

EU Settled Status

How EU/EAA archaeologists can continue living, working and studying in the UK, without a need for visas.



BAJR Series
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Apply before 30th June 2021.

Post-Brexit Settlement Status. How EU/EAA archaeologists can continue living, working and studying in the UK, without a need for visas. Apply before 30th June 2021.

Introduction

Are you an archaeologist working in the UK with EU or EAA citizenship? Are you aware there is a June 30th cut-off date for applying for 'settled' or 'pre-settled' status, allowing you to continue living and working in the UK without the need for a visa? Would you like to find out more? Read on...

As a result of the UK exiting (Brexit) the European Union (EU) in January 2020 and the end of an agreed transition period on 31st December 2020, the status of EU and EEA citizens living and working in the UK has changed. The UK government has agreed the **EU SETTLEMENT SCHEME** for EU/EAA citizens. The scheme allows for applicants to attain '**SETTLED**' or '**PRE-SETTLED**' status, providing they have been resident in the UK before January 1st 2021 and register before 30th June 2021. Those whose registration is successful will be allowed to continue living and working in the UK without the need for a working visa. Those who do not register or whose registration is unsuccessful, may find that employment, access to benefits and/or housing will become restricted.

Achieving **SETTLED** status largely depends upon previous residency in the UK. Applicants need to have been here before January 1st 2021. EU/EAA citizens who arrive on or after January 1st will be treated the same as arrivals from elsewhere in the world and will need to apply for a visa, specific to their intention in the UK i.e working, studying etc etc. Details of the **SETTLED** scheme and how to apply are given below.

Applicants who are working towards establishing residency or where their initial application for 'settled' status is rejected, can be considered for **PRE-SETTLED** status. Although clearly not as advantageous as settled status, **PRE-SETTLED** status provides many advantages, including the right to work, access to the NHS and to other benefits. Details of the **PRE-SETTLED** scheme are also given below.

Application for **PRE-SETTLED** status follows the same procedure as for full **SETTLED** status.

Once either **SETTLED** or **PRE-SETTLED** is established, successful candidates can if they wish, live and work outside of the UK for periods up to 5 years, without losing their right to return, visa free, to the UK for residency, work or study.

If you fall into the group of EU/EAA archaeologists affected as a result of Brexit, consider seriously making an application. It is free, sure it is a little bureaucratic, but at the end of the day it could allow you a much easier life !!

Many thanks to David Connolly (BAJR) for hosting this guide

Kevin Wooldridge, Lowestoft, January 2021

1 Settled status and how to get there.

1.1 Why does it matter?

If you're a British or Irish citizen, you don't need to apply to stay in the UK. None of the consequences of Brexit apply to your right to live work and study in the UK. But please continue reading if you have an EU/EAA colleague who might benefit from registering their status to stay in the UK.

If you are a citizen of an EU/EAA state and have lived in the UK for 5 years, following Brexit you are entitled to apply for **SETTLED** status. Settled status will enable yourself (and your immediate family) to remain in the UK, with a right to work, study, use the NHS, claim UK benefits etc etc, without the need for additional visa or registration requirements. Settled status will allow an individual the right to:

- stay in the UK
- work in the UK
- study in the UK
- use the NHS
- claim benefits - including the State Pension
- rent a home

If you get settled status, you can:

- live and work in the UK for as long as you like
- live outside the UK for up to 5 years in a row without losing your status
- bring your family to live in the UK

You might also find it easier to apply for British citizenship if you have settled status.

If you achieve SETTLED STATUS and leave the UK, you can spend up to 5 years in a row outside the UK without losing your right to return, work, study, use the NHS, and claim benefits....

Why does it matter?

Settled status is a one-off, time limited opportunity that, to be honest, is too good to be missed. Whilst the UK might take a long time to get over Brexit, for non-UK workers the Settlement offer is about as good as it gets and the closest to the pre-2016 position. If successful, you can still work, study and live in the UK as can your immediate dependents. And Settled status doesn't limit you to exclusive residence or employment in the UK for the rest of your life. You can still take breaks, up to 5 years, without losing your rights.



1.2 Qualifying for Settled status

1.2.1 The deadline for applying for settled status is 30 June 2021. You must have started living in the UK by 31 December 2020. It's free to apply to the scheme. Do not be taken in by immigration agents offering to provide access or help with applying to the scheme. Whilst their activities are legal, they can (and will) charge a fee.

Settled status does not require that you have been CONTINUOUSLY resident in the UK for 5 years. To be eligible for settled status, you usually need to provide evidence of residence in the UK, the Channel Islands or the Isle of Man for at least 6 months in any 12 month period for 5 years in a row. You need to provide proof of this when you apply. There are two main routes to establishing UK residence.

1.2.2 National Insurance route If you arrived in the UK before 31 December 2020, you can give your National Insurance number to allow an automated check of your residence based on tax and certain benefit records. If this check is successful, you do not need to provide further documentation as proof of residence.

1.2.3 Other document route You only need to provide documents, if you have been here for 5 years in a row, but there is not enough National Insurance data to confirm continuous residence. The Home Office will tell you immediately after you apply if you need to provide any documents.

All the documents you submit as evidence of your residence in the UK by 31 December 2020, must be dated and have your name on them. You should only provide one piece of evidence to cover each month or longer period of time. You can upload a maximum of 10 documents to show evidence of UK residence. Each document must be no more than 6MB in size. Use documents that cover longer periods of time if you can, such as annual bank statements, council tax bills or university letters and certificates. This means you will not need to submit as many documents. A document with a single date on will count as proof of residence for that month only, for example a monthly electricity bill, an official letter or a GP appointment card. The Home Office will contact you if they need further information.



1.3 Evidence that covers longer periods of time

The lists of evidence below are not exhaustive. The Home Office can consider other forms of evidence on a case-by-case basis. Documents that cover a longer period of time between 2 dates include:

- annual bank statement or account summary, showing at least 6 months of payments received or spending in the UK
- employer letter confirming employment and evidence that the employer is genuine
- council tax bill
- letter or certificate from your school, college, university or other accredited educational or training organisation showing the dates you enrolled, attended and completed your course
- invoice for fees from your school, college, university or other accredited educational or training organisation and evidence of payment
- document showing a UK address from a student finance body in England, Wales, Scotland or Northern Ireland or from the Student Loans Company
- residential mortgage statement or rental agreement and evidence of payment
- letter from a registered care home confirming your residence there
- employer pension contributions
- annual business account of a self-employed person
- a [P60](#) for a 12-month period – your P60 shows the tax you've paid on your salary in the tax year (6 April to 5 April). We may ask you for additional evidence to confirm that you were resident here for at least 6 months of that period.
- a [P45](#) showing the length of your previous employment. You should get a P45 from your employer when you stop working for them.

1.4 Evidence that covers shorter periods of time

These documents count as evidence for one month if they have a single date on them. They can be used to cover a longer period of time if they have a start and end date covering longer than a month.

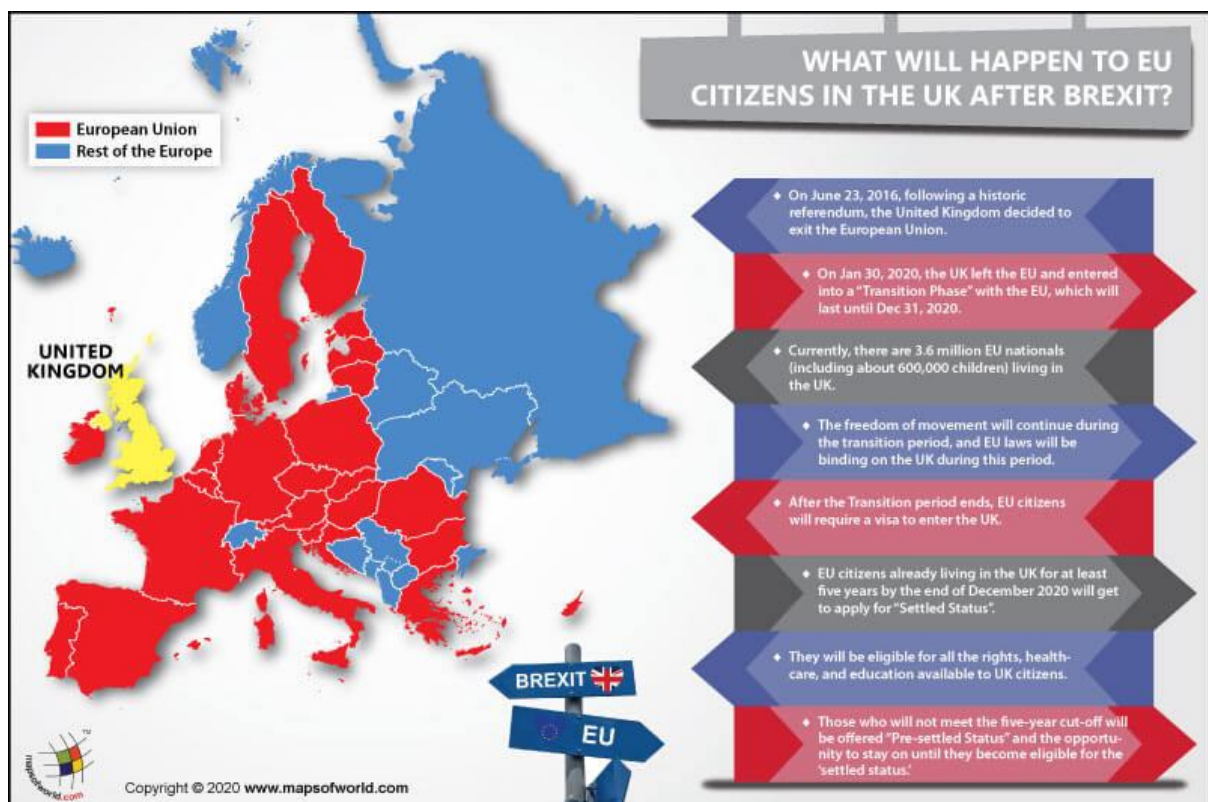
- bank statement showing payments received or spending in the UK
- payslip for a UK-based job
- water, gas or electricity bill showing a UK address
- landline or mobile telephone, TV or internet bill showing a UK address
- domestic bill, such as for home repairs, vet's services or insurance, and evidence of payment
- card or letter from your GP, hospital or other healthcare professional confirming appointments you have made or attended
- letter from a government department, public service or charity that show you dealt with them on a particular date or for a particular period (for example Job Centre Plus or Citizens Advice)
- passport stamp confirming entry at the UK border
- used travel ticket confirming you entered the UK from another country
- invoice for work you have done in the UK and evidence of payment

1.5 Documents you CANNOT use as evidence

The documents you use should be from an official or impartial source. You cannot use:

- photos and videos
- letters or references from family and friends
- greeting cards, for example birthday cards
- postcards sent or received
- personal scrapbooks


If there is insufficient evidence in an applicants own name, the Home Office will work with the applicant to confirm when they have been resident in the UK based on all the evidence available.



2 How to apply

Applications for settled status should be made online (see link below) and can be made from laptops, Android or I-phones.

<https://apply-to-visit-or-stay-in-the-uk.homeoffice.gov.uk/euss?qitg=2f5403d6-a093-4ebb-b60e-00c294a17bd7&qitp=2a094c29-9799-464b-89b6-2698a19bba1d&qitts=1610711121&qitc=homeoffice&qite=prodoct2019&qitrt=Safetynet&qith=90b73856facd4203cdb26d8bed554d18>

Settled vs Pre-Settled Status			
	Pre-Settled	Settled	
How long is it granted for?	<p>For five years, but you will lose it if you leave the UK for a period of 2 consecutive years.</p> <p>In addition, your period of "continuous residence" resets to 0 if you spend over 6 months abroad in any 12-month period. This means you will lose the ability to change your pre-settled status to settled. It can also be revoked for subsequent criminal offending.</p>	<p>Forever, but you will lose it if you leave the UK for a period of 5 consecutive years (4 years for Swiss citizens). It can also be revoked for subsequent criminal offending.</p>	
What are my employment and welfare rights?	<p>You will enjoy the same rights to live, work, and healthcare, but pre-settled status does not count as "right to reside" for the purposes of welfare benefits.</p> <p>You may be able to show your right to reside under EEA regulations by being a worker for example. However, it is unclear whether these regulations will apply following a no-deal.</p> <p>This may not matter now but if you need to access support because of ill health, unemployment or domestic violence you will need to demonstrate your right to reside.</p>	<p>You will enjoy the same rights to live, work, healthcare and welfare as UK citizens as your settled status is evidence that you have a right to reside in the UK.</p>	

3 Pre-Settled status

3.1 If the application process indicates there is insufficient evidence proving an applicants claim to have lived in the continuously UK for 5 years, the applicant may still be **ELIGIBLE FOR PRE-SETTLED STATUS**. Applicants who fail to attain 'settled' status are entitled to gain **pre-settled status**. Pre-settled status may be granted to applicants who do not satisfy the conditions for settled status at the time of their initial application, but may gain that status at a later date.

If an applicant does not have 5 years' continuous residence they will usually be granted **pre-settled status**. They must have started living in the UK by 31 December 2020, unless applying as a close family member of an EU, EEA or Swiss citizen who started living here by then. They can stay in the UK for a further 5 years from the date of attaining pre-settled status. This can be changed to settled status once 5 years' continuous residence is achieved. This must be done before 'pre-settled' status expires.

If an applicant reaches 5 years' continuous residence at some point before 30 June 2021, they can choose to wait to apply until they reach 5 years' continuous residence. This means that if the application is successful, they will get settled status without having to go through the process of pre-settled status first.

3.2 Applicant has already left UK. If an applicant has left the UK, they may still be able to get pre-settled status if they were living in the UK before 31 December 2020, even if they were not here on that date. They still must satisfy the condition of having resided in the UK, Channel Islands or the Isle of Man for 6 months or more in any 12 month period over the previous 5 years.

An applicant MAY be eligible if they were living in the UK by 31 December 2020, but left for one period of no more than 12 months for an important reason (for example childbirth, serious illness, study, vocational training or an overseas work posting). Previous residence in the UK will count towards eligibility for pre-settled status.

3.3 Rights with pre-settled status are identical to those of settled status. A successful pre-settled applicant will be able to:

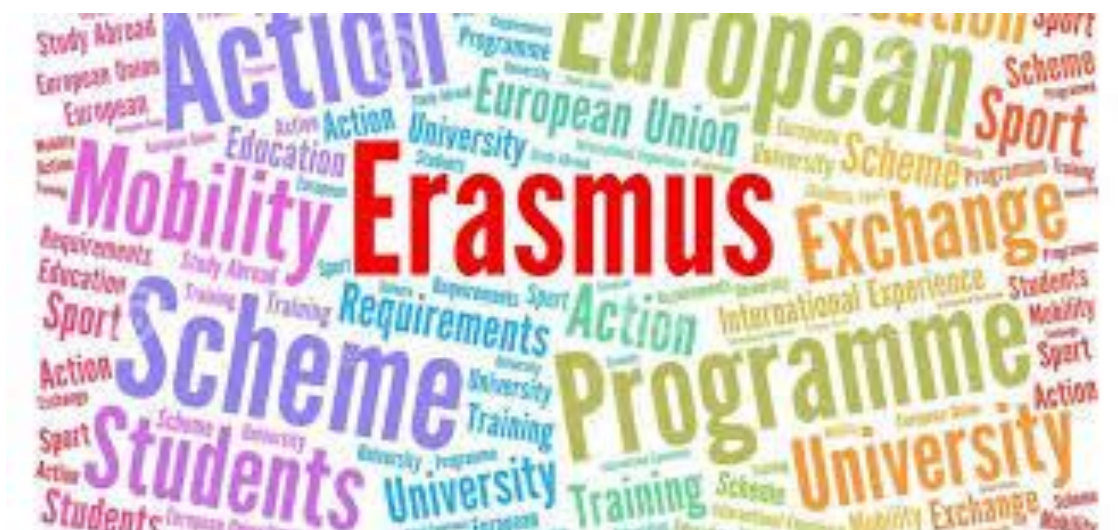
- work in the UK
- use the NHS for free, (if they can at the moment)
- enrol in education or study in the UK
- access public funds such as benefits and pensions, if eligible
- travel in and out of the UK
- If you have settled status and want to spend time outside the UK, you can spend up to 5 years in a row outside the UK without losing your status.

3.4 If you have pre-settled status, you can spend up to 2 years in a row outside the UK without losing your status. You will need to maintain your continuous residence if you want to qualify for settled status.

4.1 Erasmus

4.2 The Turing scheme

UK academic organisations will be invited to bid into the **TURING** scheme in early 2021. Successful applications will receive funding for administering the scheme and students taking part will receive grants to help them with the costs of their international experience. The benefits of the exchanges to schools and colleges will be assessed and the learnings used to build on future schemes. Funding decisions for subsequent years will be subject to future spending reviews. To meet delivery timescales, universities, colleges and schools are encouraged to begin preparation with international partners as soon as possible.



4.3 Graduate working visas

The **TURING** scheme however, is not entirely the end of things. The UK government has proposed a new student work visa scheme that will allow overseas graduates from UK universities to work for up to 2 years in the UK after completing their studies. The scheme as currently understood would apply to both undergraduate and post-graduate students.

Key features announced so far:

- The new immigration route will be open to international students who have completed a degree at undergraduate level or above at a Higher Education Institution with a track record of compliance
- Successful applicants on this route will be able to stay and work (in any sector or at any level), or look for work, in the UK for a maximum period of two years. The visa is not extendable but graduates will be able to switch into skilled work once they have found a suitable job
- It is expected that students entering the UK in the 2020-21 academic year intake will be eligible for this route. The UKCISA website mentions that students who have current Tier 4 leave when the new route is introduced may also be able to benefit from it.
- Students whose Tier 4 visa expires before the route is introduced will not be eligible for the post-study work visa.
- The route will require an in-country application. A (so far unspecified) application fee and an Immigration Health Surcharge payment will be applicable. Applicants will be subject to identity, criminality and security checks.

Please note: Due to the limited information available at this time (January 2021), it is not possible to confirm precise requirements for eligibility under this route. As and when these requirements and clarifications become clearer, this document will be updated.

The following link gives more information on the Student and child Tier 4 visa guide v 2, December 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939075/student-route-casework-guidance-v2.0ext.pdf. Accessed 14.01.2021

5 Employers

5.1 What steps do employers need to take? An interesting question and one which hasn't really been addressed to date despite the settled and pre-settled schemes having been announced for close on 2 years. There are currently sanctions under UK law that can be applied to employers using workers who are not covered by nationality or visa conditions. There is no indication that the current sanctions will be removed for employers continuing to employ EU/EAA citizens beyond 30th June 2021 who have not registered for either settled or pre-settled status.

5.2 Sanctions. Under existing legislation, an employer can be sent to jail for 5 years and pay an unlimited fine if found guilty of employing someone who they knew or had 'reasonable cause to believe' did not have the right to work in the UK. Sanctions can be applied if the employer had any reason to believe

- an employee did not have leave (permission) to enter or remain in the UK
- an employee's leave (permission) had expired
- an employee was not allowed to do certain types of work
- an employee's papers were incorrect or false

An employer is required to check their employees have the right to work in the UK and make sure their documentation is valid. An employer can be penalised if they employ someone who does not have the right to work and they did not carry out the correct checks, or did not do them properly. If this happens, an employer might get a 'referral notice' to let them know a case is being considered and that they could be liable to pay a civil penalty (fine) of up to £20,000 for EACH illegal worker.

If an employer is found liable, they will be sent a 'civil penalty notice' and will have 28 days to respond. The notice will explain how to pay, what to do next, and how to object to the decision. Details of the business may be published by Immigration Enforcement as a warning to other businesses not to employ illegal workers. An employer will not have to pay the civil penalty if they can demonstrate they have made the correct 'right to work' checks.

Employers who seek to dismiss staff whose employment status has changed as a result of Brexit may still be liable for redundancy notice and redundancy payments.

See the link below and appendix 1 for employer guidance when an employee's right to work in the UK has changed or might change.

Settlement Scheme: Introduction for employers https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941992/6.7018_HO_EU-Exit-SS_Employers_Intropack_A4_4pp_Final_v2_Web1.pdf

6 Appendix 1: Advice to employers

The following advice for employees regarding employees whose visa or employment status might be affected as a result of Brexit is taken from Shoosmiths web page. (see link below).

<https://www.shoosmiths.co.uk/insights/articles/dismissing-employees-due-to-right-to-work-issues-13746>.

6.1 Recommended process

The following is advice for employers regarding the treatment of staff whose visa either has or is about to expire. Given uncertainty and the risk of unfair dismissal claims employers should:

- make their best efforts to ensure that they investigate an employee's immigration status in good time before the expiry of an employee's limited leave to remain;
- ensure that an individual's immigration status and necessary dates are recorded and maintained with appropriate flags and alerts so that you are aware, in good time beforehand, of the dates up on which the employee's right to work expires;
- at least six to eight weeks prior to the expiration date, check with the employee whether she/he intends to apply for a further visa and provide such support as necessary;
- know which rules apply. For example, in some cases an application cannot be submitted until 28 days prior to the expiration date so ensure that you are aware of the necessary timescales;
- request that the employee confirms when the application has been submitted.

6.2 If an eligible worker does not apply for Settled status

In the event that the employee has not made an application for settled status, a short timescale (five to seven days) should be provided for her/him to demonstrate that the application has been made, failing which a meeting should be arranged to discuss the employee's continued employment and they should be warned that dismissal could be a potential outcome. Depending on the employee's situation and the timescales available, the decision to dismiss may be deferred to a later date pending action by the employee to provide the correct information.

In the event of a pending immigration application, the company should satisfy itself that the employee's application is valid and preserves the employee's leave on the same basis as she/he had been working previously (including by using the Employer Checking Service).

6.3 Grace period

Upon receipt of a positive check, the employer has a 28 day grace period following the expiry of the right to work before becoming criminally liable for illegal working, until 28th July 2021. Communications should continue with the employee during this period but if they are unable to provide evidence of the right to work prior to the end of this period, the employer should move to dismiss. If there has been some failure in the recommended process, or the employer finds itself otherwise in the situation of employing an individual who is unable to provide evidence of continued right to work on the expiry date of the visa, it should consider immediate dismissal.

6.4 Steps to follow when dismissing

A meeting should be held with the employee immediately (either by phone or in person), to understand what steps have been taken to obtain the necessary right to work documentation. The employer should use the Employer Checking Service as this will provide confirmation of any outstanding application. In the event of a negative response, a further meeting should be held with the employee on the same day during which the employee should be notified that they are being dismissed.

Even in this situation, there still remains a risk of an unfair dismissal claim in the event that the employee is not in fact working illegally. We therefore recommend that the employee is offered the right of appeal so that the employer has the opportunity to correct the decision in the event that it was wrong. For example, the application may have been made in time but not yet processed and so it did not register on the Employer Checking Service.

A dismissal in this situation would be without notice. Ideally, all contracts will have a clause requiring the employee to be able to demonstrate that they have the right to work in the UK - an employee would be in fundamental breach of their contract by failing to provide evidence of that; giving the employer the right to dismiss without notice.

Where there is no such clause, some more cautious employers may consider making a payment in lieu of notice in this situation, to avoid a wrongful dismissal claim, but this may not be necessary and could always be offered at a later stage, as part of settlement negotiations in the event of a threat of a claim.

If an employee is working illegally, suspension is not an option. The individual is still be employed while suspended, exposing the employer to criminal sanctions and large fines.

6.5 Key point

The process for checking right to work documents should be commenced at an early stage to avoid the need to make a last minute decision on termination at or after the date of expiry of right to work. It will then only be in exceptional circumstances that the company is forced to dismiss summarily with limited investigation.



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