

Brexit temporary offer for courses starting before 2028: Settled and exercised a right of residence

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (g) must be met:

(a) you left the UK and exercised a right of residence before 11pm on 31 December 2020, having already been settled in the UK

Note: The meaning of having 'exercised a right of residence' is very limited. It only covers two groups.

First, *UK nationals* and their family members who went to the *EEA* / Switzerland exercising European rights of free movement as workers, students, self-sufficient people or as the family members of any of those people.

Second, people with the European right of permanent residence in the UK, who either:

- went elsewhere in the EEA / Switzerland exercising European rights of free movement as workers, students, self-sufficient people, or as the family members of any of those people; or
- went to the state in the EEA / Switzerland of which they or their family member was a national.

The most common way a person acquired a right of permanent residence under European law was if they were an EEA or Swiss national, or their accompanying family member, and they lived in the UK for 5 years. The right arose automatically at the 5-year point, there was no need to make any application for it.

The meaning of 'family member' in the Note above is:

- *spouse / civil partner*
- *direct descendant* of the person, or of their spouse / civil partner, who is:
 - under 21 years old; or
 - 21 or over and a *dependant* of the person, or of the person's spouse / civil partner
- additionally (but if the person is exercising rights as a student and is not exercising rights as a worker, then the person must be self-sufficient), the dependent direct *ascendant* of:
 - the person; or
 - the person's spouse / civil partner

(b) you were *ordinarily resident* at 10.59pm on 31 December 2020 in either:

- the *EEA* (this does not include the UK) / Switzerland / the *overseas territories* (these include Gibraltar); or
- the UK – but this will only be acceptable if:
 - your period of ordinary residence in the UK started after 31 December 2017; and
 - it immediately followed a period of ordinary residence in the *EEA* (this does not include the UK) / Switzerland / the *overseas territories* (these include Gibraltar)

(c) you were ordinarily resident in the *UK* / *EEA* / Switzerland / *overseas territories* (these include Gibraltar) throughout the period from 11pm on 31 December 2020 until the *first day of the first academic year of the course*

(d) you are ordinarily resident in the *UK* on the day on which the first term of the first academic year actually begins

(e) you have been ordinarily resident in the *UK* / *EEA* / Switzerland / *overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course*

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as ‘ordinary residence’.

(f) if your three years’ ordinary residence in the large area described in (e) was mainly for the purpose of receiving full-time education, you must have been ordinarily resident in the *UK* / *EEA* / Switzerland / Gibraltar (and not in any of the other overseas territories) the day before the start of the three-year period

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/Gibraltar anyway, then you meet criterion (f).

(g) you must be ‘settled’ in the *UK* on the *first day of the academic year* you are paying fees for

To be ‘settled’ you must be both ordinarily resident in the UK and without any immigration restriction on the length of your stay in the UK. The regulations take this definition of ‘settled’ from immigration law (section 33(2A) of the Immigration Act 1971).

You have no immigration restriction on the length of your stay in the UK if you fall into one of the following groups (A or B or C or D or E or F):

A. ‘Indefinite Leave’ or ‘settled status under the EU Settlement Scheme’

If you have been given ‘settled status’ under the EU Settlement Scheme, then you have no immigration restriction on the length of your stay in the UK. This is because you will have been given either Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR).

See box F if you are still waiting for ‘settled status’ under the EU Settlement Scheme.

If you have Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR) in the UK, you have no immigration restriction on the length of your stay in the UK.

If you have ILE or ILR in Jersey, Guernsey, or the Isle of Man, then this is considered to be ILE or ILR in the UK whenever you are in the UK.

B. British Citizen

If your passport describes you as a 'British Citizen', you have no immigration restriction on the length of your stay in the UK.

A special note for British Overseas Territories Citizens (BOTCs)

Many British Overseas Territories Citizens (BOTCs) are also British Citizens. The easiest way to show you are a British Citizen is to have a passport that lists your nationality as 'British Citizen'. If you do not have one, the Welsh Government indicates in its Assessing Eligibility Guidance 2024/25 (paragraph 2.17.3) that any of the following will be acceptable instead:

- a British Overseas Territories Citizen passport issued before 21 May 2002; or
- a British Dependent Territories Citizen passport issued before 21 May 2002; or
- a British Overseas Territories Citizen passport issued on or after 21 May 2002, but only if you also provide evidence that either:
 - you or your parent was born in a British overseas territory (check the list of 'qualifying territories' at www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen); or
 - you or your parent was registered or naturalised as a citizen (for example, as a British Subject, a Citizen of the UK and Colonies, a British Citizen, a British Dependent Territories Citizen, or a British Overseas Territories Citizen) before 21 May 2002.

If you are a British Overseas Territories Citizen who is also a British Citizen, another category you might fit is the one headed 'Residence in British overseas territories', where the residence area is bigger.

C. Right of Abode

If you have a Certificate of Entitlement to the Right of Abode in the UK in your passport, you have no immigration restriction on the length of your stay in the UK.

D. Republic of Ireland citizen

If you are a citizen of the Republic of Ireland, you have no immigration restriction on the length of your stay in the UK. You are also an EU national and an EEA national.

E. Non-British Citizen serving in the British armed forces

If you are not a British Citizen and you are serving in the British armed forces, you are treated as having no immigration restriction on the length of your stay in the UK, while you serve in the British armed forces. This is because of section 8(5) of the Immigration Act 1971.

F. Waiting for 'settled status under the EU Settlement Scheme'

If you had a right of permanent residence under European law in the UK at 10.59pm on 31 December 2020 and you have made an application to the EU Settlement Scheme (EUSS), you are in a special position. You will be treated as though you already have your settled status under the EUSS while:

- you wait for a decision on your application to the EUSS (but you must have a Certificate of Application for the EUSS). It does not matter if you made the EUSS application late, after the deadline; and
- you wait for the outcome of an administrative review or appeal about your EUSS application (your request for an administrative review or appeal needs to have been made in-time, or accepted by the authorities for consideration despite being outside the time limit). Or you are still within the time limit for submitting one.

Examples of where status is not 'settled'

You are not 'settled' if you:

- have a time limit on the length of your stay in the UK, as shown by your current immigration permission (you have 'limited leave'); or
- are exempt from immigration control (unless you fit box E). For example, you are living in the UK as a diplomat or a member of their household/family; or
- have a type of British passport that does not give you British Citizenship (for example a British National (Overseas) passport), and you do not have Indefinite Leave