("A") is a non-EU citizen who:</p> <p>(i) ceased to be a family member of a relevant EU citizen (or a qualifying British citizen) on the <b>termination of the marriage or civil partnership</b> of A; and</p> <p>(ii) was resident in the UK at the date of the termination; and</p> <p>(iii) one of the following applies:</p> <p>(aa) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership,</p>

	<p>the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had been resident in the UK for a continuous qualifying period of at least one year during its duration; or</p> <p>(bb) A has custody of a child of the relevant EU citizen (or the qualifying British citizen); or</p> <p>(cc) A has the right of access to a child of the relevant EU citizen (or the qualifying British citizen), where the child is under the age of 18 years and where a court has ordered that such access must take place in the UK; or</p> <p>(dd) the continued right of residence in the UK of A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence or abuse whilst the marriage or civil partnership was subsisting</p>
full birth certificate	a birth certificate recognised in the UK which records the name of the mother and (where registered) the father
immigration status in the UK	indefinite or limited leave to enter or remain in the UK under or outside the Immigration Rules; exemption from immigration control; or the entitlement to reside in the UK or the right of permanent residence in the UK under regulations 13 to 15 of the EEA Regulations
Irish citizen	a person who is an Irish citizen as a matter of Irish law
marriage of convenience civil partnership of convenience durable partnership of convenience	a marriage, civil partnership or durable partnership entered into as a means to circumvent: (a) any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations; or (b) any other provision of UK immigration law or any requirement of the Immigration Rules; or (c) any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law
non-EU citizen	a person who is not an EU citizen and is not a British citizen
person who has ceased activity	the person: (a) has terminated activity as a worker or self-employed person in the UK and either reached the age of entitlement to a state pension on terminating that activity or, in the case of a worker, ceased working to take early retirement; and immediately before that termination, was a worker or self-employed person in the UK for at least 12 months and resided in the UK for a continuous qualifying period of more than three years; or

	<p>(b) stopped being a worker or self-employed person owing to permanent incapacity to work, having resided in the UK for a continuous qualifying period of more than the preceding two years or the incapacity having resulted from an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the UK; or</p> <p>(c) resided in the UK for a continuous qualifying period of at least three years as a worker or self-employed person, immediately before becoming a worker or self-employed person in an EU country mentioned in the entry for 'EU citizen' in this table, while retaining a place of residence in the UK to which they return, as a rule, at least once a week</p> <p>in addition, the conditions as to length of residence and of employment in sub-paragraphs (a) and (b), above, do not apply where the decision-maker is satisfied, including by the required evidence of family relationship, that the relevant EU citizen is the spouse or civil partner of a British citizen (substituting 'British citizen' for 'relevant EU citizen' in the entry for, as the case may be, 'spouse' or 'civil partner' in this table)</p>
qualifying British citizen	<p>a British citizen who:</p> <p>(a) has been or was resident in the UK with the applicant for a continuous qualifying period which corresponds with the continuous qualifying period on which the applicant relies; and</p> <p>(b) satisfied regulation 9(2) and (4)(a) of the EEA Regulations (as the British citizen ("BC") to whom those provisions refer) immediately before returning to the UK with the applicant (who is to be treated as the family member ("F") to whom those provisions refer)</p>
relevant document	<p>a family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card which:</p> <p>(a) was issued by the UK under the EEA Regulations (and was not subsequently revoked, or fell to be so, because the relationship or dependency had never existed or had ceased); and</p> <p>(b) has not expired or which remained valid for the period of residence relied upon</p>
relevant EU citizen	<p>means:</p> <p>(a) an EU citizen resident in the UK for a continuous qualifying period; or</p> <p>(b) where the applicant is a family member of an EU citizen resident in the UK for a continuous qualifying period who is a relevant naturalised British citizen, a relevant naturalised British citizen</p>

	resident in the UK for a continuous qualifying period
relevant naturalised British citizen	[to be confirmed in light of planned changes to the EEA Regulations to implement the CJEU judgment in Lounes]
required application process	[see paragraph 4.4, above: drafting to be confirmed]
required biometrics	[see paragraph 4.10, above: drafting to be confirmed]
required evidence of family relationship	<p>in the case of:</p> <p>(a) a spouse – a relevant document as the spouse of the relevant EU citizen, or a valid marriage certificate recognised under the law of England and Wales, Scotland or Northern Ireland or of the country in which the marriage was contracted;</p> <p>(b) a civil partner – a relevant document as the civil partner of the relevant EU citizen; a valid civil partnership certificate recognised under the law of England and Wales, Scotland or Northern Ireland; or the valid overseas registration document for a same sex relationship which is entitled to be treated as a civil partnership under the Civil Partnership Act 2004;</p> <p>(c) a child – a relevant document issued on the basis of the relevant family relationship or their evidence of birth;</p> <p>(d) a dependent parent – a relevant document issued on the basis of the relevant family relationship or their evidence of birth;</p> <p>(e) a durable partner:</p> <p>(i) a relevant document as the durable partner of the relevant EU citizen and, unless this confirms the right of permanent residence in the UK under regulation 15 of the EEA Regulations, evidence which satisfies the decision-maker that the durable partnership continues to subsist (or did so for the period of residence relied upon); or</p> <p>(ii) where the applicant is seeking to come to the UK after the specified date, evidence which satisfies the decision-maker that the partnership was formed and was durable before that date and that the partnership remains durable; or</p> <p>(f) a dependent relative – a relevant document as the dependent relative of their sponsor (in the entry for ‘dependent relative’ in this table) and, unless this confirms the right of permanent residence in the UK under regulation 15 of the EEA Regulations, evidence which satisfies the decision-maker that the relationship and dependency continue to subsist (or did so for the period of residence relied upon)</p>

in addition:

(a) where the eligibility requirements to be met for leave to be granted under this Appendix relate to the death of a person, the required evidence of family relationship must include their death certificate or other evidence which the decision-maker is satisfied evidences the death; and  
(b) where the applicant is a non-EU citizen without a documented right of permanent residence, the required evidence of family relationship must include:

(i) the following proof of identity and nationality of (as the case may be) the relevant EU citizen, or the qualifying British citizen, of whom the applicant is a family member:

(aa) (in the case of an EU citizen or a qualifying British citizen) their valid passport (and 'valid' here and in sub-paragraph (bb) means that the document is genuine and has not expired or been cancelled or invalidated); or

(bb) (in the case of an EU citizen) their valid national identity card; or

(cc) (in the case of an Irish citizen) their full birth certificate, unless (in any case) the decision-maker agrees to accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons; and

(ii) evidence which satisfies the decision-maker that:

(aa) where the applicant is a family member of a relevant EU citizen, either that EU citizen was a relevant EU citizen throughout the continuous qualifying period on which the applicant relies as being a family member of a relevant EU citizen; or that EU citizen is a relevant EU citizen who has been or is being granted indefinite leave to remain under this Appendix (or who would be granted that leave, if they made a valid application under this Appendix); or

(bb) where the applicant is a family member of a qualifying British citizen, that British citizen was a qualifying British citizen throughout the continuous qualifying period on which the applicant relies as being a family member of a qualifying British citizen; and

(c) other than in sub-paragraph (b)(i), above, where, in order to meet the requirements of this entry, the applicant submits a copy (and not the original) of a document, the decision-maker can require the applicant to submit the original



	document where the decision-maker has reasonable doubt as to the authenticity of the copy submitted
required proof of identity and nationality	<p>(a) (in the case of an EU citizen or a non-EU citizen) their valid passport; or</p> <p>(b) (in the case of an EU citizen) their valid national identity card; or</p> <p>(c) (in the case of an Irish citizen) their full birth certificate; or</p> <p>(d) (in the case of a non-EU citizen) their valid <b>specified relevant document</b> or their valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), unless (in any case) the decision-maker agrees to accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons</p> <p>in addition, 'valid' here means that the document is genuine and has not expired or been cancelled or invalidated</p>
self-employed person	<p>there is evidence which satisfies the decision-maker that the person is, or (as the case may be) for the relevant period was, either:</p> <p>(a) a self-employed person as defined in regulation 4(1) of the EEA Regulations; or</p> <p>(b) a person who is or was no longer in self-employment but who continues or continued to be treated as a self-employed person within the meaning of qualified person under regulation 6</p>
specified date	2359 Greenwich Mean Time on 31 December 2020
specified relevant document	means, within the meaning of 'relevant document' in the relevant entry in this table, a residence card or permanent residence card issued on the basis of an application made on or after 16 March 2015
spouse	<p>at the date of application:</p> <p>(a) the person is party to a marriage with a relevant EU citizen (or with a qualifying British citizen) and the marriage is recognised under the law of England and Wales, Scotland or Northern Ireland or is lawfully recognised in the country in which it was contracted; and</p> <p>(b) it is not a marriage of convenience; and</p> <p>(c) neither party has another spouse, a civil partner or a durable partner with (in any of those circumstances) immigration status in the UK based on that person's relationship with that party</p>
supervening event	<p>means that at the date of application:</p> <p>(a) the applicant has been absent from the UK for</p>

	<p>a period of more than five consecutive years (at any point since they last acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations); or</p> <p>(b) any of the following events has occurred, unless it has been set aside or no longer has effect in respect of the person:</p> <p>(i) any decision or order to exclude or remove under regulation 23 or 32 of the EEA Regulations; or</p> <p>(ii) a decision to which regulation 15(4) of the EEA Regulations otherwise refers, unless that decision arose from a previous decision under regulation 24(1); or</p> <p>(iii) an exclusion decision; or</p> <p>(iv) a deportation order, other than under the EEA Regulations</p>
termination of the marriage or civil partnership	the date on which the order finally terminating the marriage or civil partnership is made by a court
valid evidence of their indefinite leave to enter or remain	<p>means:</p> <p>(a) a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated; or</p> <p>(b) the decision-maker is otherwise satisfied from the information available to them that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated</p>
worker	<p>there is evidence which satisfies the decision-maker that the person is, or (as the case may be) for the relevant period was, either:</p> <p>(a) a worker as defined in regulation 4(1) of the EEA Regulations; or</p> <p>(b) a person who is or was no longer working but who continues or continued to be treated as a worker within the meaning of qualified person under regulation 6</p>

## **Annex 2 – Consideration of a valid application**

A2.1. A valid application made under this Appendix will be decided on the basis of:

- (a) the information and evidence provided by the applicant, including in response to any request for further information or evidence made by the decision-maker; and
- (b) any other information or evidence made available to the decision-maker (including from other government departments) at the date of decision.

A2.2.(1) For the purposes of deciding whether the applicant meets the eligibility requirements for indefinite leave to remain or for limited leave to remain, the decision-maker may invite the applicant to:

- (a) provide further information or evidence that they meet those requirements; or
- (b) attend an interview with the decision-maker.

(2) If the applicant purports to meet the eligibility requirements for indefinite leave to remain or for limited leave to remain on the basis of a relationship with another person (“P”), including where P is a qualifying British citizen, the decision-maker may invite P to:

- (a) provide information or evidence about their relationship with the applicant, their residence in the UK or, where P is a qualifying British citizen, their residence in an EU country mentioned in the entry for ‘EU citizen’ in the table at Annex 1 to this Appendix; or
- (b) attend an interview with the decision-maker.

(3) If the applicant or P (as the case may be):

- (a) fails to provide the information or evidence requested; or
- (b) on at least two occasions, fails to attend an interview if so invited,

the decision-maker may draw any factual inferences about whether the applicant meets the eligibility requirements for indefinite leave to remain or for limited leave to remain as appear appropriate in the circumstances.

(4) The decision-maker may decide following the drawing of a factual inference under subparagraph (3) that the applicant does not meet the eligibility requirements for indefinite leave to remain or for limited leave to remain.

(5) The decision-maker must not decide that the applicant does not meet the eligibility requirements for indefinite leave to remain or for limited leave to remain on the sole basis that the applicant or P failed on at least two occasions to comply with an invitation to attend an interview.

