



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**EU Settlement Scheme extended to the people
of Northern Ireland: what does it mean for me?**

June 2020

Introduction

This briefing sets out a change in immigration rules being introduced from 24 August 2020. The change is a response to representations made by a number of organisations and individuals on how the current arrangements do not meet the identity and birth right provisions of the Belfast (Good Friday) Agreement. The issue was the subject of a legal challenge by Jake and Emma De Souza that has now been resolved. The new rules only apply for a limited period. The joint committee of the Commission and Irish Human Rights and Equality Commission published a [report](#) setting out a longer-term solution produced by Alison Harvey. Alison has also produced this briefing. I want to thank Alison for so ably meeting the challenge of producing an accessible document while doing justice to the complexities of the amended immigration rules. The briefing also sets out where else to get help and I hope it will be helpful to those individuals looking to resolve family reunification arrangements who are covered by the rules.

Les Allamby
Chief Commissioner
Northern Ireland Human Rights Commission

What has happened?

On 14 May 2022 the government published *Statement of Changes* [CP 232](#) to the [Immigration Rules](#). This changes the rules with effect from 24 August 2020 so that from that date the “family members” of the “people of Northern Ireland” can apply under the EU settlement scheme set out in [Appendix EU](#) to the Rules. The [EU settlement scheme](#) was originally devised for EEA nationals and their family members living in the UK before the end of [transition period](#) following Brexit to be able to continue living in UK indefinitely when the transition period ends, and in some instances for others family members to join them.

The change is to treat all the family members of the people of Northern Ireland in the same way as [EEA](#) nationals and their family members. The people of Northern Ireland are thus put in a more advantageous position as far as family unity is concerned than other British citizens or other people settled in the UK. This change is only for a limited period, as outlined later in this briefing.

Who are the “people of Northern Ireland” who stand to benefit?

The definition of the “people of Northern Ireland” in [Appendix EU](#) is taken from that in the [Belfast Agreement](#): people born in Northern Ireland to a mother or father (whether or not the parents are married) who, at the time of their birth, was a British citizen, an Irish citizen, or a dual British and Irish citizen or settled (“without any restriction on their residence”) in the UK. The person of Northern Ireland must be Irish, British or both at the time of the family member’s application; it does not matter if they hold another nationality as well.

People who were not born in Northern Ireland are always outside the definition. People who are not settled are mainly people who do not have “[indefinite leave to remain](#)” in the UK: people with leave under the immigration rules for a limited time, or with no leave. Irish people who are not people of Northern Ireland are also treated as settled provided they are not subject to [deportation](#) or [exclusion](#) orders. They are thus double-counted in the definition.

Why this scheme?

The government was [concerned](#) that some of the people of Northern Ireland, who are entitled under the Belfast Agreement to identify as Irish, British or both, were giving up, or considering giving up, British citizenship. Their reason for doing so was due to the fact that, while Irish nationals can benefit from EU free movement law and from the EU settlement scheme, dual Irish/British nationals cannot. Jake de Souza, the US citizen husband of Emma, a woman of Northern

Ireland, brought a [case](#) asserting his right to be treated as the spouse of an EEA national because she identified solely as Irish. The [Immigration Rules](#) that apply to family members of dual British/EEA nationals, along with those who are British citizens only or are settled in the UK, are more restrictive and impose [requirements](#) that are more difficult to meet. The changes are thus designed to remove one reason for persons of Northern Ireland to give up British Citizenship.

Who are my family members who can benefit?

The people who will benefit from the scheme will be “third country national” family members i.e. people who are not British and are not from the EEA. Your EEA national family members could apply as your family members under the scheme, but they are already [entitled](#) to use the scheme in their own right. Your spouse/ civil partner and your or your spouse/civil partner’s children, grandchildren or great grand-children up to age 21 can apply.

Children, grandchildren etc. over 21, and parents and grandparents (and great grandparents etc.) can apply, but they need to prove that they depend on you or your spouse or civil partner for support for their essential living needs. Your unmarried partner can apply provided you can evidence a “durable relationship” between the two of you before 31 December 2020. An immigration document under the family immigration rules should be sufficient, but alternative evidence can be used. The Home Office looks for evidence of two years’ cohabitation, but will consider other evidence, such as shared parental responsibility for a child. Having another relationship recognised under UK law (including immigration law) in the period relied on (e.g. still being married to someone else or having a visa as the dependant of someone else) will defeat the application.

Other relatives such as siblings or cousins can apply provided they can evidence dependency and that they are a member of the person of Northern Ireland’s household or are in strict need of personal care from the person of Northern Ireland on serious health grounds. Those who have met the requirements for leave as an [adult dependent relative](#) will be able to apply under this rule; others are likely to find it more difficult. There are very limited circumstances in which the dependant relative of the person of Northern Ireland’s spouse or partner can apply. In the case of EEA nationals, these persons have to have held relevant documentation before [1 February 2017](#); it is not yet clear exactly how these requirements will be applied to family members of the people of Northern Ireland.

There are limited circumstances where family members of a person of Northern Ireland who has died can apply under the scheme, or can apply following divorce from the person of Northern Ireland. There are criteria as to the duration of the relationship and the length of time spent in the UK. In the case of a death, the family must have been living in the UK for two years before the death in order to qualify for settled status, unless the death was the result of an accident at work or occupational disease. Those with a shorter period of residence in the UK can nonetheless apply for pre-settled status. If the child of the person of Northern Ireland is in education at the time of the death and is still in education, they and their carer can apply. In the case of divorce, the couple must have been married for at least three years, and living in the UK for at least a year, before the divorce. If these criteria are not met it is still possible to apply if the family member has custody of a child; the court has ordered access to the child or in “particularly difficult circumstances”, the most obvious of which is where the relationship has broken down because of abuse.

See further information about evidence below.

Irish nationals who are not “people of Northern Ireland” can apply in their own right under the scheme, but do not have to do so to remain in the UK. Their third country national family members do have to apply under the scheme and can do so even if the Irish national does not. Irish nationals suffer no loss of rights by applying under the scheme.

What is the time frame for applications?

The time frame for applications from those in the UK is 24 August 2020 to 30 June 2021. Close family members can join you in the UK after 30 June 2021, but only if you were in the UK before 31 December 2020 and the relationship existed before that date, or a child was born or adopted after that date. Those exceptions aside, after 30 June 2021 the scheme closes. EEA nationals and all the people of Northern Ireland will again fall under the immigration rules that apply to British citizens, people settled in the UK and refugees. *Carpe diem*: seize the day.

What are the advantages for me and my family members of applying under the scheme?

Children can apply up to age 21, whereas under the Immigration Rules that apply to British citizens (including dual nationals) people settled in the UK and refugees, they can only apply up to age 18. Grandparents (and great grandparents) are not required to meet the well-nigh impossible requirements of

the adult dependant relatives [rule](#), although the requirements for more distant relatives resemble that rule. You do not have to satisfy minimum income [requirements](#) to bring your spouse to the UK: requirements that had previously been [identified](#) as adversely affecting people in Northern Ireland, because of its generally lower wages.

It is free to apply whereas applications under the Immigration Rules currently [cost](#) thousands of pounds.

Applying under the scheme is your family member's choice.

See further information about settled status below.

Are there any other requirements?

Your family member will need to prove their relationship to you and their identity in the ways set out in the rules.

They will also need to meet a "[suitability](#)" requirement. There will be a check against criminal records databases including the [Police National Computer](#) and the Warnings Index. Those who are the subject of an extant deportation order will be refused. Immigration history more generally can be reviewed, with a particular emphasis on deception.

What can my family members apply for?

Settled status

Settled status is given to those who can prove five years "continuous" residence in the UK and that since those five years continuous residence, they have not been outside the UK for more than two years. It is also given to those who meet the requirements where the relationship with the person of Northern Ireland has ended because of death or divorce. Here, 'continuous' means not absent for more than six months in any 12-month period. There is power to overlook absence on compulsory military service, and one 12-month absence for an important reason, such as serious illness or to work or study overseas. It is generally simpler to avoid periods when you have excess absences and to choose recent years. Those whose relationship with the person of Northern Ireland ended in death or divorce can be awarded settled status without the need for five years continuous residence.

Settled status means that a person can remain in the UK without limit of time. People with settled status have a right to return to the UK with settled status

provided they do not stay outside it for more than five years. By contrast, partners of British citizens who are granted indefinite leave to remain must return for settlement no more than two years after they left the UK so, again, settled status is more advantageous.

Pre-settled status

This is awarded to those who cannot prove five years continuous residence. They can use it to accumulate the total five years' residence required to apply for settled status and will need to apply for settled status when they have done so. Provided they have got pre-settled status by 30 June 2021, they can hold pre-settled status beyond that date.

Entitlements

People with pre-settled and settled status will have access to social security benefits, health care etc. on the same terms as the family members of EEA nationals under the settled status scheme do now. This is not the same as the scheme that applied to EU nationals exercising free movement rights: persons with pre-settled status are not treated as having a "[right to reside](#)" for the purpose of the habitual residence test for benefits.

How do they apply?

The application is made on a smartphone app. You then fill in an online form. In some cases, where people do not have "biometric" documents that can be scanned, documents will need to be posted to the Home Office. There is support for people who really cannot use the online process. Applications can be made from outside the UK. Details are checked against government databases (tax, national insurance records etc.)

Successful applicants are not issued with a document but given a link to an online checking service that can be used to prove their status.

Where will I find other information?

Follow these links to [gov.uk](https://www.gov.uk) and see [NI Direct](#) .

Do I need legal advice?

Many people have applied successfully under the scheme without a lawyer, but consider your own situation. It is easier to get things right at the outset than to put things right after they have gone wrong. People who fear refusal under the

“suitability” requirement are advised to seek legal advice as are those with excess absences from the UK. Other dependent relatives, such as siblings, may need advice and so too may those whose relationship with the person of Northern Ireland has broken down. If your family member expected to be given settled status and was given “pre-settled status,” seek legal advice.

This document is up to date on 18 June 2020. Always check for updates. This document describes the scheme. It does not give legal advice, which, to be accurate, must be based on the detail of your circumstances. If you wish to seek legal advice on the scheme, please contact a solicitor. Details on solicitors are available from the Solicitors Directory of Northern Ireland at: www.lawsoc-ni.org

Alternatively please contact one of the organisations below:

Advice NI

Website: www.advice.net/eu-settlement-scheme

Telephone: 0800 138 6545

Law Centre NI

Website: www.lawcentreni.org

Telephone: 02890 244401

Northern Ireland Human Rights Commission

Website: www.nihrc.org

Telephone: 02890 243987

Step NI

Website: www.stepni.org

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