

Changes to the Civil Service Nationality Rules from the 1st January 2021

Guidance & Departmental Actions

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Introduction

1. **For the purposes of this document ‘EEA nationals’ refer to those from the EU, European Economic Area and Switzerland.**
2. When the transition period ends at 11pm on 31 December 2020, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 will end EU rules on free movement. EEA nationals will be subject to the same UK immigration rules as non-EEA nationals, including the new points-based immigration system. To ensure the Civil Service Nationality Rules¹ (CSNRs) reflect the end of free movement and the introduction of the points-based immigration system, a number of changes are required to the CSNRs.
3. The Government has made clear its commitment to ensuring that EEA nationals, and their family members, living in the UK before the end of the transition period on the 31 December 2020, are able to continue to live and work in this country.
4. This document covers the changes that we will be making to the CSNRs and outlines the action organisations subject to the CSNRs should look to take to ensure they are prepared. This document is intended not only for existing civil servants, but also for EEA & Turkish nationals who intend to seek employment in the Civil Service following the end of the transition period.

Background

5. The CSNRs govern eligibility for employment in the Civil Service on the grounds of nationality and must be followed by government departments in their recruitment and appointment procedures.
6. The CSNRs operate independently to the immigration rules, applying in addition to those rules should an individual want to work within the Civil Service. Broadly, persons who are classified as ‘aliens’ in the British

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/536143/annexa_nationality_rules.pdf & https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/307931/AnnexE_Prescribed_Public_Bodies.pdf (for a summary of who is covered by the CSNRs)



Nationality Act 1981² are not eligible to be civil servants – but there are exceptions to this, including the exception for ‘relevant Europeans’ (EEA & Swiss nationals), as set out in the Aliens’ Employment Act 1955.

7. Pre the end of the transition period, non-reserved posts³ in the Civil Service are open to broadly, the following groups of individuals under the CSNRs:
 - UK nationals
 - Nationals of Commonwealth countries
 - Nationals of the Republic of Ireland
 - EEA nationals
 - Certain Turkish nationals
 - Certain family members of EEA and qualifying Turkish nationals
8. Changes to the definition of a relevant European will be made from 31 December 2020 in consequence of our exit from the EU – although as explained below, protections are made for those currently working in the Civil Service.

Changes as a result of EU Exit

9. The CSNRs and underpinning legislation have evolved in line with historical developments, including membership of the EU. The free movement rules⁴ were broadly retained when the UK left the EU on 31 January 2020 under the terms of the Withdrawal Agreement, which was approved by Parliament with the enactment of the European Union (Withdrawal Agreement) Act 2020.
10. When the transition period ends on 31 December 2020, free movement will end. This means that EEA nationals will no longer be able to rely on entitlements under EU law and will require a UK immigration status in the same way as non-EEA nationals. There are exceptions, however, for those who are EEA nationals who are resident here by 31 December 2020, and their family members, who are able to secure their immigration status in UK law by applying to the EU Settlement Scheme (‘EUSS’). Further details of the relevant legislation is contained in paragraphs 12 - 14.

² SI 1981/61: section 50 defines ‘alien’ as a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

³ In practice, reserved posts are those reserved for UK Nationals only. The concepts of reserved posts are not the subject of this guidance and remain unchanged by the amendments to the CSNRs.

⁴ The Free Movement Directive 2004/38/EC implemented in UK legislation by the Immigration (European Economic Area) Regulations 2016



11. In addition to the above, currently, certain Turkish nationals are able to work in the Civil Service under the rights provided by Article 6(1) of Decision 1/80 under the European Community Association Agreement (ECAA)⁵. To become eligible to work unrestricted, including as a civil servant, a Turkish national must have lived and worked in the UK for at least four years and have worked for the same employer for at least three of those years (and in the same profession for all four). These rights will also fall away at the end of the transition period. The rights of Turkish nationals and their family members who have applied for, or already have ECAA rights as of the 31 December 2020 will also be protected in legislation⁶.

Statutory position

12. Section 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ('the Act') contains a power to make changes to legislation as a consequence of, or in connection to the end of free movement. Those regulations ("the consequential amendments SI"⁷) amend a wide range of domestic primary and secondary legislation. This includes amendments to the Aliens' Employment Act 1955, which currently provides the right for EEA nationals to work in the Civil Service under the CSNRs on the basis of their nationality.

13. The consequential amendments SI amends the definition of 'a relevant European' in the Aliens' Employment Act 1955 to mean someone who has:

- status under the EUSS
- limited or indefinite leave to remain granted before the end of the transition period (where they were also eligible under the EUSS as of 31 December 2020, but did not need to apply because they had other leave to remain)
- those who have rights under the ECAA as a Turkish worker (or as a family member of a Turkish worker) which is demonstrated either by having ECAA worker leave that was granted before the end of the transition period or as a result of an application made before that time. and either;

⁵ Decisions No 1/80 of the Association Council of 19 September 1980 on the development of the Association

⁶ The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020

⁷ The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020
<https://www.legislation.gov.uk/ukxi/2020/1309/contents/made>



- i. immediately before the end of the transition period had an entitlement to take up any activity in the United Kingdom under Decision 1/80; or
- ii. they would have had an entitlement at a later date under Decision 1/80 but for the Act.

14. In addition to the consequential amendments SI, the Government has legislated to protect existing rights held by those lawfully resident⁸ in the UK under free movement law at the end of the transition period but who have yet to obtain EUSS status. Their rights are saved for the duration of the grace period (ending on 30 June 2021) and until an application under the EUSS made by the deadline is finally determined. This will ensure individuals' rights continue as now, while they make their application. These protections have been made using the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('the grace period SI')⁹.

Changes to the Civil Service Nationality Rules

15. To reflect the new statutory position and ensure that the CSNRs remain consistent with UK immigration policy, the CSNRs need to be amended. In practice, what this will mean is that from the 1st January 2021, broadly the following groups will be able to work in the non-reserved posts within the Civil Service:

- UK nationals
- Nationals of Commonwealth countries
- Nationals of the Republic of Ireland
- EEA nationals with (or eligible for) status under the EUSS
- Relevant EEA or Turkish nationals working in the Civil Service
- Relevant EEA or Turkish nationals who have built up the right to work in the Civil Service
- Certain family members of the relevant EU & Turkish nationals

16. More information on the relevant groups is outlined below.

UK, Commonwealth & Irish nationals

⁸ Lawful residence is permanent residence or the exercise of Treaty rights in accordance with the Immigration (European Economic Area) Regulations 2016 – as a worker, self-employed person, self-sufficient person, student or family member

⁹ <https://www.legislation.gov.uk/uksi/2020/1209/contents/made>



17. For these groups the changes to the CSNRs will have no impact. This is because their rights to work in the Civil Service are not derived from free movement law, the end of which gives rise to these changes.

EEA and Turkish nationals currently working in the Civil Service (by 31 December 2020)

18. For this group, the aim is to ensure they maintain their current rights to work in the Civil Service. The consequential amendments SI makes it clear that those who have EUSS status (pre-settled or settled¹⁰), or who would have been eligible under that scheme on 31 December 2020 but who instead have limited or indefinite leave to remain granted before that date under another part of the immigration rules, will continue to be considered 'relevant Europeans' for the purposes of employment in non-reserved posts within the Civil Service under the CSNRs. During the grace period, the existing rights of EEA citizens and their family members lawfully resident in the UK at the end of the transition period will be protected pending their application to the EUSS by the deadline. EEA nationals currently employed in the Civil Service who do not already have a UK immigration status should make sure they obtain EUSS status by 30 June 2021. Turkish nationals who are exercising ECAA rights as a worker at the end of the transition period benefit from provisions in the consequential amendments SI and can apply for further leave using transitional arrangements¹¹. The CSNRs will be updated to reflect this position before the end of the year.

19. The Government has made clear that, in line with the citizens' rights agreements¹², late applications to the EUSS will be accepted where there are reasonable grounds for missing the deadline. The Home Office will publish non-exhaustive guidance on reasonable grounds in early 2021.

20. For Turkish nationals and their family members who have applied for, or already have ECAA rights as of 31 December 2020, the Home Office has been clear that these individuals' rights are protected. As such, Turkish

¹⁰ Settled status is indefinite leave to remain and granted to an individual with at least five years' continuous residence in the UK. Pre-settled status is temporary leave to remain of five years which is granted in the event of less than five years' continuous residence.

¹¹ From 1 January 2021 onwards, ECAA workers must apply for extensions of leave using Appendix ECAA Extension of Stay outlined in the Statement of Changes to the Immigration Rules on 22 October 2020

¹² Taken to mean the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement



nationals who are existing civil servants, will be able to continue their employment in the Civil Service. We will reflect this position in the CSNRs.

Practical considerations

21. It is important that this group are able to continue their careers in the Civil Service. The Home Office has been clear they are not expecting organisations to retrospectively check current EEA nationals employed to ascertain whether they have obtained immigration status under the routes set out above. **As such, departments are not required to ask EEA nationals who were recruited by 31 December 2020 to retrospectively verify their immigration status.** However, due to right to work checks on internal moves in some departments, EEA and Turkish nationals may be asked to confirm they are eligible to work in the Civil Service under the CSNRs should they move roles. Therefore, departments should encourage EEA nationals to follow the advice in paragraph 18.

Relevant EEA and Turkish nationals who do not work in the Civil Service by 31 December 2020

22. EEA nationals who are currently eligible to work in the Civil Service will continue to be eligible for the duration of the grace period, and beyond the grace period where they have status under the EUSS or other immigration leave granted by 31 December 2020 where they were eligible under the EUSS on that date. This applies whether or not the individual is already working in the Civil Service by 31 December 2020.

23. Turkish nationals and their eligible family members who have extant ECAA leave and an existing entitlement under Decision 1/80 to take up any work activity will continue to be eligible to work in the Civil Service. Likewise, those with extant ECAA leave or those who applied for ECAA rights by 31 December 2020 (where that application is successful) and would have otherwise at the point their status is being considered built up the right to work in the Civil Service in the future, were it not for the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, will be eligible. This applies whether or not they are working in the Civil Service by 31 December 2020.

Practical Considerations

24. Individuals wishing to join the Civil Service who fall into this category will all be external recruits and as such, the question of how they demonstrate their eligibility under the CSNRs is the biggest issue for departments.



25. EEA nationals who are resident in the UK by the end of the transition period but are not currently civil servants will continue to be eligible to apply to join the Civil Service. Their existing rights at the end of the transition period will continue for the duration of the grace period and until the final determination of an application under the EUSS made before the deadline of 30 June 2021. Beyond the grace period, they will continue to be eligible where they have EUSS status or a pending application to the scheme made before the deadline, or other leave to remain granted by the end of the transition period where they were eligible under the EUSS on 31 December 2020.
26. Those who successfully apply under the EUSS are issued with a digital status, which can be shared, including to demonstrate a right to work, via the Home Office online service 'view a job applicant's right to work details'. Recruiters will need to request a share code from the EEA national, which can be provided to the recruiter directly from the individual or from the service. If requested from the service, the email will come from: right.to.work.service@notifications.service.gov.uk. Recruiters will need the share code and the EEA national's date of birth to access the online service which will confirm the individual's right to work in the UK.
27. Some EEA nationals who apply for roles in the Civil Service from the 1 January 2021 onwards will not yet have status but may be eligible to obtain it. **In these scenarios, the Home Office has been clear that employers should not prevent individuals in these groups from starting work** because the requirement is to apply for status by 30 June 2021. Until then, evidence of right to work for EEA nationals continues to be a valid national passport or identity card. As such, from 1 January 2021, departments should allow EEA nationals who find themselves in this scenario to begin work, but will need to make it clear that failure to obtain status will result in termination of their employment.
28. There may also be a few months after the deadline of 30 June 2021 when the Home Office has a backlog of applications to work through. Where someone has made an application by the deadline and the case has yet to be resolved, **this should not impact the individual's right to begin work in the Civil Service if the individual can demonstrate that they have applied for EUSS Status**. This is because the existing rights of those EEA nationals and their family members lawfully resident in the UK by the end of the transition



period are protected for the grace period and until the final determination of an EUSS application made by the deadline (this includes any appeal against the refusal of status under the scheme).

29. Departments must make sure they put in place a process for ensuring that those who fall into this category and do take up employment before they have obtained EUSS status, are monitored to avoid unlawful employment of an individual who does not meet the CSNRs if their application for status is refused (this includes any appeal against the refusal of status under the scheme).

30. If a department does find that they have employed someone who is ineligible for or who has not obtained EUSS status by the deadline, and is not eligible to work in Civil Service by virtue of holding limited or indefinite leave to remain, they may need to bring their employment to an end, but should contact the Cabinet Office at contact.us@csep.gov.uk before they do so.

31. For Turkish nationals, the situation will remain as it is now, whereby they will first need to be able to demonstrate that they have ECAA rights by holding immigration leave as an ECAA worker (Code 1) before employment in the Civil Service can commence. The only change to the situation now is that from 1 January 2021 Turkish nationals will not be able to apply as a new ECAA worker, and are therefore unable to build up and claim these rights in future.

EEA nationals with indefinite or limited leave to remain

32. Recruiters should be aware that EEA nationals and their family members who have obtained indefinite or limited leave to remain on or before the 31st December 2020 and were eligible under the EUSS on that date (but did not need to apply because they had other leave to remain) will also continue to be eligible to work in the Civil Service. Individuals in this category will continue to hold the same rights they have now, which include being able to work in the Civil Service. In addition to this, the Home Office has been very clear with this group that they are under no obligation to apply for EUSS status, unless they choose to, as they already have the right to live and work in the UK

Practical Considerations

33. As mentioned above, individuals who claim they have limited or indefinite leave to remain and were eligible under the EUSS as of 31 December 2020,



do not need to rely on obtaining EUSS status. Furthermore, departments should not, in the first instance, insist that they obtain EUSS status. Instead there are a number of checks that departments may want to go through first to ensure individuals in this group do indeed have the right to work in the Civil Service. These are outlined below:

- The individual should be asked if they meet the nationality requirements in the CSNRs, to prove that they are in fact a relevant European national, this will likely be through self declaration at the point they apply for the role.
- If they are a relevant European national, they will then need to provide proof that they hold indefinite or limited leave to remain granted on or before the 31 December 2020
 - i. This may include documentation or in some instances a passport stamp.
 - ii. Limited leave to remain may have its own recruitment restrictions attached including the number of hours an individual should work per week, which will still apply.
- If the individual does not currently hold proof that they have indefinite or limited leave to remain granted on or before 31 December 2020, then they should seek to obtain proof before their employment can commence.
 - i. They will need to do this by contacting the Home Office.
- If the individual is unable to obtain proof from the Home Office, then their last option is to apply for EUSS status.
 - i. They could then commence work, but would need to be aware that failure to actually obtain EUSS status may result in the termination of their employment as they would not meet the CSNRs requirements.

Certain family members of EEA & Turkish nationals

34. Currently, certain family members of EEA nationals irrespective of their nationality are eligible to take up employment in Civil Service. This is on the basis of free movement arrangements.

35. With respect to the CSNRs, in line with the amended definition of 'relevant European', family members of EEA nationals, who have obtained status under the EUSS, where eligible, will continue to be able to work for the Civil Service as they can now, regardless of nationality.



36. To obtain this status they will need to have been resident in the UK by 31 December 2020 (unless they are a family member residing outside the UK who subsequently joins their family member under the EUSS) and be able to demonstrate that they currently have a relationship with an EU national residing in the UK. Where resident by 31 December 2020, they have until 30 June 2021 to obtain status under the EUSS. In addition, there are some family members who are eligible to enter the UK after 31 December 2020 to join EEA nationals who have EUSS status. These family members must have status under the scheme before being eligible to apply to the Civil Service.

37. Newly arriving EEA nationals who enter the UK from 1 January 2021, and their family members, who are not eligible to apply to the EUSS will be subject to the UK's new points- based immigration system. As such, they will not be eligible to work in the Civil Service unless they are able to qualify under their own nationality (i.e. they are an Irish national).

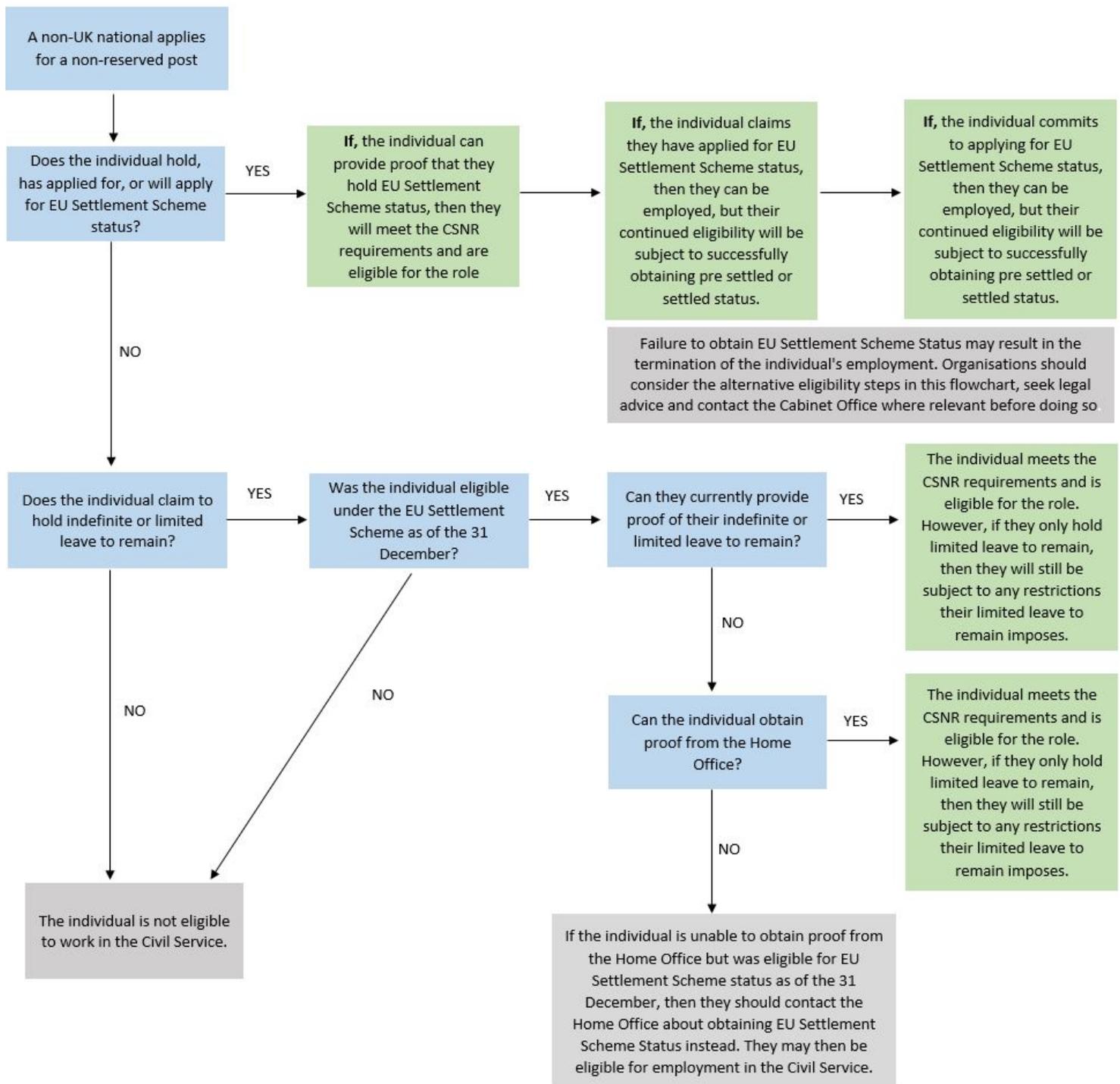
38. Turkish nationals and their family members are required to have applied for or obtained ECAA rights by 31 December 2020 to be eligible for employment in the Civil Service either now, or at a later date, depending on the length of time they have been living or working in the UK.

Practical Considerations

39. The practical considerations for individuals falling under this category and wishing to join the Civil Service are the same as those for relevant Turkish nationals who have built up the right to work in the Civil Service.

Process Overview

40. The below process flow outlines the stages recruiters should follow to ascertain the eligibility of EU nationals who apply for jobs in the Civil Service from the 1st January 2021.



Checklist of Actions for Departments

41. Below we have included a checklist of actions organisations should work through to ensure their readiness for the changes to the CSNRs.

- For departments, make their Arms Length Bodies aware of the changes
- Update internal recruitment guidance to reflect the changes
- Provide upskilling sessions, if necessary, for recruiters to make them aware of changes
- Ensure there is a process in place to monitor and check the status of those who are employed into the Civil Service with the agreed understanding that they will successfully obtain EU Settlement Scheme status.
- Provide reassurance communications to their EU national networks and support for any questions they might have.

Frequently Asked Questions

Below are a number of frequently asked questions (FAQs) related to the content above. These can be shared more widely.

A. How do I apply to the EU Settlement Scheme?

- Those eligible can apply at [gov.uk](https://www.gov.uk)¹³.

B. I missed the window to apply for the EU Settlement Scheme. What do I do?

- The Government is committed to accepting late applications where there are reasonable grounds for missing the deadline.

C. Do I need to apply for the EU Settlement Scheme to continue working in the Civil Service if I was employed in the Civil Service by the end of the transition period?

- Existing rights held by EEA nationals and their family members lawfully resident in the UK at the end of the transition period will be protected for the duration of the grace period (31 December 2020 – 30 June

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https://www.gov.uk/settled-status-eu-citizens-families?utm_campaign=transition_p1&utm_medium=cp&utm_source=seg&utm_content=eut_act84&gclid=EAlaIqobChMly_qvorGQ6wI VW-ztCh2kzQEdE AAYASAAEgLVpFD_BwE&gclidsrc=aw.ds



2021). After the grace period, all EEA nationals and their family members will need a UK immigration status. We would encourage all Civil Servants who are eligible to apply for the EU Settlement Scheme to do so by the deadline. We will not be retrospectively checking the status of EEA nationals to ensure they have this in their current roles. However, due to right to work checks in some departments, EU nationals may be asked to demonstrate they meet the CSNRs.

D. If I am on leave, maternity leave or a career break throughout the transition period will I still retain the right to continue to work in the Civil Service?

- All those who currently have the right to work as a civil servant will continue to be eligible for the duration of the grace period, until the deadline for applications under the EU Settlement Scheme.
- After grace period, an EEA national's or their family member's continued employment in the Civil Service is contingent on holding either EU Settlement Scheme status or being eligible under the scheme on 31 December 2020 but with no need to apply as a result of holding either limited or indefinite leave to remain granted before that date.
- Whether they are actually working during the transition period is irrelevant.

E. My family members do not have EUSS status. Are they still able to work in the Civil Service?

- Family members of EEA nationals who are currently eligible to work in the Civil Service will continue to be eligible for the duration of the grace period until the deadline for applications under the EU Settlement Scheme.
- After the grace period, family members of EEA nationals will continue to be eligible to work in the Civil Service where they hold status under the EUSS, or where they hold other leave to remain granted on or before 31 December 2020 and were eligible under the EU Settlement Scheme on that date.

F. Do the changes to the CSNRs affect any other nationalities other than EEA and Turkish nationals?

- The changes affect family members of EEA and Turkish nationals, which may be of any nationality.



Civil Service HR

- The changes are designed to reflect the changes being made to the European rules on free movement at the end of the Transition Period. We are not making any other changes to the rules at this stage.