

EU citizens' rights and Brexit

Information service for EU citizens'
local communities

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information service
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- The service is delivered through the Law Centres Network with the support of Law Centres and partners across the UK
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EU Law

- Currently most EU citizens and their family members live in the UK under EU law which is commonly known as free movement.
- Free movement has allowed EU citizens to come to the UK to live, work and study.
- Most people do not have much interaction with EU law because their passport / ID card is enough to enter the UK and to get a job etc.
- Some people may have a document issued from the HO - such as a blue PR document - which shows that they live in the UK legally under EU law.

2016 referendum

- UK will withdraw from the EU and EU law will cease to apply to the UK.
- As a result, there has been a negotiated agreement between the EU and the UK covering a number of areas including citizens' rights, how much money the UK will pay to the EU and the border of Northern Ireland.
- This agreement is currently known as the Draft Withdrawal Agreement (DWA), published on 19 March 2019.

Dates to remember

Key dates

- 29 March 2019 – The proposed date the UK leaves the EU
- 31 December 2020 – The end of the transition period (Art 121 DWA)
- 30 June 2021 – Earliest possible deadline for EU citizens to secure residence rights

Brexit Day

- This is currently intended to be 29 March 2019 but this is not settled yet.

Transition period

There will then be a Transitional Period/Implementation Period that will run to 31 December 2020.

Transitional Period/Implementation Period

- EU law maintained and continues throughout this period.
- People can still come to work and settle in the UK during 29 March 2019 to 31 December 2020 period because EU law will still apply.
- Once the transitional period ends there will be no more free movement to the UK.

Transition period & after

Note, additional registration requirement may be implemented during the transition period [there are no published Home Office details of this registration requirement as at the date of this presentation].

There will be a new immigration system after 31 December 2020 for those who want to come and live in the UK after this date - this will not be free movement and is highly likely to be more restrictive [The government plans to release details of the new proposed immigration system later in 2018].

Non-EU European Economic Area States

The DWA does not cover citizens of Iceland, Liechtenstein, Norway and Switzerland

The UK Govt. intends the citizens of these countries to be included in the settled status process.

Who is protected by the DWA?

- EU citizens and family members who, by 31 December 2020, have been residing in the UK can continue to do so.
- EU citizens can continue to come to the UK freely under current free movement law up to and including 31 December 2020.
- This includes those who are outside the UK on 31 December 2020 but have maintained continuity of residence for those without PR.
- Those who are outside the UK on 31 December 2020 with PR for a period of 5 years TBC.
- Some family members will be able to enter the UK after 31 December 2020.

Family members

Family members of the EU national or their spouse or civil partner (but not a durable partner) who can enter the UK at any time:

- Spouse
- Civil partner
- Durable partner
- Dependent child or grandchild
- Dependent parent or grandparent

Relationships of this type (e.g. including dependency) needed to exist on 31 December 2020 and to continue to exist when they enter the UK

Children

Family members of EU citizens can still enter the UK if they are:

- Future children born to the EU citizen or their spouse and civil partner
- Future children adopted by the EU citizen or their spouse or civil partner

Family members who arrive after 31 December 2020 will need to apply for pre-settled status within 3 months of their arrival

Irish Citizens

- Irish citizens enjoy a right of residence in the UK which exists outside the UK's membership of the EU (CTA)
- They are not required to apply for settled status but may wish to do so as this will be evidence that they are covered by the DWA
- Family members of Irish citizens can apply without the Irish citizen doing so

EU citizens' rights to Social Assistance & Pensions

There will be no change to healthcare, pension or other social assistance rights – same as current

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Settled Status / Pre-Settled Status

- The DWA allows the UK to introduce a registration system to distinguish between EU citizens resident in the UK before the end of the transitional period when free movement law ends.
- Therefore, in the UK, the rights of EU citizens and their family members will be covered by what is known as the **EU Settlement Scheme**.
- This EU Settlement Scheme will have two statuses, settled status and pre-settled status.

Settled Status / Pre-Settled Status

- **Settled status** is for those EU citizens and their family members who have lived in the UK for 5 years when they apply (some limited exceptions to the 5 year rule).
- **Pre-settled status** is for those EU citizens and their family members who have not lived in the UK for 5 years by 30 June 2021 but wish to acquire permanent residency rights. Pre-settled status will be granted to allow them to accrue the 5 years needed to then apply for settled status.
- The details are contained in the Home Office Statement of Intent and Draft Rules published on 21 June 2018.
- Sets out the basis on which EU citizens and their family members can continue to reside in the UK.

The application process

The application system is intended to be:

- Streamlined
- User-friendly
- Draw on existing government data
- Work with applicants to avoid errors or omissions

Approach is to look to grant, not for reasons to refuse

HO Caseworkers will be able to exercise discretion in favour of applicants

Requirements

There are three key requirements of the settled status process:

- Prove identity and nationality
- Prove length of residence in the UK
- Undergo a criminality check

More favourable conditions

The Settlement Scheme is intended to be more favourable than the previous Permanent Residence Scheme.

For example, you **won't need to evidence** having:

Comprehensive Sickness Health Insurance (in the case of Students and Self-Sufficient persons)

How to apply

- Online form and an Identity Application
- Paper form will be available to some applicants [we are not sure of who can use the paper form yet], but the online form will be mandatory for most
- A certificate of application will be generated on applying

Fees

- Adult applicants will be charged £65
- For under 16s the charge is £32.50
- It will be fee free for those with ILR/PR documents
- It will be fee free for 'Looked After Children' [i.e.: those under local authority care]
- It will be fee free for those who move from pre-settled status to settled status

When to apply

- Limited applications for some will be from late 2018, and open for all by 30 March 2019.
- The deadline to **submit applications will be 30 June 2021**; the date **applies to those who have a permanent residence document as well.**

Valid applications

- An application must be valid before the Home Office will consider whether a person is eligible for either status'.
- An application will not be rejected as invalid without the applicant being prompted or contacted by the Home Office and given a reasonable opportunity to address issues of invalidity.

There are four requirements for validity:

- The application must be made in the UK and made using the required application process
- Payment of the required fee
- Provide the required proof of identity and nationality
- Enrol facial image (Non-EU citizen family members will need to enrol biometric data)

If an applicant is given a reasonable opportunity to remedy the invalidity but fails to do so the Home Office may retain an administration fee.

Identity

- Verified by a passport (for any applicant), or
 - National ID card (for EU citizens)
 - Biometric Residence Permit (for Non-EU citizens)
 - Biometric Residence Card issued under the EEA Regulations
-
- A mobile Application will check biometric passports and transmit that data to the Home Office.
 - Face-to-face services may be implemented to allow applicants to access the mobile Application where they are unable to do so using their own devices.
 - Alternatively, identity documents can be posted to the Home Office. A dedicated team at the Home Office will check physical documents and return them to applicants as soon as possible.

Alternative evidence of identity

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*'.

Residence

- The online form will automatically check HMRC and DWP for evidence of residence.
- The Home Office will not check any data beyond an 'ongoing relationship with HMRC and DWP' e.g. earnings, length of employment, benefits accessed etc.
- Gaps in HMRC and DWP records can be supplemented with additional proof of residence.
- List of acceptable residence evidence at Annex A of the Statement of Intent
- Not a prescribed list, alternative forms of residential evidence may be accepted.

Length of residence

- Those who can evidence residence of 5 years will be granted settled status.
- Those who are in the UK less than 5 years or can only evidence residence for a shorter period than their actual residence will be granted pre-settled status.
- Pre-settled status will enable individuals to secure settled status at a point in the future when they have been resident or can evidence 5 years residence in the UK.

Continuous residence

A person must be continuously resident in the UK to satisfy the residence requirement. They must not have been absent from the UK **for more than 6 months in any 12month period.**

Absences of more than 6 months but which do not exceed 12 months are permitted for:

- Important reasons (e.g. childbirth)
- Serious illness
- Study
- Vocational training
- Overseas postings
- Any period of compulsory military service is permitted.

When is residence broken?

- A person is serving a prison sentence
 - Unless: that person has resided in the UK for at least 10 years, has the right of permanent residence and they have forged integrating links with the UK that were not broken by imprisonment
 - If their release occurs before 31 December 2020, they can restart their residence period (Note: outstanding issue for those who are released after 31 December 2020).
- By a Deportation Order, an Exclusion Order or an Exclusion Decision is made.
- A person is removed from the UK under the EEA regulations, unless set-aside or no longer in effect.

Acquiring settled status with less than 5 years of residence

Mirrors the Permanent Residence rules:

- A worker or self-employed person, having reached the age of entitlement to a state pension or early retirement, so long as they were a worker or self-employed for 12 months and were continuously resident for 3 or more preceding years
- Stopped working or self-employment due to permanent incapacity to work, having been continuously resident for more than the preceding two years or the incapacity is a result of an accident at work or an occupational disease
- Were continuously resident in the UK for at least 3 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.

Acquiring settled status with less than 5 years of residence

Family members:

- If the family member is that of an EU citizen in the above scenarios they will also acquire settled status earlier if they were the family member at the above points and they remain continuously resident in the UK.
- Children of an EU citizen, or their spouse or civil partner, under the age of 21 will be eligible for settled status when then their parents acquires it.

Criminality Check

- Will be done to identify serious or persistent offenders, or anyone who poses a security threat
- **Disclosure will be required by the EU citizen or family member ! – otherwise application will be refused**
- Checks will be made against UK criminality and security databases
- Checks may be made against overseas criminal records
- Conduct, including convictions that relate to it, before 31 December 2020 will be assessed according to the current EU public policy tests for deportation
- Conduct, including convictions that relate to it, from 01 January 2021 will be considered against UK deportation thresholds [this is a complex area but broadly speaking means anyone who is sentenced to more than 12 months' imprisonment will have automatic deportation proceedings initiated against them]

Refusals on grounds of suitability

An application will be refused on grounds of suitability where:

- The applicant is subject of a deportation order or a decision to make a deportation order (EU15(a))
- The applicant is the subject of an exclusion order or an exclusion decision (EU15(b), or
- 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 (EU15(c)).

An application may also be refused where, whether or not to the applicant's knowledge (EU16):

- False or misleading information was submitted
- False representations or documents have been submitted

Families

- Applications made by families at the same time will be considered together.
- EU family members of an EU citizen do not need to provide evidence of that their family relationship unless they are applying for settled status for a period less than 5 years having or retained the right of residence (see above).
- Non-EU family members will need to provide evidence of their family relationship and the identity evidence of the EU citizen.

Those who already hold Permanent Residence or Indefinite Leave to Remain

- The application will be straightforward
- Exchange the PR/ILR document free of charge
- Confirm the status not lapsed through absence from the UK
- Still be subject to the criminality and security check

Deadline to apply

The deadline to submit applications will be

30 June 2021

the date **applies to those who have a permanent residence document as well.**

Missed deadline

- If an applicant misses the 30 June 2021 deadline they can apply late.
- They must have a '*good reason*' for the delay in their application date.
- They will then have a reasonable further period in which to apply.
- But, a period of unlawful residence may occur.

Refusals

- Where a valid application is refused before 31 December 2020 the applicant can:
- Reapply to remedy the refusal ground (**re-application to be made before 30 June 2021**)
- Request an administrative review of the decision
- If the refusal is received after 30 March 2019, apply to appeal the decision (subject to primary legislation)
- The continued right of residence is unaffected by refusal decisions received before 31 December 2020.

Evidence of settled status

- Evidence of the status will be in digital form
- This digital form can be shared by the holder with third parties
- Non-EU citizen family members will be issued with a biometric residence document
- Holders of pre-settled status will need to maintain continuous residence and, where relevant, their family relationship, in order to qualify for settled status later
- Holders of both status' will be able to travel to and from the UK using a valid passport or (at least until 31 December 2025) a valid national ID card

Applying for British citizenship

Holders of settled status can apply for British citizenship – this is known as naturalising or naturalisation:

- Immediately, if they are the spouse or civil partner of a British citizen (and they were lawfully resident in the UK for at least three years)
- Immediately, if they were granted EU PR (as evidenced by a document certifying so) or ILR in another capacity more than 12 months previously (and they were lawfully resident in the UK for at least 5 years)
- 12 months after the date on which they acquired a right of PR as evidenced by a document certifying so (and they were lawfully resident in the UK for at least 5 years)
- Otherwise, 12 months after the date on which they were granted settled status (and they were lawfully resident in the UK for at least 5 years)

There are other additional criteria to qualify to be naturalised as a British citizen (not covered here)

Deal or no deal

- In the event of a no deal scenario the legal default position is no status for EU citizens on 30 March 2019 unless the European Union (Withdrawal) Bill comes into force. The EEA Regulations will stay in force per section two of the proposed Bill.
- The Home Office will need to get on and do something if there was a no deal
- The initial proposals for settled status are the absolute bare minimum and expect that it will be implemented in the event of a no deal. Note however, during the negotiations the UK has conceded on a few points like future family members and there is a theoretical risk of that might be rolled back, but the politics of it would be deeply unattractive to the UK Govt.
- The Home Office have hinted that they are working towards settled status whatever the outcome of the negotiations, and this would be the sensible approach

Further information

- EU citizens and their family members can sign up for email updates on the gov.uk page:
- <https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-whatyou-need-to-know> (Google: 'EU settled status')



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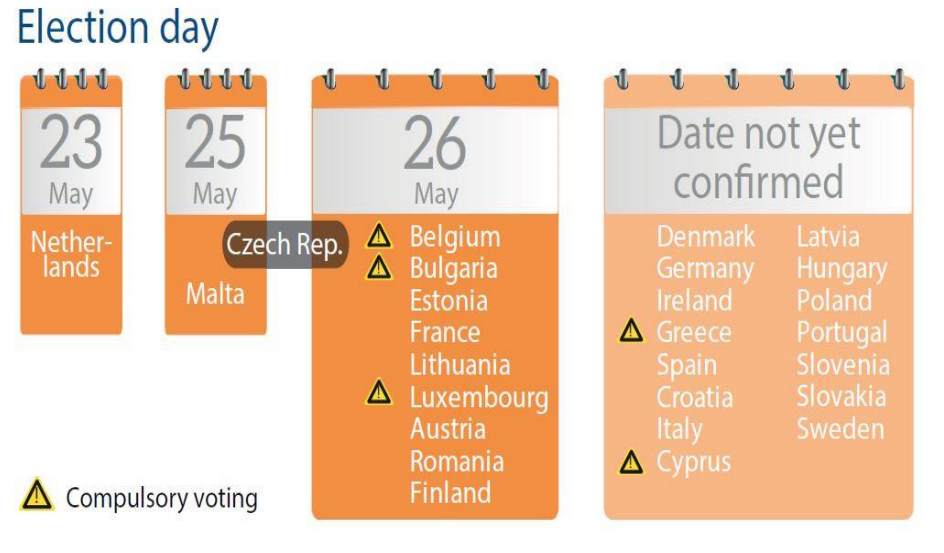
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Commission

European Elections 2019

❖ European Parliament Elections

❖ 23 – 26 May 2019

❖ 27 countries



❖ Number of MEPs: from 751 to 705

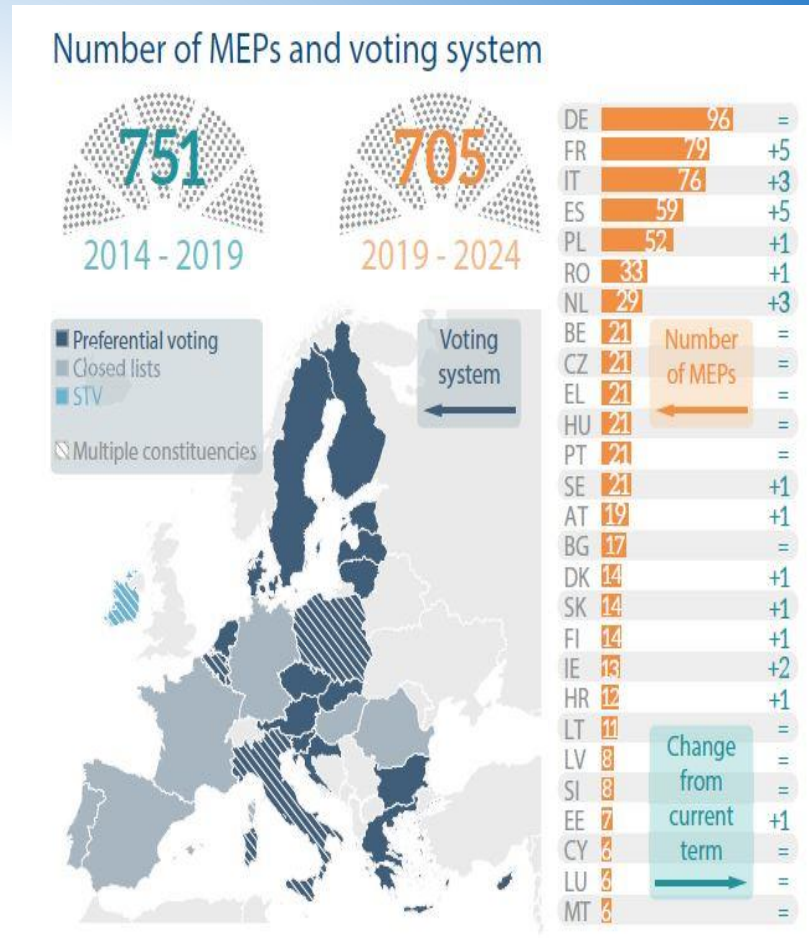
❖ MEP = represents YOU

European Elections 2019

- ❖ 19 countries' **EU citizens eligible to vote if resident in the UK**
- ❖ 4 countries' citizens **NOT eligible to vote if resident in the UK:**
 - ❖ Czech Republic
 - ❖ Ireland
 - ❖ Malta
 - ❖ Slovakia
- ❖ **Voting age: 18 (16 in Austria)**

Why vote in European Parliament Elections 2019?

- ❖ Members of the European Parliament whom you elect in your home country can fight for your EU rights in the UK.
- ❖ You can petition the European Parliament to protect your rights.
- ❖ The European Parliament has always been strongly supportive of the rights of EU citizens in the UK.
- ❖ Freedom of movement for students, workers and citizens is a freedom that has been created by the European Union.
- ❖ Democracy at European level is key to the future of the EU.



https://europa.eu/youreurope/citizens/residence/elections-abroad/ep-elections/index_en.htm

European Elections 2019

this time i'm voting

tällä kertaa äänestän

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Αυτή τη φορά ψηφίζω

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Let's get social:          

this time i'm voting

European elections 23 - 26 May 2019

This time it's not enough to just hope for a better future: this time we all need to take responsibility for it.

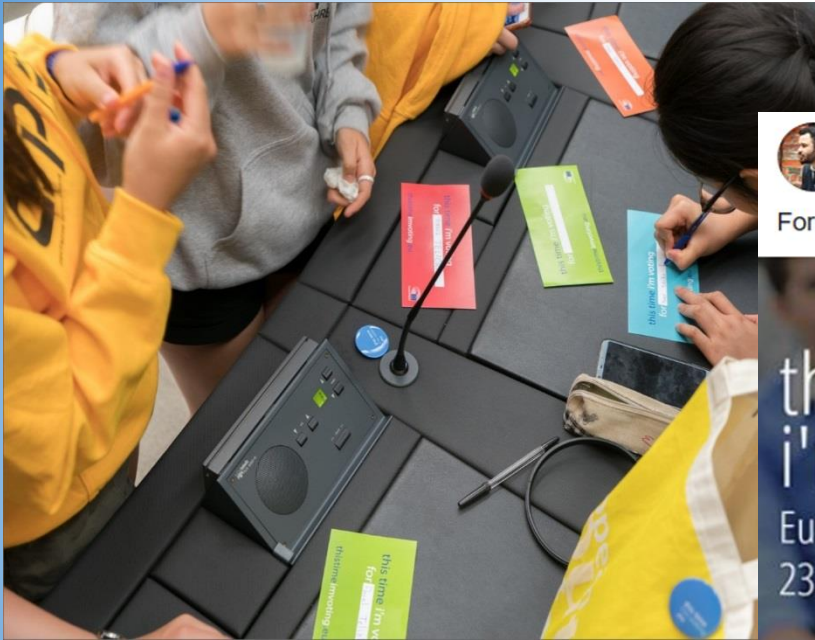
So this time we're not just asking you to vote, we're also asking you to help to persuade others to vote too.

Because when everybody votes, everybody wins.

Yes, this time i'm voting

thistimeimvoting.eu

European Elections 2019



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 **Andrew S. Christodoulou**
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this time
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European elections
23 - 26 May 2019

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Commenti: 3

2. Share

Q&A

More information

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Avoiding errors: a two-way process

- HO will work with applicants to avoid errors or omissions that may impact on the decision process.
- HO will contact applicants to give them 'a reasonable opportunity' to submit supplementary evidence or remedy any deficiencies.
- But, only where 'a simple omission' has taken place.
- A principle of evidential flexibility will also be applied.

Acquiring settled status with less than 5 years of residence

Family members of EU citizen who has died

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 at the time of death they will be eligible for settled status with less than 5 years' continuous residence if the EU citizen was:

- Resident for at least two years before their death or their death was a 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

Families: retained right of residence

Some family members retain the right of residence after their relationship with an EU citizen resident in the UK has ended:

- Non-EU family member of an EU citizen who was continuously resident in the UK by 31 December 2020 and that EU citizen has died; so long as the family member was residing for at least a year as a family member before the death
- The applicant is a child of an EU citizen who was continuously residing in the UK by 31 December 2020 and that EU citizen has died or ceased residence in the UK and that child was attending an educational course immediately before death or secession of residence
- A non-EU citizen parent with custody of a child;
- 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 certain other requirements are satisfied.

Families: other cases

- Chen carer – A primary carer of a self-sufficient EU citizen child or children in the UK
- Ibrahim and Teixeira child - 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
- 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)
- 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 (Zambrano carers)
- 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.
- Surinder Singh: A non-EU citizen family member of a British citizen resident in the UK before 31 December 2020 by virtue of Reg 9 of the EEA Regs.

Capacity and Looked After Children

The Home Office is considering the scope of an application being completed on behalf of a person where:

- They do not have the capacity to apply themselves, or
- A child is a 'Looked After Child'

Social security rights

The SOI says that *'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.'*

- DWP decides whether someone is entitled to benefits or not, this is based on meeting the *'habitual residence test'*
- This test is split into two parts with the first part relating to the 'right to reside' which is always relevant for EEA citizens (a British national will always have the right to reside and so this part of the test does not apply to them). The second part of the test relates to actual residence in the UK and applies to all nationalities.
- The right to reside test means that when someone is resident in the UK under EU free movement law as set out in Directive 2004/38/BC, they have the right to reside.
- Pre-settled status will only demonstrate the three requirements set out above. It will not prove that they have the right to reside under free movement law as that test is being eschewed by the Home Office in favour of a simple residence test. That makes life simple for the Home Office but not for the DWP who will presumably still invoke the right to reside test based on free movement law. This means that those with pre-settled status may not automatically be entitled to benefits without additional proof of their activities in the UK.

Monitoring of the process

- 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.
- Prior to establishing the IMA, the Independent Chief Inspector for Borders and Immigration (ICIBI) will be the UK monitoring authority.
- During the Transitional Period / Implementation Period the European Commission will retain its monitoring role.