



## **TECHNICAL NOTE: CITIZENS' RIGHTS - ADMINISTRATIVE PROCEDURES IN THE UK**

1. The UK will be bound by the obligations set out in the Withdrawal Agreement as a matter of international law. The citizens' rights chapter of this Agreement will be incorporated in UK law, which means that the UK authorities will be required to confer the status and rights defined in the Withdrawal Agreement upon those EU citizens and their family members who fall within its scope, and EU citizens will be able to enforce their rights on that basis.
2. In the UK, the route for individuals to obtain this status will be by application to the UK authorities, made within a period of time after exit as specified by the UK authorities. Obtaining this status will be a condition for lawful residence in the UK and enable these people to easily prove their unique status and rights, as guaranteed by the Agreement, to the UK authorities, employers, public service providers and others, in a convenient way in the future.

### ***Streamlined application system***

3. People are concerned that the application process will be complicated and bureaucratic. The UK recognises that the system it currently has in place for dealing with the processing of registration certificates and residence cards under Directive 2004/38 is not fit to deal with the situation after we leave the EU. We are therefore designing a new system from scratch, with new processes, technology, rules and support for applicants. The process will be designed with users in mind, and we will engage with them every step of the way. The UK has established user groups, consisting of representatives of EU citizens in the UK, and digital, technical and legal experts, to help us factor stakeholder views into the design and operation of the new scheme. These groups will enable us to test implementation systems and guidance as they are developed, build our understanding of the range of user needs, and develop communications in line with user needs.
4. Recognising the scale of the challenge of granting status to potentially more than three million EU citizens and their families, and ensuring that there is no suggestion that those lawfully here will be required to leave on the day we exit the EU, those currently resident will be given sufficient time after exit to make their application. Subject to getting an early agreement with the EU on these issues, we are also planning to set up a voluntary application process before we leave the EU so that those who wish to do so can get their new status at their earliest convenience. The voluntary scheme will sit alongside any existing EU law rights, until those rights fall away.
5. Notwithstanding this voluntary scheme, the UK estimates that the period made available for individuals to make an application after exit will last for around two years after the UK's exit from the EU. Those EU citizens and their family members in scope of the Withdrawal Agreement will have their status in the UK protected during that time.

6. Learning lessons from applicants' experiences of the existing routes for obtaining EEA documentation, the UK is designing a streamlined, user-friendly, digital application process. This will include an assisted digital service for those who need support to make an online application. Our intention is to develop a system which draws on existing government data, for example, employment records held by HMRC will be checked, which will, for the majority, verify residence as a worker. Our priority is to minimise the burden of documentary evidence required to prove eligibility under the Withdrawal Agreement.
7. The fee for applying for this status will not exceed the cost of a British passport. The cost will not be linked to other Home Office immigration application fees, for example, the fee for indefinite leave to remain or naturalisation as a British citizen.
8. For those who already hold a valid EEA permanent residence document, there will be a simple process to exchange this for a settled status document, subject to ID verification and submission of a photograph, a security check and confirmation of ongoing residence. The previous residence assessment will not be re-done. We intend to charge a reduced fee to these individuals.
9. As the Prime Minister set out in her Florence speech, people will continue to be able to come and live and work in the UK during the implementation period after the UK leaves the EU, and there will be a registration system.

***Criteria for granting status and circumstances under which status may be refused***

10. The criteria applied will be simple, transparent and strictly in accordance with the Withdrawal Agreement. In accordance with our obligations under the Withdrawal Agreement, EU citizens and their family members who can evidence to the UK authorities that they fall within the scope of the Withdrawal Agreement (i.e. are lawfully resident before the specified date) must be granted status by the UK authorities unless one of the grounds for refusal permitted by the Agreement is met. The UK authorities will have no discretion to refuse an application in other cases. We have already agreed with the EU that the conditions for EU citizens acquiring permanent residence/settled status under the Agreement will be as per the conditions set out in Article 16 of Directive 2004/38 (five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof).
11. In order to streamline the application process, the UK intends to adopt a pragmatic approach to the application of the agreed conditions, for example, by not checking that comprehensive sickness insurance has been held by those who are not economically active or are studying, or applying a genuine and effective work test. We will also not seek to account for undocumented periods where we are satisfied that, overall, the residence requirements have been met, meaning people will not have to account for every trip that they have taken in and out of the UK.
12. We will verify identity and are considering digital ways to do this in order to make it both secure and user-friendly. We intend to ask applicants to submit a photograph. We will not ask EU citizens for other biometric data such as fingerprints.

13. Applicants who are not yet able to evidence the five years' continuous residence necessary to obtain settled status, but who can evidence that they were resident before the specified date, will be given temporary status. This will enable them to remain in the UK until they have built up five years' continuous residence allowing them to apply for settled status.
14. The only circumstances in which an application for status under the citizens' rights chapter of the Withdrawal Agreement may be refused will be as provided for in the Agreement. Subject to final agreement with the EU, we expect that these circumstances will be either that the applicant does not fall within scope of the Agreement, either because they were not resident before the specified date or because they did not meet the conditions as prescribed in the Withdrawal Agreement, or because the applicant is refused on criminality or security grounds as set out in paragraphs 19 to 25.
15. The UK authorities will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will give applicants the opportunity to furnish 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 avoid unnecessary administrative burdens.
16. We will establish an administrative review mechanism to quickly resolve any case-working errors. Beyond this, applicants will have recourse to an independent judicial authority, as now. This will mean that EU citizens and their direct family members will have recourse to a statutory right of appeal, allowing the UK courts to examine the legality of the UK authorities' decision to refuse or revoke status, as well as the facts or circumstances on which the decision is based. They will be able to remain in the UK pending conclusion of the appeals process, unless a deportation decision is made, or the individual is in the UK in breach of a deportation or exclusion order. In the latter cases, the decision may be certified by the UK authorities, such that an appeal can be made but will not prevent removal. The individual may, however, be able to return to the UK to attend the appeal hearing.
17. Individuals covered by the Withdrawal Agreement will be required to hold a UK immigration status to lawfully stay in the UK after the period of time specified by the UK authorities. However, understanding that there may be good reasons why some people may not have applied in that period, the UK will take a proportionate approach to those who miss the deadline for application. The UK's intention is that:
  - where applications are submitted but a decision has not been made before the deadline, the applicant may continue to reside in the UK until the decision is made; and

- where individuals without status are encountered after the deadline, a proportionate consideration will be made of their circumstances at that time and any reason why they did not apply for status before the deadline. Where there were good reasons for an individual not to have made an application, the UK authorities will consider exercising discretion to allow an ‘out of time’ application for status under the Withdrawal Agreement.

18. Those EU citizens who apply for status but do not fall within the scope of the Withdrawal Agreement, and are refused status on that basis, will, after the specified period has elapsed, be in the UK unlawfully unless they hold or secure another status (for example, leave to remain under the Immigration Rules or any post-exit successor arrangements for EU nationals). As such they will not be entitled to access work or other services and may be asked to leave.

### **Criminality**

19. As regards checks, the intention is to ask applicants to self-declare criminal convictions (either UK or overseas), as we do for all other applications made to the UK immigration authorities. We will check appropriate UK biographic criminal records databases. In specified cases, where we have good cause, we may seek to verify international declared convictions or identify any international criminality.
20. Concerning expulsions, we already seek to expel EU citizens who are foreign national offenders, in conformity with the public policy criteria in the Directive 2004/38 and the relevant expulsion provisions. Those who fall within the scope of the Withdrawal Agreement may be denied their rights if they are considered a threat to public order or security. The approach that we take will vary depending on when the most recent conduct took place.
21. Consideration of deportation on grounds of public policy or public security as set out in Directive 2004/38 will continue to apply to any pre-exit criminal conduct. This means that the UK authorities will consider whether, based on their conduct, the individual poses a genuine, present and sufficiently serious threat to the fundamental interests of UK society (a threshold which rises with longer residence periods), as balanced against a proportionate consideration of the individual’s personal circumstances. In most cases, EU citizens who have already committed a criminal act will already have come to the attention of the Home Office. We will not re-run public policy assessments where they have already been carried out and removal action was judged inappropriate, without good reason, such as new information coming to light.
22. The UK’s criteria for considering deportation of non-EEA foreign national offenders, as set out in relevant legislation and published guidance on GOV.UK, will apply to EU citizens whose *post-exit conduct* falls within the scope of that guidance, including those convicted of criminal offences. This means, for example, that deportation will be considered for those who, post-exit, commit a serious crime and receive a custodial sentence which is at least 12 months. In such cases, a person’s previous, pre-exit criminality may also be taken into account in order to make a holistic assessment of whether deportation is appropriate.

23. Whether or not an individual is deported will be subject to considerations such as the right to respect for private and family life under Article 8 of ECHR. Factors to be weighed when considering the Article 8 rights of the individual compared with the public interest in deportation are set out in the UK's Immigration Rules, underpinned by Part 5A of the Nationality, Immigration and Asylum Act 2002. These factors include whether the individual has lived in the UK for most of their life, how socially and culturally integrated they are in the United Kingdom, and the obstacles they might face in integrating into the country to which they would be deported. The impact of an individual's deportation on their partner and children is also considered.
24. In addition, the current procedures and safeguards applicable to expulsions of EU citizens will still apply, including the requirement for notification in writing, the right to appeal to an independent judicial authority and a delay of one month before removal is enforced
25. The UK accepts that on a reciprocal basis EU Member States may apply measures which depart from Directive 2004/38 in respect of expulsions from their territory of UK criminals otherwise protected by the Agreement.