

# Frequently Asked Questions for EEA Staff and Their Family Members

December 2017

Many European Economic Area (EEA) nationals in the UK are understandably concerned about what Brexit may mean for them, even 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 and the joint [report](#) published by the EU and the UK government on progress during phase 1 of the Brexit negotiations on 8 December 2017.

The following FAQs are intended to answer your most immediate questions on the effect of the UK's exit from the EU and we will continue to update these as and when the situation develops.

## **The Proposals and the December Joint Report 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 and the December Joint Report, but "EEA nationals" when discussing the current law and practice relating to the wider group of EU, EEA and Swiss nationals.

## **What About UK Citizens Living in Other EU Countries?**

The December Joint Report indicates that equivalent arrangements in line with the points detailed below will apply to UK citizens living in other EU countries.

## **What Are the Key Points Agreed Between the EU and the UK So Far?**

- EU citizens who arrived in the UK before the date on which the UK leaves the EU which is expected to be on or shortly after 29 March 2019 ("Exit Date"), and who have been continuously and lawfully resident in the UK for five years will be allowed to stay indefinitely by obtaining "settled status".
- EU citizens who arrived before Exit Date but have not been here for five years will be given 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 in the UK before Exit Date will also be able to apply for settled status after five years in the UK.

- There will be a grace period of at least two years after Exit Date 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. The government has said it will take a "proportionate" approach for those who do not apply before the end of the grace period.
- EU citizens in the UK can be joined by certain close family members after Exit Date for the life time of that EU citizen, providing that (other than in the case of children born or adopted after Exit Date) they were related to the EU citizen on Exit Date and continue to be related at the point they wish to join the EU citizen in the UK.

## **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. Having ILR means that you are not subject to immigration control and can reside and work in the UK without restriction. ILR is similar to the permanent residence that can currently be 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 or a co-habiting family member thereof).

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

The EU and the government have agreed that the qualifying criteria should be the same as those applied to EEA nationals currently seeking to reside in the UK for more than three months or acquire permanent residence after five continuous years, namely the holding of a qualifying status (i.e. as a worker, a self-employed or self-sufficient person or student or a co-habiting family member thereof). The EU and the government have agreed to maintain the current definition of "continuous" residence, namely, with limited exceptions, absences of no more than six months in any 12-month period or 12 months for an important reason, e.g. childbirth. The government has indicated that applicants will not have to list every trip that they have taken in and out of the UK over the previous five years if, overall, it is satisfied that the residence requirements have been met.

It has also said it will remove the requirement that EU citizens who have been studying or economically self-sufficient in the UK 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 exactly what the process will involve or when it will be introduced. The government has indicated that it will be “a streamlined, user-friendly, digital process”, using “existing government data, such as income records, to minimise the burden of documentary evidence required (e.g. to prove continuous residence)”.

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

The government has agreed that applications should be free of charge or charged at a rate “not exceeding that imposed on nationals for issuing similar documents”. We therefore expect the cost to be around £72, as currently charged for British passport applications.

## **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 a settled status document. The December Joint Report indicates that those who already have a document confirming their permanent residence at Exit Date can convert this into a settled status document free of charge, subject only to an identity, criminality and security check and confirmation of their ongoing residence in the UK.

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

Yes. You should not be put off by Home Office communications discouraging you from applying if you are eligible. 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 a permanent residence document](#) can be used by most applicants and is more straightforward than the previous paper form. 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.

Having a document confirming permanent residence is also a prerequisite 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 for certain 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 could 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 (i.e. as a student, worker or self-sufficient or self-employed person or a co-habiting family member thereof), then you will have acquired permanent residence and will be eligible to apply for a permanent residence document. 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 or a European Health Insurance Card).

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 in a qualifying status (i.e. as a worker, a self-employed or self-sufficient person or student or a co-habiting family member thereof) 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 (or up to 12 months for an important reason, e.g. childbirth) will not usually prevent you from acquiring permanent residence. 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 Before Exit Date?**

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 with you as your family members for a continuous period of five years, even if they have not been here as a worker, a self-employed or self-sufficient person or student.

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 living with you 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. However, 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. In addition, of course, under the government's proposals, permanent residence will cease to be recognised as such once the UK leaves the EU, hence the need to apply for settled status. According to the December Joint Report, those who obtain a settled status document will only lose that status if they are absent from the UK for more than five consecutive years.

## 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 (or a settled status document, once we leave the EU). 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 may affect the rights of those 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)