



Advisor guidance on changes to the EU Settlement Scheme

This guidance has been produced by the Immigration Project run by the Committee on the Administration of Justice (CAJ).

‘RELEVANT PERSONS OF NORTHERN IRELAND’, IRISH CITIZENS NOT BORN IN NORTHERN IRELAND, AND THEIR FAMILY MEMBERS - ADVISING ON ACCESS TO THE EU SETTLEMENT SCHEME

N.B. In this guidance note **‘Irish citizens not born in Northern Ireland’** refers to Irish Citizens born in the Republic of Ireland or persons born outside of the Republic of Ireland who are Irish citizens by descent. **‘Relevant Persons of Northern Ireland’** is used to describe Irish, British and dual Irish/British citizens born in Northern Ireland. Please note that different advice applies to Irish citizens born in the Republic of Ireland/by descent and Irish citizens born in Northern Ireland.

I. FAMILY MEMBERS OF ‘RELEVANT PERSONS OF NORTHERN IRELAND’

- On the 24th August 2020 Appendix EU of the immigration rules was amended to allow the family members of a “relevant person of Northern Ireland” to apply to the EU Settlement Scheme.
- A relevant person of Northern Ireland is, “a British citizen, an Irish citizen or a dual British and Irish citizen who was born in Northern Ireland (and at the time of their birth had at least one parent who was a British citizen; or an Irish citizen; or a dual British and Irish citizen; or who was otherwise entitled to reside in Northern Ireland without any restriction on their period of residence)”.
- Qualifying non-EU family members of a relevant person of Northern Ireland are now able to apply to the [EU Settlement Scheme](#).
- The relevant person of Northern Ireland does not need to apply to the scheme for their non-EU family members to apply. Family members can make the application in their own name providing evidence of the person of NI’s status.
- The Home office position is that people of Northern Ireland are not required to and should not apply to the EU Settlement Scheme themselves.
- These changes also apply where a relevant person of NI or their family member currently lives in England, Scotland or Wales and in some cases where they live abroad and wish to return to the UK.
- Applications for relevant persons of NI and their family members will only be accepted from the **24th August 2020** until the deadline of 30th June 2021.
- Applications after the 31st December 2020 are possible if you meet certain requirements-see advice
- Applications are made through the standard EU Settlement Scheme [process](#), which is online and free.
- Eligible family members of relevant persons of NI are defined in the same way as family members of other EU nationals. Durable partners and extended family members of relevant persons of NI can apply relying on alternative evidence to the standard ‘relevant document’ required.
- Non-EU family members can transfer to the EUSS from existing visas if they wish.
- To provide evidence that a person is a relevant person of Northern Ireland applicants must provide their NI family members birth certificate or passport showing that they were born in Northern Ireland; evidence which shows, at the time of their birth, at least one of their parents was British, Irish, or dual British/Irish or otherwise entitled to reside in NI without any restriction on their period of residence and evidence of their relationship to that parent. Alternative evidence may be accepted.

- Family members of relevant persons of Northern Ireland will be required to meet the same requirements as other non-EU family members. For example the relevant person of Northern Ireland must be resident in the UK before 31st December 2020 for their family member to apply.

Advising relevant persons of Northern Ireland and their family members; British, Irish and dual British/Irish nationals born in Northern Ireland will **not be required** to apply to the EU Settlement Scheme as they have an existing right to reside in the UK. Non-EU family members of relevant persons of Northern Ireland **are required to apply** to the EU Settlement Scheme if they have no other status in the UK, and can apply **even when their NI family member has not**. EU family members can apply in their own right.

Family members of relevant persons of Northern Ireland who already have status in the UK such as a spouse visa, may also wish to transfer to the EU Settlement Scheme as it can offer advantages over UK visas, such as being free to apply to and not subject to No Recourse to Public Funds.

This route opens from the **24th August 2020**. Aside from some extra evidence requirements and alternative evidence for extended family members and durable partners, relevant persons of Northern Ireland and their family members are generally expected to meet the same requirements and apply the same way as other applicants.

2. IRISH CITIZENS NOT BORN IN NORTHERN IRELAND

- Irish citizens not born in NI, who are resident in the UK, are eligible to apply to the EU Settlement Scheme but are not required to apply.
- The UK government [advice](#) is that Irish citizens not born in NI can apply to the EU Settlement Scheme “should they wish to do so”.
- The UK government [states](#) that Irish citizens not born in NI hold a right of residence in the UK which is not reliant on the UK’s membership of the EU and will continue to have the right to reside, work and access healthcare, education and social security in the UK without applying to the EU Settlement Scheme. These are sometimes called ‘Common Travel Area Rights’, however these are generally administrative arrangements, not underpinned by legislation, and could be changed by the government at any time. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 legislates to fix a gap concerning the entry of Irish citizens into the UK; it does not legislate for other Common Travel Area rights.
- A [report](#) by the Northern Ireland Human Rights commission found that not applying to the EU Settlement Scheme could leave Irish citizens who live in the UK, with fewer rights after Brexit. The settlement scheme offers legally-bound retention (usually for life) of EU rights and benefits provided for under Part II of the Withdrawal Agreement; one important example is the right to family reunion.
- Irish citizens not born in NI make the same application and need to provide the same evidence as other EU nationals when applying.

Advising Irish citizens not born in NI; Irish citizens not born in NI should be advised that they can apply to the EU Settlement Scheme but that they are not required to. There are potential benefits to applying. If they do not apply the UK government has stated that they will be able to continue working and living in the UK as they do now.



3. FAMILY MEMBERS OF IRISH CITIZENS NOT BORN IN NI

- Non-EU family members of Irish citizens not born in NI who do not have any other status in the UK **are required** to apply to the EU Settlement Scheme. EU family members should apply in their own right.
- Family members of Irish citizens need to apply even if their Irish citizen family member has not applied, or doesn't want to.
- There is no status or residence provided for the family members of Irish citizens through the so called 'Common Travel Area rights' outlined above. If they do not apply to the EU Settlement Scheme or for another form of immigration status, they could be left without legal status in the UK after the deadline.
- Children of Irish citizens will often be eligible for Irish citizenship, but this should be confirmed and otherwise the children should apply for status under the EU Settlement Scheme.
- Eligible family members of Irish citizens are defined in the same way as other EU nationals and include those with retained right of residence.
- The evidence requirements for applying are the same as for family members of other EU citizens. Where the Irish family member has not applied to the Settlement Scheme, the applicant will need to provide evidence the Irish citizen would be granted if they made the application. e.g their valid Irish passport and evidence of 5 years' continuous residence in the UK.

Advising family members of Irish nationals not born in NI; it is very important that non-EU family members of Irish citizens know they **are required to apply** to the EU Settlement Scheme, and can do so **even if their Irish citizen family member has not**. They risk losing the right to live and work in the UK if they do not obtain an immigration status before the EU Settlement Scheme deadline. EU family members are also required to apply and can apply in their own right. Qualifying family members of Irish citizens not born in NI should be advised to apply in the same way family members of other EU nationals are advised.

4. DUAL IRISH/BRITISH CITIZENS AND OTHER BRITISH CITIZENS NOT BORN IN NORTHERN IRELAND

- The change to Appendix EU defines a relevant person of Northern Ireland strictly in line with the 'the people of Northern Ireland' under the two governments' interpretation of this in the Good Friday Agreement. This means it only applies to British, Irish or dual British/Irish citizens born in Northern Ireland, who had a parent who was British, Irish, dual British/Irish or residing in NI without restriction on their right of residence (e.g. had indefinite leave to remain) at the time of their birth.
- This is a narrow definition which excludes for example, a person with parents from Northern Ireland who was born outside of Northern Ireland, or a British citizen who has resided in Northern Ireland the majority of their life but was not born there.
- British citizens who are not relevant persons of Northern Ireland and their family members, remain excluded from the EU Settlement Scheme except in limited circumstances such as when using the [Surinder Singh](#) route.
- Family members of dual British/Irish citizens who are not relevant persons of Northern Ireland, remain excluded from the EU Settlement Scheme under the application of the ruling in [McCarthy](#), which does not permit a dual British/EU national in the UK to exercise EU family reunion rights.

- Some family members of dual EU/British citizens may be permitted to use the EU Settlement Scheme under the application of the ruling in [Lounes](#). This applies if the dual national exercised free movement rights in the UK prior to the acquisition of British citizenship and retained their EU nationality. For example, an EU national who travelled to the UK to work and later naturalised as British citizen becoming a dual British/EU national.

Advising dual Irish/British and British nationals who are not born in Northern Ireland; only a very limited number of British and dual British/Irish nationals who are not a relevant person of Northern Ireland will be able to access the EU Settlement Scheme. It is important to check the person's details and history to see if exceptions such as Surinder Singh or Lounes apply.

5. SUMMARY

There has been miscommunication and uncertainty over the rights of Irish citizens, relevant persons of Northern Ireland and their family members and whether they can or should apply to the EU Settlement Scheme. It is essential that this is addressed so that people are aware of their rights and particularly to prevent non-EU family members being left without status in the UK after the EU Settlement Scheme deadline.

Irish citizens have been told by the UK government not to apply to the EU Settlement Scheme, which is not an accurate reflection of the reality of their situation. It is important that Irish citizens understand they can apply if they wish to, and doing so may hold rights advantages for them. It is extremely important that non-EU family members of Irish citizens understand that they must apply and can do so even if their Irish family member does not.

The changes to Appendix EU allows applications for family members of relevant persons of Northern Ireland, and expands the EU Settlement Scheme to a group of people who were previously excluded. They have a brief window of opportunity to apply to the scheme, which can have advantages over the UK immigration rules and advisors should be alert to this when dealing with clients who were born in Northern Ireland or who have family born in Northern Ireland. This could be particularly impactful for vulnerable clients who are subject to NRPF as the EUSS is not subject to this. Advisors should be aware that family members of people from Northern Ireland may previously have had an application refused or been advised that they could not apply to the scheme, and these people should be urgently informed of the change in the rules so that they can re-apply. It is important to emphasise that a relevant person of Northern Ireland can be solely Irish, solely British, or a dual British/Irish national as they so choose.

LEARN MORE

The information in this brief is accurate at the time of writing on 22nd October 2020. Please contact CAJ's Immigration Project Coordinator, **Úna Boyd**, for further information on this guidance or to request an organisational training session on the issues discussed within it. Free case advice and guidance on applying to the EU Settlement Scheme is available in Northern Ireland from the following organisations:

Migrant Centre NI- 07730747860 , Advice NI- 08001386545, Step & Stronger Together-02887750211

Email: una@caj.org.uk

Twitter: [@CAJNi](https://twitter.com/CAJNi)

Website: www.caj.org.uk