

# Remain in France Together

## Information Sheet

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# There's no place like home: eligibility to apply for an EU residence permit

This information sheet looks at what it means to be resident in France in order to qualify for protection under the Withdrawal Agreement (WA).

We have resisted the temptation to title this 'Schrödinger's resident' in response to many discussions in our Facebook group about whether it is possible to be resident in more than one place at the same time.

For more detail about legal residence in France please see our bite-size guide to Legal Residence under the Withdrawal Agreement.

### What is meant by residence?

Establishing a person's place of residence can appear to be quite complex. You will hear the terms residence, ordinary residence, habitual residence, domicile, fiscal residence (and probably others) used in different circumstances.

The multiple definitions exist for a range of different purposes. What matters in relation to Brexit is what residence means in relation to the Withdrawal Agreement (WA).

### Who has the right to take up residence?

Article 7 of Directive 2004/38/EC<sup>1</sup> specifies who has the right to take up residence in

another member state for a period of more than three months.

To summarise you need to fall into one of the following categories: worker, self-employed, self-sufficient, student or family member of someone who satisfies the conditions.

The detail (including requirements about sufficient resources and sickness cover) can be found in our bite-size guide to [legal residence under the withdrawal agreement](#).

### What does the WA say about residence?

The WA confers rights on people who exercise their right to reside in another EU



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member state in accordance with EU law as set out in Directive 2004/38/EC.

The WA itself does not define residence (which is probably why confusion arises): it does not need to do so because the definitions are there in the prior legislation.

Regulation 883/2004<sup>2</sup> on the coordination of social security, article 1 (j) and (k) states:

(j) "residence" means the place where a person habitually resides;

(k) "stay" means temporary residence;

These definitions apply EU wide in any circumstances where conflicts of law may need to be resolved in relation to people exercising their rights to live and work in other states. In EU law you can only ever be habitually resident in one state at a time.

### What about second home-owners?

The clue is in the name. If you have a second home here, then France is not your habitual residence. You may be used to spending quite long periods of time here but that has only been possible because France has traditionally been lax about registering arrivals from other countries.

It is therefore not legal to apply for a residence permit simply to get round the limits that will apply to UK nationals in the Schengen area after the end of the transition period.

If you have more than one home, you will find that, aside from major issues like tax and healthcare, defining which is primary and secondary matters in many aspects of everyday life such as insurance, banking, and

validity of your driving licence to name but a few.

If you want to continue with a lifestyle where you spend around half of your time in France, you have three options:

1. You can decide to make the shift so that you have your principal residence and centre of interests in France. This means following all the requirements for legal residence.
2. You can manage your time so that you comply with the rule of spending no more than 90 days in any 180 day period in France. The EU provides information about the rules on [EU border crossing](#)<sup>3</sup> along with a [short stay calculator](#)<sup>4</sup> and a detailed [user guide](#)<sup>5</sup>.
3. You can apply for a long stay visa for France. The current rules for non-EU nationals can be found (in English) on the French government [visa website](#)<sup>6</sup>.

### How is habitual residence determined?

To establish whether or not you are habitually resident in a particular country involves taking an overall assessment of your life and centre of interests. The EU provides detailed [guidance](#) on this and says that any decision must be made: '*... having regard to all circumstances which point to a person's real choice of a country as his or her State of residence.*'

Factors to be considered as part of this overall assessment include:



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- family situation (family status and family ties)
- duration and continuity of presence in the Member State concerned

(contd)

- employment situation (nature and specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of the work contract)
- exercise of a non-remunerated activity
- in the case of students, the source of their income
- housing situation, in particular how permanent it is
- the Member State in which the person is deemed to reside for taxation purposes
- reasons for the move
- the intention as it appears from all the circumstances.

### What does this mean for cross-border workers?

We receive many queries from people who work outside France, particularly those who return to the UK to work, and who are concerned that this may compromise their application for a residence permit.

Frontier workers, who meet the definition of returning home at least once a week, are specifically protected under the WA.

However, cross-border workers with different working patterns can still meet the requirements for habitual residence in France.

In general, the concerns arise because people are focused on how many days they spend working outside France without taking into consideration all of the other criteria listed above. If your main residence is in France, your family is here, you have an S1 from the country you are working to cover your healthcare and you make a tax return here (even if the tax is actually payable in the UK), you should have no problem demonstrating that your centre of interests lies in France.

### Still uncertain about your situation?

If you are part of a family transitioning to life in France for one reason or another e.g. one parent staying with a child still in school or because you are unable to sell your house in the UK, your situation may be less clear-cut and you will have to keep good evidence to back up a claim that you have implemented your intention to move your life habitually to France.

The EU [guidance document](#)<sup>7</sup> provides a range of detailed examples of how habitual residence is determined in complex situations.



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### References

The following links all point to official information sources:

1. Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038>
2. Regulation 883/2004 on the coordination of social security.  
<https://eur-lex.europa.eu/eli/reg/2004/883/2014-01-01>
3. EU web page on border crossing.  
[https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/border-crossing?fbclid=IwAR021evg-wQrk31FKLAXxVJyF\\_ijzDY9fceMARMJueKUk2IGpJt2mYZR9pE](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/border-crossing?fbclid=IwAR021evg-wQrk31FKLAXxVJyF_ijzDY9fceMARMJueKUk2IGpJt2mYZR9pE)
4. EU calculator to help you manage time spent within the Schengen area.  
[https://ec.europa.eu/home-affairs/content/visa-calculator\\_en](https://ec.europa.eu/home-affairs/content/visa-calculator_en)
5. EU user guide for the short stay Schengen calculator.  
[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/border-crossing/docs/short\\_stay\\_schengen\\_calculator\\_user\\_manual\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/border-crossing/docs/short_stay_schengen_calculator_user_manual_en.pdf)
6. French government web page on long stay visas for non-EU nationals.  
[https://france-visas.gouv.fr/en\\_US/web/france-visas/long-stay-visa](https://france-visas.gouv.fr/en_US/web/france-visas/long-stay-visa)
7. Practical guide on the application of habitual residence test in the EU, EEA and in Switzerland.  
<https://ecas.issuelab.org/resource/practical-guide-on-the-applicable-legislation-in-the-eu-eea-and-in-switzerland.html>

### Disclaimer

This is one of a series of guides and information sheets produced by Remain in France Together (RIFT). RIFT is a statutory association governed by French law and managed and run by volunteers. It exists to uphold the rights of British citizens living in, or moving to, France affected by the UK withdrawal from the EU.

The information is for general guidance and does not constitute legal advice. It is offered free for personal, non-commercial use.

The main source of information to keep up-to-date with developments in citizens' rights is our website <https://www.remaininfrance.fr/>

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