Immigration

Brexit - Advice for European nationals in the UK
What do we know?

We are highly likely to leave the European Union in March 2019.

While current Treaties and Directives are in force Europeans in the UK have the same rights as before the referendum decision.
Brexit means Brexit?

Unless transitional arrangements are made, the automatic consequence of the UK leaving the EU will be that all EU rights of residence will fall away. However, the government has said that it wants to guarantee the rights of EEA nationals who are already living in the UK after the UK leaves the EU.

This will be subject to a new immigration regime which will be introduced with an initial grace period of two years.
Transitional period

New immigration system

Exit day

Referendum

Article 50

Pre-Brexit

Transitional period

New immigration system begins

29 March 2017

Referendum

23 June 2016

29 March 2017

29 March 2019

29 March 2021
Government Proposal for EU Citizens in UK

• All EU citizens and their family members who have lived in the UK lawfully for 5 years will need to apply for “settled” status – even those that already have permanent residence.

• For “guaranteed” rights EU citizens must have been living lawfully in UK the before a “specified date” which will be 29 March 2019

• Those who have not completed 5 years residence for settled status at the specified date will be able to apply for temporary residence in the UK to complete their 5 year period.
Government Proposal for EU Citizens in UK

What rights will I get if I am granted “Settled Status”?

• The same rights to live, work and access benefits and health care as British Nationals.

• You will not be able to hold a British Passport.

• It is likely that you will be able to naturalise as a British Citizen after having held “Settled Status” for 12 months.
Government Proposal for EU Citizens in UK

How will the application process for settled status work?

- EU Citizens who qualify will go through a new process, which is yet to be rolled out. Likely to be online. Proposal is to have electronic documents (adjustment to data contained in passport chip).

- As this process and the requirements are unknown, EU Citizens may opt to apply for permanent residence under current process, and later switch to settled status. This approach will offer more peace of mind and a more streamlined application for settled status in the future.
Permanent Residence

- An EEA national and their family members automatically attain permanent residence (“PR”) once they have resided in the UK for a continuous period of 5 years (“qualifying period”) in accordance with the Immigration (EEA) Regulations 2006.
- For an EEA national, residing in accordance with the Regulations generally means being a Qualified Person.
- A Qualified Person is one of the following:
  - a jobseeker;
  - a worker;
  - a self-employed person;
  - a self-sufficient person with comprehensive sickness insurance; or
  - a student with comprehensive sickness insurance.
EEA example:

Spain

5 years’ residence
- no restrictions

5 years’ residence
- doing qualifying activities

Initial 3 months’ residence
- no restrictions
What does continuous mean?

- **Continuous residence** is not broken by;
  - Periods of absence of up to 6 months in any year of the 5 year qualifying period;
  - Absence due to military service; or
  - One absence, not exceeding 12 months for an important reason, such as pregnancy/childbirth, serious illness, study or training or an overseas posting.

- **Permitted absences** for PR are more generous than for naturalisation.
Comprehensive Sickness Insurance

- Required by students (transitional arrangements before 20 June 2011) and self-sufficient people.
- Not required if also a worker, job seeker or self-employed person.
- If required and not held, residence will not be “in accordance with the Regulations” and will not count for PR purposes.
- Family members must also be covered.

What is Comprehensive Sickness Insurance (“CSI”)?
- A private health insurance policy which covers everything that one would expect a reasonably complete policy to cover;
- An EHIC card plus a declaration on temporary stay; or
- A reciprocal arrangement with home country evidenced with form S1, S2 or S3; but
- Access to the NHS is not the equivalent of CSI.
How do I apply?

• Since 1 February 2017; forms are mandatory; EEA (PR)
• Home Office fee is £65 per applicant.
• May use paper or online form, then post to Home Office for consideration.
• Can only use the Same Day Service if applying for 5 year reg. cert as a qualified EEA national, not for permanent residence.

Online application: https://visas-immigration.service.gov.uk/product/eea-pr
• Straight forward; approximately 20 minutes.
• Can use European Passport Return Service.
• Cannot be used if family member applying at a different time or if complex such as retained rights or Surinder Singh
Can I keep my original passport?

- You can submit your original passport or ID card; or use the European Passport Return Service (Reg cert and PR only) https://www.gov.uk/government/collections/european-passport-return-service
- Exception if passport/ID card is not available “for reasons beyond your control”
- EPRS – attend within 5 working days of submitting online application
- Can travel outside the UK during consideration.
What documents should I submit?

- Guidance issued in April 2017 has relaxed the documentary requirements:
  - ID – passport/ID/EPRS plus two passport photographs.
  - Evidence of relationship to family members.
  - Only require evidence of Treaty Rights and residence from chosen 5 year qualifying period.
  - Demonstrate PR has not been lost with absence of 2 years following qualifying period.
  - If employed, P60s for each year will evidence employment and residence, or rely on 3 payslips (inc March) or letter from emp.
  - If not employed, evidence of studies, self emp., self sufficiency and/or job seeking plus evidence of residence.
  - Only require one item of evidence of residence for each 12 month period.

Can I keep my original passport?
Do I need to list all my absences?

– No, only those longer than or totalling six months in any year.

– Only those during the qualifying period, do not list any absences before qualifying period.

– Demonstrate that PR has not been lost with an absence of longer than 2 years after the qualifying period.
How long will my application take?

• An application by an EEA national must be granted as soon as possible. An application for a family member must be granted within 6 months of application.
• Currently taking 2/3 months
End of period
29 March 2021

Pre-Brexit

Transitional period

New immigration system

Apply for settled status - voluntary

Apply for settled status - mandatory

5 years' residence

New application route open ...

OVERSTAYING

Brexit

End of period


29 March 2019

29 March 2021
Does not benefit from voluntary application route

Mandatory to apply for settled status - mandatory

Voluntary to apply for settled status

OVERSTAYING

4 years' residence

1 year

New application route open ...

Pre-Brexit

Transitional period

New immigration system


29 March 2019

Brexit

End of period

2021

29 March 2021
Must apply for settled status after a further year (total 5 years)

Does not qualify for settled status - must apply for a temporary residence document

Does not benefit from voluntary application route

Does not need to apply in grace period

End of period: 29 March 2021

New immigration system

Transitional period

Pre-Brexit

Brexit


2 years 2 years 1 year

Does not need to apply in grace period

New application route open ...
British Citizenship

Naturalisation

1. Meets the good character requirement
2. Meets the English language and Life in the UK test requirement
3. Intends to make the UK their permanent home
4. Meets the residence requirements (see below)

Married to a British Citizen
Present in the UK 3 years before app.
No more than 270 days absence in 3 years before app.
No more than 90 days absence in 12 months before app.
Flexibility on absences
No time limit on stay (ILR or PR) on day of app.
No breach of immigration law in 3 years before app.

Not married to a British Citizen
Present in the UK 5 years before app.
No more than 450 days absence in 5 years before app.
No more than 90 days absence in 12 months before app.
Flexibility on absences
No time limit on stay (ILR or PR) for 12 months before app.
No breach of immigration law in 5 years before app.
Practicalities

- Naturalisation form is mandatory; [Form AN](#) for adults
- £1282 fee per applicant.
- Must be posted to the Home Office for consideration.
- No time limit for consideration and decision; generally take 3 - 6 months although subject to recent delay.
- Evidence submitted must be original, save for British spouse’s passport.
- If not married to a British Citizen, the period relied on in the PR application must have ended more than 12 months ago. The PR card can have been granted more recently. The Home Office should record the date of acquisition of PR. Check letter granting PR.
Future – what can we expect?

2 year period of negotiations commenced on 29 March 2017

Any agreement on exit terms will need approval of 20 Member States with at least 65% of European population

If no extension and/or no agreement; EU treaties cease to apply to the UK at end of negotiation period, on 29 March 2019
QUESTIONS?
Contact

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