

# Frequently Asked Questions for EEA Staff and Their Family Members

April 2018

Many European Economic Area (EEA) nationals in the UK remain understandably concerned or confused about what Brexit means for them. The UK government's proposals on [Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU in June 2017](#), and the [Joint Report](#) on progress during phase 1 of the Brexit negotiations in December 2017 may have provided some reassurance. More recently, the [draft Withdrawal Agreement](#) published on 19 March 2018 indicated agreement on issues including citizens' rights. The UK government has since updated its [online guidance](#) for EU citizens, including those who will arrive in the UK during a post-Brexit implementation period (also referred to as the transition period). Unfortunately, none of these documents give a complete and easy guide to the current situation.

The following FAQs are intended to answer your most immediate questions on the effects of Brexit and we will continue to update them as matters develop.

## Has Anything Been Finalised Yet?

The draft Withdrawal Agreement and the UK government's online guidance set out agreed arrangements for EU citizens in the UK and UK citizens in the EU. However, there are a number of other important points within the draft Withdrawal Agreement which are yet to be agreed, including the protocol on Ireland/Northern Ireland. Until the Withdrawal Agreement is agreed in full, therefore, nothing, including the provisions for citizens, is set in stone.

## What Has Been Agreed Between the EU and the UK Government So Far?

- EU citizens and their families who arrive in the UK by the end of the implementation period on 31 December 2020 and who have been continuously and lawfully living in the UK for five years will be allowed to stay indefinitely by obtaining "settled status".
- EU citizens and their families who arrive by 31 December 2020 but have not been in the UK for five years will be able to apply for temporary permission to stay until they have been here for five years at which point they will be able to apply for settled status.
- EU citizens in the UK by 31 December 2020 can be joined indefinitely by certain close family members (spouses, civil and unmarried partners, dependent children and grandchildren and dependent parents and grandparents), providing that (other than in the case of children born or adopted after that date) the relationship existed on or before 31 December 2020.
- EU citizens and their families with settled status or temporary permission to stay in the UK will have the same access as they currently enjoy to healthcare, pensions and other benefits in the UK.

The UK government has also indicated that EU citizens and their families arriving during the implementation period (i.e. from 30 March 2019 to 31 December 2020) will need to go through some form of registration process if they choose to stay in the UK for longer than three months. It is not yet clear if this registration will also be necessary if those EU citizens and their families apply for temporary permission to stay in the UK.

## What Will the Qualifying Criteria Be for Settled Status?

The EU and the UK government have agreed that the qualifying criteria should be the same as, or more generous than, those currently applied to EEA nationals and their family members applying for a permanent residence document. In other words, having arrived in the UK before 31 December 2020, you will need to have been lawfully in the UK for five continuous years as a worker, a student, a self-employed or self-sufficient person (or a co-habiting family member thereof) to qualify for settled status.

Thankfully, the UK government has 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?

The UK government has said that the new process will go live at the end of 2018. We do not yet know exactly what this will involve but assurances have been given that it will be digital, streamlined, quick and user-friendly. We shall see. Qualifying EU citizens in the UK should only need to provide an identity document and a recent photo and declare any criminal convictions. The UK government has said it will use existing government data to reduce the amount of evidence needed, for example, HMRC employment records. It has also said that applicants will not need to list every trip made outside the UK during the relevant 5 year period and it will provide support to ensure applications are not turned down because of simple errors or omissions. To ensure that EU citizens and their family members have enough time to apply, the process will remain open for applications until 30 June 2021.

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

The UK 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?**

The UK government has said 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 before 30 June 2021. It has also said, however, that those who already have a document confirming their permanent residence under current EU rules can convert this into a settled status document free of charge, subject only to an identity and criminality check and confirmation of their ongoing residence in the UK.

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

Yes, if you want to and are eligible. 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. 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, is more straightforward than the previous paper form and allows for an immediate passport return service. 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 no longer required to list all of your absences from the UK.

Having a document confirming permanent residence is also a prerequisite if you intend to apply to naturalise as a British citizen.

## **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.

## **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 worker, a student or self-sufficient or self-employed person or a co-habiting family member thereof), then you will already 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 UK 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 or Settled Status?**

It means, with limited exceptions, being in the UK in a qualifying status (i.e. as a worker, a student, a self-employed or self-sufficient person 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?**

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 usually have obtained 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 UK 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. Under the draft Withdrawal Agreement, 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.

## What Is the Difference Between Permanent Residence, Settled Status and Indefinite Leave to Remain?

The three concepts are very similar in that, in each case, the holder is not subject to immigration control and can reside and work in the UK without restriction, has access to public funds and services and can apply for British citizenship in due course. However, under current EU law, *permanent residence* is acquired automatically by EU citizens who have spent five lawful, continuous years in the UK, regardless of whether the holder applies for a document to confirm that status. By contrast, settled status will only be granted subject to an application under UK immigration law specifically for eligible EU citizens (and their family members) living in the UK by 31 December 2020 and once they have been here for 5 continuous years. *Indefinite leave to remain* is also granted subject to an application under UK immigration law – it currently applies to non-EEA nationals seeking to settle in the UK after five years' continuous residence in the UK in specific immigration categories but with more onerous criteria (largely relating to income).

## 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. You will 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. This risk is mitigated by the recent case of *Toufik Lounes v Secretary of State for the Home Department* in which the ECJ held that an EU citizen who becomes a national of another EU country retains the right for their non-EU spouse to live with them in that country, but note that the judgement has yet to be implemented by the UK government. 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.

## Most of the Available Information Refers Specifically to EU Citizens, but What About Those of Us in the UK From Other EEA (Non-EU) Member States and Switzerland?

The UK government has said that it is in discussions with Iceland, Liechtenstein, Norway and Switzerland about securing the status of their citizens who are resident in the UK and UK citizens resident in those countries. We anticipate that similar arrangements as for EU citizens as outlined above will apply but there is currently no further guidance available. Throughout this note, we have used "EU citizens" when referring to the arrangements under the draft Withdrawal Agreement, 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?

As part of the draft Withdrawal Agreement, the EU and the UK government have agreed that equivalent arrangements to those set out above for EU citizens and their families in the UK will apply to UK citizens and their families living in the EU including the unrestricted ability to move to and work in other EU countries until 31 December 2020.

Each of those other EU countries can and may put in place their own residence procedures similar to the UK's settled status process but, at present, we have no further guidance on what those might be. Further UK government guidance can be found [here](#).

## What About Irish Citizens?

The UK government has indicated that the UK's departure from the EU is 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.

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