

## Updated Brexit FAQs for EEA nationals

This briefing addresses some of the key questions about the status of nationals of EEA countries residing in the UK following the Brexit vote

### UK Government proposals for EU citizens living in the UK

What are the Government's proposals on the position of EU nationals after the UK leaves the EU in March 2019?

The Government has published a policy *paper* [Safeguarding the Position of EU Citizens Living in the UK and UK nationals Living in the UK](#) setting out its proposals. Key points include the following:

- A new **settled status** in UK law will be created for EU citizens who have been resident in the UK before a specified date. This specified date is yet to be identified, but will be between 29 March 2017 and the date of the UK's withdrawal from the EU (scheduled to be 29 March 2019).
- EU citizens who have resided in the UK for five years on the specified date will be eligible to apply for settled status.
- EU citizens resident in the UK before the specified date but who have not been resident for five years will be able to apply for a temporary residence status to cover the period until they have accumulated five years continuous residence, after which they will be eligible to apply for settled status.
- EU citizens who arrive in the UK after the specified date will benefit from a grace period which will allow them to remain in the UK for at least a temporary period. They may become eligible for settlement depending on the arrangements that are implemented, but should have no expectation of this being the case.

Details on the arrangements for EU nationals entering the UK after 29 March 2017 have not yet been published, but it seems likely that the current rules on free movement will end and additional restrictions will apply (eg, the requirement for a work permit in order to work).

#### Who will be required to apply for the new settled status?

All EU citizens (other than Irish nationals, for whom separate arrangements will continue to apply) who wish to settle in the UK will be required to apply for the new settled status. This includes EU nationals who have acquired permanent residence documentation (but these individuals are likely to have a streamlined application process).

#### What will be the qualifying criteria for the new settled status?

Full details have not yet been published, but the Government has published a [Technical Paper](#) setting out further information. Key points include the following:

- The condition for EU citizens acquiring the new settled status will be five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof.
- The Government is intending to set up an application process before the UK leaves the EU so that those wishing to apply for the new settled status can do so at their "earliest convenience".

- EU nationals will have up to around two years from the date of the UK's exit from the EU to lodge applications and will have protected status during this transitional period.
- There will be a bespoke streamlined digital application process designed to minimise the amount of documentary evidence required in support. Implementation systems and guidance will be tested with user groups.
- The application fee will not exceed the fee for a British passport (currently £72.50 for an adult) and will not be linked to other application fees such as for indefinite leave to remain or naturalisation.
- EU nationals who hold permanent residence documentation will have a streamlined application process (a "simple exchange process") and a reduced fee.
- Comprehensive sickness insurance will not be a requirement for those who are economically inactive (eg, individuals who are students or self-sufficient).
- EU nationals will not need to account for every absence from the UK, suggesting that a travel log will not be required.
- Applicants will be afforded an opportunity to provide supplementary evidence or remedy any deficiencies in the evidence provided where it appears that a simple omission has occurred.

## What will happen to the family members of EU nationals?

This will depend on the date of arrival in the UK.

- Family members who join an EU national in the UK before the UK leaves the EU will be able to apply for settled status after five years of continuous and lawful residence (including where the five years accrues after the date of the UK's exit).
- Family members who wish to join an EU national in the UK after the date the UK leaves the EU are likely to be subject to the rules applicable to non-EU nationals who join British citizens (or any post-Brexit immigration arrangements that are implemented). The current rules for non-EU nationals joining British citizens in the UK are more onerous and contain minimum earnings requirements.

## What rights will EU citizens who are granted settled status have?

The new settled status will enable EU citizens to reside in the UK in any capacity and undertake any lawful activity. They will continue to have access to UK benefits (eg, healthcare, benefits, pension and social security) on the same basis as UK nationals.

## Can the new settled status be lost?

Yes. Settled status will be lost if a person spends more than two continuous years outside the UK, unless the person is able to establish strong connections/ties with the UK.

## What is the position for citizens of Switzerland and European Economic Area ("EEA") countries that are not members of the EU?

The Government intends to discuss similar arrangements with Iceland, Liechtenstein, Norway and Switzerland on a reciprocal basis, but it is not certain that the same rules will apply to citizens of these countries.

## Is it certain that these proposals will be implemented?

No. The proposals have been made in expectation that the rights will be reciprocated by other EU member states. This will depend on the outcome of negotiations with the EU. The UK's proposals are less comprehensive and generous than those published by the EU (eg, in relation to family members, family reunification, lifetime rights, the role of the European Court of Justice, and potential loss of status after two years absence from the UK). It is anticipated that an agreement should be reached shortly.

## What is the position of EEA nationals living in the UK in the meantime?

There is no impact on the principle of freedom of movement and the right of EEA and Swiss nationals to live and work in the UK. This should remain unchanged until the date the UK leaves the EU.

## So what steps should EEA nationals consider taking now?

Depending on individual circumstances, EEA nationals may still wish to consider making applications for permanent residence and British citizenship. Further details in relation to both of these applications are set out below.

EEA nationals should also ensure they are residing legally in the UK under the current free movement rules. They should also retain records of their absences from the UK, the activities they are undertaking in the UK (eg, employment records), and any relevant relationship or dependency, so they are well placed to make applications in future (including for the new settled status).

## Permanent Residence

### Why apply to confirm permanent residence given that it will still be necessary to apply for the new settled status?

There are a number of reasons why it may be sensible to apply for permanent residence documentation.

- It is likely that those who hold permanent residence documentation will benefit from a streamlined application process for the new settled status, as referred to above.
- Under current rules, EEA nationals must hold permanent residence documentation in order to be eligible to apply for British citizenship. Therefore, EEA nationals who wish to apply for British citizenship now, or who want to be in a position to do so with minimal delay in future (eg, depending on the progress of the UK's negotiations with the UK), may wish to apply now.
- In light of the continuing uncertainty about the future status of EEA nationals and the transitional provisions, obtaining formal documentation evidencing current status is a sensible step to take.
- For citizens of Switzerland and the EEA states of Iceland, Liechtenstein, Norway, future arrangements are less certain. Permanent residence documentation may be of relevance, depending on the arrangements that are agreed with these countries.

### What are the eligibility criteria for permanent residence?

EEA nationals who have exercised treaty rights (as a worker, job-seeker, student, self-sufficient person, or self-employed person) continuously in the UK for a five year period will have acquired permanent residence. EEA nationals who have acquired permanent residence are able to evidence this by applying for a certificate of permanent residence.

EEA nationals who wish to establish permanent residence or make an application should collate and retain evidence showing they have been exercising treaty rights in the UK for a five year period. EEA nationals who have not yet reached the five year period should retain this evidence on an ongoing basis.

### Can family members of EEA nationals apply to confirm permanent residence?

Yes. Family members of EEA nationals (whether EEA nationals, or third country nationals) – for example, spouses/civil partners, durable partners, and children - who have resided legally with the EEA national in the UK for the same period will also acquire permanent residency and can apply to have this status confirmed. Family members who meet the relevant criteria can be included in the same application as the EEA national who has been exercising treaty rights.

Some EEA nationals may, therefore, have the option of applying to confirm permanent residence on the basis of their own exercise of treaty rights, or on the basis of the exercise of treaty rights by a spouse/civil partner/durable partner. The option chosen is likely to depend on practical considerations, in particular the number and availability of documents that will need to be submitted.

## Are there any circumstances when permanent residence can be acquired prior to five years' continuous residence in the UK?

Yes, in limited circumstances. Examples include ceasing work due to retirement or permanent incapacity. Detailed requirements apply in these circumstances.

## What are the common pitfalls that arise for permanent residence applications?

The conditions for acquiring permanent residence depend on the right of residence that the person is exercising (ie, whether as a worker, job-seeker, student, self-sufficient person, or self-employed person). The requirements are complex and this is an area where problems often arise. For example:

- **Students** – in most circumstances, students are required to have comprehensive sickness insurance (“CSI”) cover in the UK in order to rely on the student right of residence. As a result, some EEA nationals will not have acquired permanent residence, despite having been in the UK for five years or more.
- **Workers** - periods out of work will not necessarily mean that a person ceased to be treated as a worker or self-employed person, but this will depend on the particular circumstances.
- **Self-sufficient** – applicants relying on a period as a self-sufficient person are also required to have CSI cover in the UK for the period relied upon (and also for their dependants).

## Who is required to have Comprehensive Sickness Insurance?

**Students** are required to have CSI cover in the UK in order to rely on the student right of residence. There is an exception to this requirement for students prior to 20 June 2011 who obtained a registration certificate as a student before 20 June 2011. However, most students will not have applied for a registration certificate. CSI is also required for the family member of students from 22 June 2015.

**Self-sufficient** - applicants relying on a period as a self-sufficient person are also required to have CSI for the period relied upon. This is also a requirement for the family members of self-sufficient persons.

CSI is not required for workers, job-seekers and the self-employed – ie, those who are economically active.

## What must an applicant have done in order to meet the CSI requirements?

CSI requirements can be met in three ways:

- A comprehensive private medical insurance policy document.
- A valid European Health Insurance Card (EHIC) issued by an EEA member state other than the UK, or the predecessor form E111.
- Forms S1, S2, and S3 (and their predecessor forms E109, E121, and E112).

These must cover the full period being relied upon as a student.

These are the only ways in which CSI requirements can be met. Being entitled to access the NHS, or having substantial personal funds, is not sufficient to meet the requirements. If an applicant has disposed of historic EHIC cards, or the EHIC card does not feature a valid from date, they must also submit evidence from the issuing authority confirming that they held a valid EHIC card for the period relied upon. CSI requirements cannot be met retrospectively.

## Would part-time work count for the purpose being a worker?

It may do. While there is no minimum number of hours of work to qualify as a worker, the employment must be genuine and effective and not marginal or supplementary. If an EEA national is earning below the Primary Earnings Threshold (the point at which employees must pay class 1 National Insurance Contributions (“NICs”)), the Modernised Guidance indicates that enquiries will be made into whether the activity relied upon is genuine and effective. Applicants in these circumstances should proactively explain in a cover letter why their work should not be regarded as marginal or supplementary, notwithstanding it is below the NICs threshold.

An EEA national who was a student for a period but does not meet all of the requirements for extended residence as a student (eg, CSI), but who worked on a part-time basis when studying, may be able to contend that they should be regarded as worker for that period. It is very likely that the EEA national would need to meet the NICs threshold referred to above. Further, there is a risk that the Home Office may regard part-time work by a student to be marginal or supplementary on the basis it is not the main purpose of the EEA national’s residence in the UK.

## What if an EEA national has gaps in employment between fixed-term contracts?

In these circumstances, the EEA national may meet the requirements for being a job-seeker (which is a qualifying person activity). This will involve submitting evidence in relation to job-seeking for the relevant period (eg, job application forms, letters of invitation to interviews, rejection letters from employers, Jobcentre Plus registration documents, and letters and emails written by the applicant to employers or employment agencies seeking work).

If an EEA national agreed a new fixed-term contract prior to the expiry of their previous contract and the gap between the two contracts is relatively brief, there may be grounds for arguing that the person is a job-seeker even if they have not sought fresh employment during the brief intervening period. It is advisable for applicants to set out in a cover letter with the application how they meet the job-seeker requirements.

If an EEA national does not meet the job-seeker requirements they may meet the requirements for being a self-sufficient person (although CSI requirements apply).

## Can absences from the UK break continuity for permanent residence purposes?

Yes. EEA nationals should normally spend no more than six months outside the UK in any 12 month period in the five years they are relying on for permanent residence.

In addition, a single period of absence from the UK not exceeding 12 months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or an overseas posting, will also not break continuity.

## What information do I have to provide in relation to absences from the UK for permanent residence applications?

Applicants were previously required to provide a travel log containing details of their absences from the UK. However, this is no longer required when applying online. For online applications, applicants must simply confirm that they have not been absent from the UK for more than six months in any of the five years being relied upon.

Some EEA nationals are making subject access requests in an attempt to verify the information contained in official records regarding their dates of entry and exit from the UK.

## Is it necessary to submit evidence in relation to absences when making a permanent residence application?

No. Applicants are not required to submit documents evidencing their absences (eg, airline tickets or hotel booking). It is, however, sensible for individuals to retain such documents for their own records. Further a travel log is required for applications for British citizenship.

## Can I choose the five year period I rely on for the application?

Yes. Permanent residence is acquired automatically on meeting certain conditions. Therefore, a person may have acquired permanent residence several years ago (based on an earlier five year period), or more recently (relying, say, on the five year period immediately preceding the date of the application). The five year period relied upon is potentially a relevant consideration for the timing of applications for British citizenship (see below for further details).

## Should a cover letter be included with a permanent residence application?

It is permissible (and sensible) to include a cover letter confirming the five year period relied upon, identifying the relevant evidence in support, explaining any anomalies or missing documentation, and confirming that the person has not been absent from the UK for more than two consecutive years since the date they acquired permanent residence.

## What does the application process for permanent residence involve?

As noted above, applications for permanent residence can be made online in most circumstances. A link to the form is [here](#). The paper form is EEA(PR) and a link to the form can be found [here](#).

Applicants are required to submit original evidence to confirm they have exercised treaty rights for the five year period being relied on – ie, that each condition of the relevant right of residence being exercised at any time was met throughout the period. The guidance notes for form EEA(PR) include suggested lists of supporting documents. The online application form identifies the documents that an applicant is required to provide. It appears that the Home Office is looking to streamline some of the document requirements.

More detailed guidance can be found in the Modernised Guidance which can be found [here](#).

## Is permanent residence relevant for an EEA national who is married, to or the civil partner, of a British national?

Yes. EEA nationals who have a British national spouse or civil partner are usually residing in the UK on the basis of free movement rules for EEA nationals. They are not usually residing in the UK on the basis of their marriage to a British national (ie, they will not usually have applied for a visa as the family member of a British national). The route to settlement for such EEA nationals is likely to be permanent residence. It will be necessary for such a person to have permanent residence status confirmed before being able to apply for British citizenship (see below for further details).

## What fees are involved?

The application fee is currently £65 per person.

## How quickly will the application be processed?

Permanent residence applications for EEA nationals are supposed to be determined as soon as possible following receipt of the application by the Home Office. Applications by third country national family members of EEA nationals should be determined within 6 months. Online applications are currently being processed in around two to three months.

## Is it possible to lose permanent residence?

Yes. Permanent residence will normally be lost if the person is absent from the UK for more than two consecutive years. Residence documentation confirming permanent residence can also be revoked in other limited circumstances (eg, on public policy, public security, or public health grounds).

## What happens if an application for permanent residence is unsuccessful?

An unsuccessful application should not affect the applicant's ongoing right to reside lawfully in the UK. There have been some media accounts of EEA nationals who have made unsuccessful permanent residence applications being issued with letters informing them that they are required to leave the UK (it seems that around 100 individuals have been issued with such letters). It seems likely that, in most cases, these are standard form letters that have been issued in error. Unsuccessful applicants should be able to make a further application to confirm permanent residence when they subsequently acquire this status.

Applicants are not always provided with reasons why their application has been unsuccessful. Applicants should ensure they carefully complete the application form and submit the documents identified in support.

## Do I have to submit my passport or national ID card when applying for permanent residence?

The European Passport Return Service has been made available for EEA nationals applying online. Further details can be found [here](#). Using this service means that passports can be checked and copied by a participating local authority or at certain premium service centres, meaning the applicant will not have to give up their passport while the application is pending.

If the EEA(PR) postal form is used, an applicant's original passport or national ID card should be submitted. Travel plans will need therefore need to be taken into account when considering the date to lodge the application. These documents are usually returned between 4 and 8 weeks after the date the application is lodged.

## If I do not meet the requirements for permanent residence, should I apply for a registration certificate?

EEA nationals who have spent less than five years exercising treaty rights in the UK may wish to apply for a registration certificate confirming they are exercising an extended right of residence. This may assist in relation to any transitional arrangements that may be implemented, but this seems unlikely following the proposals that have been published by the Government. There is a link to the form [here](#).

## British citizenship

### Can EEA nationals apply for British citizenship?

EEA nationals may be eligible to apply to naturalise as British citizen (ie, to become a British citizen). British citizenship may be the best way for an EEA national to secure their right to live and work in the UK, irrespective of the outcome of the Brexit negotiations and any transitional provisions that are implemented. In practical terms, being a British national may also provide more flexibility in terms of future absences from the UK. Further guidance can be found [here](#).

### What are the main routes to naturalisation as a British citizen for an EEA national?

Different requirements apply depending on whether the applicant is married to, or the civil partner, of a British national:

- EEA nationals who are married to, or the civil partner of, a British national and have been in the UK for a continuous period of 5 years may be eligible to apply for naturalisation.
- EEA nationals who are not married to, or the civil partner of, a British national and have been in the UK for a continuous period of 6 years may be eligible to apply for naturalisation.

Following changes to the rules in November 2015, an EEA national must apply for a certificate of permanent residence before being able to apply for naturalisation, even if they have already accrued the required 5 or 6 years in the UK.

EEA nationals who are not married to, or the civil partner of, a British national must be free of immigration restrictions for 12 months before they can apply for citizenship. In practice, this means that such individuals cannot apply for citizenship until 12 months have elapsed since the date they acquired permanent residence.

EEA nationals who are married to, or the civil partner of, a British national can apply for citizenship once they have acquired permanent residence (ie, the requirement to be free of immigration control for 12 months does not apply).

## What other requirements apply for applications to naturalise as a British citizen?

The other key requirements relate to residence, future intentions (where the applicant does not have a British national spouse or civil partner), good character, knowledge of the English language, and knowledge of life in the UK (applicants must pass a multiple choice exam).

The residence requirements are quite restrictive. These requirements vary, depending on whether the applicant has a British national spouse or civil partner. As a general rule, applicants who do not have as British national spouse or civil partner should have spent no more than 450 days outside the UK in the preceding five year period. During the last 12 months of the five year period the applicant should have spent no more than 90 days outside the UK. But higher rates of absence are permissible in certain circumstances. It should be noted that these continuity requirements are more onerous than for permanent residence.

## What are the potential drawbacks to becoming a British national?

Very careful consideration should be given by an EEA national as to whether naturalisation is an appropriate course of action. An EEA national's home country may not allow dual nationality, meaning that acquiring British citizenship may result in renouncing original nationality, possibly permanently. Further, naturalisation may impact on pension rights, tax status, social security, the ability of non-EEA family members to remain in the UK, and other matters. An EEA national should consider obtaining advice in their home jurisdiction.

A dual national would normally have the right of abode in the UK, as well as the right to live in their original country of origin.

## Can British citizenship be lost?

In general, British citizenship cannot be lost unless the person renounces it, or is deprived of it because this is considered conducive to the public good, or there is evidence that the citizenship was obtained by fraud or deception.

## What is the status of the children of EEA nationals?

Children of EEA nationals who have resided legally with the EEA national in the UK should be able to acquire permanent residence, as outlined above.



The law relating to the acquisition of British citizenship is complicated. It is often advisable to obtain individual advice. Further guidance can be found in [Guide MN1](#). More detail on the various routes to British citizenship and the related eligibility criteria are contained in the Nationality Instructions which can be found [here](#).

As a general rule the position can be summarised as follows:

- Children born in the UK and to an EEA national parent who on the date of the birth had indefinite leave to remain, or had been exercising treaty rights continuously for a period of five years, will automatically be British.
- Children born in the UK who were not automatically British when they were born (because neither parent was a British citizen, or settled in the UK) are entitled to register as British citizens when minors if either parent becomes a British citizen, or becomes settled in the UK. Settled status in the UK for these purposes includes the acquisition of permanent residence.
- A child who has lived in the UK for the first 10 years of their life may be able to register as British, even if neither of their parents is settled. Absence requirements apply.
- Children born abroad to parents who are now applying or British citizenship may be eligible to apply to be registered as British when their parent(s) are apply for British citizenship. However, such an application will usually succeed only if both parents are granted British citizenship, or one parent is granted British citizenship and the other parent is settled.

Applying to register a child as British is different from the application to naturalise as a British citizen as an adult. However, naturalisation and registration applications can often be made at the same time.

## Is there anything else to consider?

Immigration law is complex. These FAQs are for general guidance only and are not a substitute for individual advice. EEA nationals and their family members should carefully consider their personal circumstances and may wish to obtain professional advice before determining what actions they wish to take.



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