

Is your EU passport Brexit-proof?

Four months after triggering article 50, the UK Government has published a policy paper in which it set out its proposals on the contentious issue of the rights of EU citizens living in the UK.

In this article, we address what the proposals mean for EEA nationals in the UK and for those who are looking to move to the UK in the near future.

What is your current right to live in the UK as EEA nationals?

As an EEA national, you are entitled to visit the UK for a period of up to three months without the need to comply with any formalities. Should you wish to remain in the UK beyond this three month period, you will need to be employed, self-employed, a student or self-sufficient (the latter two are required to have comprehensive medical insurance at all times). This is referred to as “exercising your treaty rights.”

Upon completion of a five-year period of continuous residence (i.e. of exercising your treaty rights), you automatically acquire permanent residence status in the UK.

For a period of residence to be continuous residence means that you should not be absent from the UK for a period of six months in any given year in the period. If you do get permanent residence status, you may lose it if you leave the UK for a period exceeding two years.

As EEA nationals living in the UK validly exercising your treaty rights, you are able to bring your family members to the UK whether or not they are EEA citizens.

Will there be any change between now and the UK leaving the EU?

No. EEA citizens and their family members will continue to enjoy the rights they have under the EU Treaties.

What has the UK Government proposed?

To help you understand what the UK Government has in fact proposed for EEA nationals in the UK after Brexit, we have identified five scenarios:

1. EEA nationals who have been residing in the UK for five continuous years prior to a cut-off date that will be set by the Government

The cut-off date is yet to be determined and will depend on the negotiations; we understand that it will be a date

between 29 March 2017, when article 50 was triggered, and the date of the UK’s withdrawal from the EU.

If you fall in this category, you will be guaranteed “settled status” in UK law (i.e. indefinite leave to remain). Settled status under UK law is the equivalent to permanent residency under EU law.

To obtain “settled status” you will be required to make a separate application which we are told will be “streamlined.” That said, the UK Government has not provided any detail regarding the format of this application.

If you have already received a document from the Home Office certifying your permanent residency, you will still be required to make a separate application after the UK leaves the EU to obtain settled status.

If your family members arrive in the UK before the UK leaves the EU, current EU law will apply and they will be able to apply for settled status after five years. If they arrive after the UK leaves the EU, they will be subject to the same rules as family members joining British citizens under domestic law, which are not as generous.

2. EEA nationals who arrive before the cut-off date and who will have completed five years continuous residence by the end of the grace period

To avoid a cliff-edge effect, the UK Government intends to give a grace period. This is a period of up to two years that will commence immediately following the UK’s withdrawal from the EU.

If you fall in this category, you will continue to enjoy the right of free movement during the grace period without having to apply for permission from the UK.

Once you complete your five years’ continuous residence in the UK, you and your eligible family members will be entitled to apply for “settled status”.

3. EEA nationals who arrive before the cut-off date, but will not have completed five years continuous residence by the end of the grace period

If you fall in this category, you will be able to continue to live and work in the UK during the grace period without having to apply for any permission.

At the end of the grace period, you will need to apply to the Home Office for a temporary residence document if you wish to remain in the UK. Once you have completed your five years' continuous residence, you will be entitled to settled status.

4. EEA nationals who arrive after the cut-off date

If you fall under this category, you will still be able to enjoy your right of free movement during the grace period without having to apply for any permission.

At the end of the grace period, you will need to apply in accordance with whatever the domestic immigration rules provide at the time.

5. EEA nationals who are currently living in the UK without exercising their treaty rights

If you fall in this category, then you may be here in breach of immigration rules. This may have a detrimental effect on your ability to enter or live in the UK in future.

However, the policy paper proposed that settled status should still be given to students and self-sufficient people who did not hold comprehensive health insurance throughout the period of their stay.

We recommend that you take legal advice to determine your rights of residence as soon as you can.

What action should I take now in light of the UK Government's proposals?

On the basis that the application fee for a "residence card" or a "document certifying permanent residency" is only £65, it is our view that EEA nationals who meet the requirements should still make the relevant application.

The residence card will confirm to the Home Office that you have lived in the UK and the document certifying permanent residency will guarantee your rights after the UK's exit (see scenario 1).

If you hold permanent residence or may qualify soon, we also strongly recommend that you look at whether you may qualify to apply for British citizenship.

Will the rules change again?

These are the UK Government's proposals and they may change at any time before the UK leaves the EU. We strongly recommend that EEA citizens speak to their legal advisers on a regular basis to understand what their options are under the current regulations and the Government's proposals.

This note is an overview and does not constitute legal advice. If you would like advice or to discuss any potential matter, please contact:



Alex Ruffel

Partner

T: 0207 399 0932

E: alex.ruffel@irwinmitchell.com



George Merrylees

Senior Associate Solicitor

T: 0207 399 0938

E: george.merrylees@irwinmitchell.com



Ben Xu

Solicitor

T: 0207 399 0937

E: ben.xu@irwinmitchell.com