

EU/EEA/SWISS Settlement Scheme

Fair Processing Notice

Under the draft BREXIT Withdrawal Agreement, the UK and the EU have agreed that the current rights of those EU/EEA/Swiss citizens resident in the Bailiwick of Guernsey will continue until 31 December 2020. If those affected want to stay in the Bailiwick of Guernsey beyond then, they will need to apply under the new EU/EEA/SWISS Settlement Scheme. This will allow them and their family members to continue to live and work in the Bailiwick of Guernsey. There may be different arrangements for those arriving after 29 March 2019.

Those affected will be granted pre-settled status otherwise known as Limited Leave to Remain if they have been living in the Bailiwick of Guernsey for less than five years. They will be granted settled status otherwise known as Indefinite Leave to remain if they have been living in the Bailiwick for Guernsey for five years or more.

The data controller with responsibility for delivering this Scheme is the Guernsey Border Agency and the Scheme is delivered by the Immigration and Nationality division. The information we are requesting is necessary in order to determine your eligibility under the above Scheme. If eligible you will be granted settled status (Indefinite Leave to Remain) or pre-settled status (Limited Leave to Remain).

1. The Data Protection Law

The Guernsey Border Agency acknowledges its obligations as per the Data Protection (Bailiwick of Guernsey) Law 2017, which provides a number of requirements in terms of processing activities involving personal data. The controller further acknowledges the general principles of processing as well as the rights of a data subject and more information in relation to these provisions are provided within this fair processing notice.

2. The Principles of Processing

a. Lawfulness, fairness and transparency

Personal data must be processed lawfully, fairly and in a transparent manner.

In order to deliver this scheme we need to collect the following information about you:

- Name

- Date of Birth
- Gender
- Nationality
- Address
- Telephone number
- Email
- Social Security number / contributions /family allowance claim
- Passport or National Identity Card number and biometric data page (copy of Passport biometric data page or National ID Card)
- Proof of continuous residence in the Bailiwick of Guernsey, UK, Jersey or the Isle of Man
- Criminal Convictions including those awaiting trial
- Name, Date of Birth, Nationality, Passport or National Identity Card number and biometric data page (copy of Passport biometric data page or National ID Card) for those non EU/EEA/Swiss citizens who are applying as a family member or dependant of an EU/EEA/Swiss citizen

The list above includes criminal conviction information and the Guernsey Border Agency recognises that this is more sensitive data, known as special category data within the Law. We need to collect both the personal and special category data, and hold this information about you, in order to:

- Determine your eligibility for pre-settled or settled status under the EU/EEA/SWISS Settlement Scheme
- Process your application for pre-settled or settled status under the Scheme
- Verify you are who you say you are

The Immigration and Nationality division is able to deliver this Scheme in accordance with the Immigration Act 1971 (the 'Act') as extended to the Bailiwick of Guernsey and through Appendix EU (EU/EEA/Swiss citizens and family members) of the Immigration (Guernsey) Rules 2008 developed under Paragraph 255 of the Act.

All personal data (listed above) is collected and processed in a lawful manner in accordance with the Law. Schedule 2 (Conditions for Processing to be Lawful) of the Law provides a number of conditions to ensure that the processing of personal data by a controller is lawful. The relevant condition that applies in relation to this Scheme is Condition 8, so that we are able to comply with a duty under an enactment.

The information will be collected from the EU/EEA/SWISS Settlement Scheme application form. We will not share your data unless we need to approach other agencies. This will happen where you have declared criminal convictions in Section 4. We will in this case share relevant information in confidence with the Police and the UK Home Office.

As part of the Settlement Scheme you need to be able to prove continuous residency within the UK and Islands (Bailiwick of Guernsey, Jersey, the Isle of Man). A useful record locally for demonstrating this is your social security contributions or family allowance claim (for those

applicants under school age or aged 19 under and still in full-time education at school, college or university). An arrangement is in place where Revenue Service and Social Security are content to provide this data directly to us provided you have given your consent. Alternatively you can approach Revenue Service or Social Security yourself for this information and supply it at the time of your application. If you choose to allow us to do this on your behalf, we will provide Revenue Service or Social Security with your date of birth and social security number and they will provide us with your contributions history or family allowance claim including residency address.

b. Purpose limitation

Personal data must not be collected except for a specific, explicit and legitimate purpose and, once collected, must not be further processed in a manner incompatible with the purpose for which it was collected.

The Guernsey Border Agency acknowledges its responsibility with regards to this data protection principle and therefore the controller maintains that it will not further process that personal data in a way which is incompatible to its original reason for processing as specified in section 2a, unless the controller is required to do so by law. The personal data will not be transferred to a recipient in an authorised or an unauthorised jurisdiction (as per the definition within data protection law).

c. Minimisation

Personal data processed must be adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed.

The controller maintains that it will only process the personal data which is detailed in section 2a, and will not process any further personal data that is not necessary in relation to the original reason for processing personal data as specified in section 2a, unless the controller is required to do so by law.

d. Accuracy

Personal data processed must be accurate, kept up-to-date (where applicable) and reasonable steps must be taken to ensure that personal data is inaccurate is erased or corrected without delay.

The controller will ensure that all personal data that it holds is accurate and kept up-to-date, and any personal data that is inaccurate will be erased or corrected without delay.

e. Storage limitation

Personal data must not be kept in a form that permits identification of a data subject for any longer than is necessary for the purpose for which it is processed.

The personal data will be retained in hard copy and electronic format for 25 years. Social Security contributions history and Family Allowance claims will only be kept until the application has been processed. This is in line with our current retention period for indefinite Leave to Remain applications. The details of my settled or pre-settled status may be shared with the UK Home Office or Immigration authorities in Jersey or the Isle of Man. This is to ensure that you may transit easily through immigration control points in the Common Travel Area.

f. Integrity and confidentiality

Personal data must be processed in a manner that ensures its appropriate security, including protecting it against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

The personal data will be held in hard copy and electronic format. Both formats will only be accessible by authorised personnel within the Guernsey Border Agency and security is in place to protect that data from unauthorised or unlawful processing and against accidental loss, destruction or damage.

g. Accountability

The controller is responsible for, and must be able to demonstrate, compliance with the data protection principles. The controller and data protection officer contact details are provided below.

3. Contact Details

The contact details of the controller are as follows:

The Committee for Home Affairs

Tel: 01481 741420

Email: immigration@gba.gov.gg

The contact details for the Data Protection Officer of Home Affairs is as follows:

Data Protection Officer, the Committee for Home Affairs

Tel: 01481 717000

Email: data.protection@gov.gg

4. Data Subject Rights

a. Right of access

A data subject has the right to be advised as to whether a controller is processing personal data relating to them and, if so, that individual is entitled to one free copy of their personal data (with further copies available at a fee prescribed by the controller). This is known as a Subject Access Request (SAR). Upon receipt of an SAR, the controller has a period of one month to adhere to the request (an extension of two further months can be sought by the controller depending upon the complexity and number of requests submitted by the data subject).

b. Right to data portability

A data subject has the right to data portability, this means that an individual is able to arrange for the transfer of their personal data from one controller to another without hindrance from the first controller. This right can only be utilized where the processing is based on consent or for the performance of a contract. This right cannot be used for processing by a public authority.

Where a data subject invokes the right to data portability, the data subject has the right to be given their personal data in a structure, commonly used and machine-readable format suitable for transmission from one controller to another. Upon the request of a data subject, the controller must transmit their personal data directly to another controller unless it is technically unfeasible to do so.

c. Exception to right of portability or access involving disclosure of another individual's personal data

A controller is not obliged to comply with a data subject's request under the right of access or right to data portability where the controller cannot comply with the request without disclosing information relation to another individual who is identified or identifiable from that information.

d. Right to object to processing

A data subject has the right to object to a controller's activities relating to the processing of personal data for direct marketing purposes, on grounds of public interest and for historical or scientific purposes.

e. Right to rectification

A data subject has the right to require a controller to complete any incomplete personal data and to rectify or change any inaccurate personal data.

f. Right to erasure

A data subject has the right to submit a written request to a controller regarding the erasure of the data subject's personal data in certain circumstances. These include where:

- The personal data is no longer required in relation to its original purpose for collection by the controller;
- The lawfulness of processing is based on consent and the data subject has withdrawn their consent;
- The data subject objects to the processing and the controller is required to cease the processing activity;
- The personal data has been unlawfully processed;
- The personal data must be erased in order to comply with any duty imposed by law; or
- The personal data was collected in the context of an offer from an information society service directly to a child under the age of 13 years of age.

g. Right to restriction of processing

A data subject has the right to request, in writing, the restriction of processing activities which relate to the data subject's personal data. This right can be exercised where:

- The accuracy or completeness of the personal data is disputed by the data subject who wishes to obtain restriction of processing for a period in order for the controller to verify the accuracy or completeness;
- The processing is unlawful but the data subject wishes to obtain restriction of processing as opposed to erasure;
- The controller no longer requires the personal data, however the data subject requires the personal data in connection with any legal proceedings; or
- The data subject has objected to processing but the controller has not ceased processing operations pending determination as to whether public interest outweighs the significant interests of the data subject.

h. Right to be notified of rectification, erasure and restrictions

Where any rectification, erasure or restriction of personal data has been carried out, the data subject has a right to ensure that the controller notifies any other person to which the personal data has been disclosed about the rectification, erasure or restriction of processing. The controller must also notify the data subject of the identity and contact details of the other person if the data subject requests this information.

i. Right not to be subject to decisions based on automated processing

A data subject has the right not to be subjected to automated decision making without human intervention.

To exercise these data subject rights, please contact either the data protection officer or the controller (as per the contact details provided in 2g).

j. Right to make a complaint

An individual may make a complaint in writing to the supervisory authority (the Office of the Data Protection Commissioner) if the individual considers that a controller or processor has breached, or is likely to breach, an operative provision of the data protection law, and the breach involves affects or is likely to affect any personal data relating to the individual or any data subject right of the individual (as listed above).

k. Complainant may appeal failure to investigate or progress and may appeal determinations

An individual may appeal to the Court where:

- The Supervisory Authority has failed to give the complainant written notice that the complaint is being investigated or not within two months of receiving the complaint;
- The Supervisory Authority has failed to provide written notice of the progress and, where applicable, the outcome of the investigation at least once within three months of providing notice of the beginning of an investigation; or
- Where the individual seeks to appeal against a determination of the Supervisory Authority.