



Home Office

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Mr Christopher Stacey LL.B, LL.M
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FOI Reference: 55571

Date: 18 October 2019

Dear Mr. Christopher Stacey,

Thank you for your e-mail of 20 September in which you ask:

- 1. Are prisoners eligible to apply to the EU Settlement Scheme while they are serving a sentence?**
- 2. How many prisoners have made applications to the EU Settlement Scheme?**
- 3. Can third country national family members of EEA national prisoners apply to the EU Settlement Scheme?**
- 4. You have also asked to be provided with any relevant Home Office policy or guidance documents.**

Your request has been handled as a request for information under the Freedom of Information Act 2000. Your questions have been answered below in the order in which they have been asked.

1. Are prisoners eligible to apply to the EU Settlement Scheme while they are serving a sentence?

Under Appendix EU to the Immigration Rules, which implements the EU Settlement Scheme, a sentence of imprisonment breaks the continuity of UK residence required for status under the scheme, where that person has not (prior to imprisonment) acquired permanent residence in the UK under EU law or completed a continuous qualifying period of five years in the UK and Islands. This is consistent with the operation of current free movement law in the UK, under the Immigration (European Economic Area) Regulations 2016. Periods of imprisonment do not therefore count towards an applicant's eligibility for status under the EU Settlement Scheme, and their eligible residence restarts from scratch on release.

Where a person has acquired the right of permanent residence under EU law (or has already completed a continuous qualifying period of five years' residence in the UK and Islands which is generally required for settled status under the EU Settlement Scheme) – before the sentence of imprisonment and that sentence does not lead to their deportation, they retain that right of permanent residence and will be able to rely on that (or on having

previously completed a continuous qualifying period of five years' residence in the UK and Islands) to apply for settled status under the scheme.

2. How many prisoners have made applications to the EU Settlement Scheme?

This request is exempt under section 12 of the Act, as the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. This is because your request would involve going into each individual application to get this information. It is considered that the work required to ensure that all of the information held by the Home Office covered by your request was located, retrieved and extracted would by far exceed the £600 cost limit.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

A single collated folder or drive of all Home Office information on this topic does not exist so a search would need to be conducted of the corporate filing systems within different areas of the department and across different Home Office systems.

Finally, once relevant information has been identified, retrieved and collated, we would have to go through each record to ensure it was in scope of the request. We therefore estimate that this request would exceed the cost limit and are not obliged to comply.

3. Can third country national family members of EEA national prisoners apply to the EU Settlement Scheme?

Where the continuous qualifying period of a relevant EEA citizen is broken and restarted due to imprisonment, this also breaks and restarts any continuous qualifying period of residence of less than five years on which their non-EEA family member relies (where they have not acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations, or the right of permanent residence in the Islands) as being a family member of a relevant EEA citizen.

4. To be provided with any relevant Home Office policy or guidance documents.

Published policy guidance on the eligibility requirements for the EU Settlement Scheme can be found here:

<https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>

Section 21 of the Freedom of Information Act exempts the Home Office from having to provide you with this information, because it is already reasonably accessible to you. If you have any difficulties in accessing this information via the source I have provided above, please contact us again.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to

foirequests@homeoffice.gov.uk, quoting reference 55571. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely

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