

# Frequently Asked Questions for EEA Staff and Their Family Members

August 2017

Many European Economic Area (EEA) nationals in the UK are understandably concerned about what Brexit may mean for them and are likely to remain so following the UK government's proposals on "[Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU](#)", as published on 26 June 2017.

The following FAQs are intended to answer your most immediate questions relating to the effect of the UK's exit from the EU on EEA citizens and we will endeavour to update these as and when the situation develops. They also take into account some additional detail included in a joint note comparing the EU and UK positions on citizens' rights, as published by the government on 19 July 2017.

## How Much Attention Should I Pay to These Proposals?

It is important to remember that they are merely proposals put forward by the UK as part of its negotiations with the EU. Whilst the proposals are a useful indicator of the government's current intentions, depending on the outcome of the negotiations, they could, by the time they are implemented, become either more generous or (less likely) more onerous for EEA nationals in the UK.

## The Proposals Refer Specifically to EU Citizens, but What About Those of Us in the UK From Other EEA (Non-EU) Member States and Switzerland?

The government has said that it will discuss similar arrangements with Iceland, Liechtenstein, Norway and Switzerland on a reciprocal basis. Throughout this note, we will use "EU citizens" when referring to the government's proposals, but "EEA nationals" when discussing the current law and practice relating to the wider group of EU, EEA and Swiss nationals.

## What Are the Relevant Points of the Proposals?

- EU citizens who arrived before a specific cut-off date (see below) and who have been continuously resident here for five years will be allowed to stay indefinitely by obtaining "settled status".
- EU citizens who arrived before the cut-off date but have not been here for five years will be allowed to obtain temporary permission to stay until they have been here for five years, after which they will be able to apply for settled status.

- Family members who are living with or who join EU citizens before the UK's exit will also be able to apply for settled status after five years in the UK.
- There will be a grace period of up to two years after the UK leaves the EU to give EU citizens and their families sufficient time to make their applications.
- All EU citizens and their families in the UK will need to apply to the Home Office for permission to stay before the end of the grace period, regardless of the date of their arrival and whether or not they already have permanent residence or documents to confirm that status.

## What Does "Settled Status" Mean?

Settled status under UK law is expected to be the same as indefinite leave to remain (ILR) granted to non-EEA nationals after five years of continuous residence in the UK. ILR is similar but not identical to the permanent residence that is currently acquired by EEA nationals who have spent five continuous years in the UK in a qualifying status (i.e. as a worker, a self-employed or self-sufficient person or student). The main differences between permanent residence and ILR are:

- Permanent residence provides an ongoing right to be joined in the UK by eligible non-EEA family members without meeting the rigorous financial criteria applied to non-EEA spouses and partners of UK citizens
- Disputes relating to ILR are dealt with by the UK courts rather than the European Court of Justice
- Qualifying EEA nationals are not currently required to obtain a document to confirm their permanent residence status, whilst non-EEA nationals must expressly apply for and be granted ILR

## What Will the Cut-off Date Be?

The government has indicated that the cut-off date will be no earlier than the date on which Article 50 was triggered (29 March 2017) and no later than the date on which it is anticipated the UK will leave the EU (29 March 2019). In theory, this means that if you came to the UK after 29 March 2017, you may not be eligible for settled status. The actual cut-off date will be a key point in the negotiations between the EU and the UK. We think it is unlikely to be much before the UK's actual exit date.

## What Will the Qualifying Criteria Be for Temporary Permission to Stay and Settled Status?

The proposals refer to arriving in the UK before the cut-off date and, in the case of settled status, being continuously resident for five years. In the July comparison note, the EU and the government appear to agree that the same qualifying criteria as applied to EEA nationals currently seeking to reside in the UK for more than three months or acquire permanent residence after five years should apply, namely the holding of a qualifying status (i.e. as a worker, a self-employed or self-sufficient person or student or family member thereof). The July comparison note also demonstrates the EU's and the government's intention to maintain the current definition of "continuous" residence, namely, with limited exceptions, absences of no more than six months in any 12-month period. Thankfully, the government has indicated that it intends to remove the requirement that EU nationals who have been studying or economically self-sufficient in the UK (but not working) during any part of their five years in the UK must be able to show that they had comprehensive sickness insurance during those periods as a condition of their ability to obtain temporary permission or settled status.

## What Will the Process Be to Obtain Temporary Permission to Stay or Settled Status?

We do not yet know what the process will involve or when it will be introduced. The proposals state that it will be "as streamlined and user-friendly as possible", using "existing government data, such as income records, to minimise the burden of documentary evidence required (e.g. to prove continuous residence)". It is likely that the Home Office will require applicants to provide their biometric information during the process.

## What Will It Cost to Apply for a Temporary Permission to Stay or Settled Status?

The proposals state only that the government intends to set fees at a "reasonable level". The current cost of an EEA residence document is £65 per person, but an ILR application (the closest equivalent to a settled status application) is £2,297 (without fast-tracking).

## If I Have Already Acquired Permanent Residence, Will This Mean That I Am Automatically Granted Settled Status?

No. The proposals state that permanent residence status will no longer be valid after the UK leaves the EU (even if you have obtained a document to confirm that status). You would, therefore, still need to apply for settled status, although the proposals also state that "for those who have already obtained a permanent residence document, we will seek to make sure that the application process for settled status is as streamlined as possible," which is a positive indication that having a permanent residence document will (as a minimum) be helpful in obtaining settled status.

## Can I Still Apply for a Document Confirming Permanent Residence Now?

Yes. You should not be put off by Home Office emails or website postings indicating that you should not apply. Many EEA nationals will find it useful and reassuring to have a formal record of their continuous residence in the UK in a qualifying status, given that the law in this respect has not yet changed and we do not know if, how or when it will do so. As stated above, having a document confirming permanent residence is also likely to facilitate the process of obtaining settled status.

The current [online application process for permanent residence](#) is now reasonably straightforward. The application fee is £65 per person; if you have not spent more than six months outside the UK in any 12-month period of the relevant five-year period, you are now not required to list all of your absences from the UK and it allows for an immediate passport return service (other than for dependants applying without a main applicant).

Having a document confirming permanent residence is also a pre-requisite if you intend to apply to naturalise as a British citizen after six years in the UK.

## Do I Need to Do Anything Now?

No. You do not need to do anything now unless you want to apply for a document confirming permanent residence. In the meantime, if you do not intend to apply for a permanent residence document, you may want to consider locating and retaining formal original documentation to confirm your continuous residence in the UK, such as P60s or payslips, given that we do not yet know how the government will require you to evidence your residence for the purpose of settled status. For non-working dependant family members, proof of residence would include formal original documentation indicating that they have resided with you at the same address in the UK, such as bank statements, tenancy agreements, council tax and utility bills and letters from GPs or schools, etc.

## How Will I Know If I Am Eligible for a Permanent Residence Document?

If you are an EEA national who has been in the UK for five continuous years in a qualifying status (e.g. as a student, worker or self-sufficient or self-employed person), then you will have acquired permanent residence. Under the current rules, any time spent in the UK as a self-sufficient person or as a student also requires you to have held comprehensive sickness insurance during that period (which, for practical purposes, generally means private medical insurance). If this applies to you, but you did not hold comprehensive sickness insurance during the relevant period, then, given that the government intends to remove this requirement, you may want to seek further advice before applying and you may be better off waiting for the new settled status process to be introduced rather than have your application for permanent residence formally rejected.

## What Does “Continuous” Mean for the Purpose of Qualifying for a Permanent Residence Document?

It means, with limited exceptions, being in the UK as a qualified person without a break of six months or more in any 12-month period. Absences from the UK or gaps in work of up to six months in any 12-month period will not usually prevent you from acquiring permanent residence (in certain circumstances, including maternity leave, longer gaps are also acceptable). Further advice should be sought where your work history or residence in the UK has material gaps.

## Can My Spouse/Partner and Children Apply for a Permanent Residence Document at the Same Time as I Do?

They may qualify for a permanent residence document in their own right (as set out above) but will also have acquired permanent residence if they have been living in the UK as your family members for a continuous period of five years, even if they have not been here as qualified persons. In that case, they can apply for a permanent residence document at the same time as you. This will also be the case for your family members from a country outside the EEA, but they will have needed proof of their status in the form of a family permit or residence card from the beginning of their time in the UK. If your family members have not been in the UK for five years when you apply for a permanent residence document, they may still apply at the same time as you, but will be issued with a registration certificate (EEA nationals) or residence card (non-EEA nationals) instead of a permanent residence document.

## How Long Does It Take to Obtain a Permanent Residence Document?

Although the Home Office is strictly required to process EEA applications within six months, in light of the significant increase in applications the Home Office is currently dealing with, it could take longer. In some cases, particularly where the online process has been used, applications have been approved well before the six-month deadline.

## Can I Lose My Permanent Residence Status Once I Have Acquired It?

Under current law, having acquired permanent residence (whether or not you obtain a permanent residence document), you will generally only lose it if you leave the UK for more than two consecutive years. This will also apply to the settled status. In addition, of course, under the government’s new proposals, permanent residence will cease to be recognised as such once the UK leaves the EU, hence, the need to apply for settled status.

## Can I Apply for British Citizenship?

Yes, if you have lived in the UK for a continuous period of five years and are the spouse or civil partner of a British citizen, or for a period of six years if you are not the spouse or civil partner of a British citizen. You would first need to obtain a permanent residence document before applying for British citizenship. There are also additional qualifying criteria, including stricter UK absence rules than those for acquiring permanent residence and a requirement to pass a “Life in the UK” and English language test. EEA nationals with non-EEA dependant family members with them in the UK should seek further advice before applying for British citizenship, as this will affect the rights of their non-EEA dependant family members. You should also check first whether your home country will allow dual nationality – some do, but others do not, and acquiring British citizenship could lead to you forfeiting your nationality of origin.

## What About Irish Citizens?

The government has indicated that its proposals are without prejudice to Common Travel Area arrangements between the UK and Ireland (and the Crown Dependencies) and the rights of British and Irish citizens in each other’s countries rooted in the Ireland Act 1949. Irish citizens residing in the UK will not, therefore, need to apply for settled status to protect their entitlement to reside in the UK.

## Contact

### **Annabel Mace**

Partner and Head of UK Business Immigration

T +44 207 655 1487

E [annabel.mace@squirepb.com](mailto:annabel.mace@squirepb.com)

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