

Brexit Survival Guide – Immigration issues

“The Home Office are very prescriptive in the evidence they will accept... omission or incorrect formatting could lead to refusal of your application and loss of the application fee.”

Are you an EEA national living and working in the UK and concerned about Brexit and what this may mean for you and your family? This Brexit Survival Guide will help you assess your options. The guide is for individuals and families as well as employers who currently employ EEA nationals and would like more information about what they need to consider and do.

Can you secure your status in the UK?

What should you think about and what steps should you take now to secure your status in the UK, and ensure you can stay here post Brexit?

The Government published a policy paper setting out its negotiating position on EU citizens' rights in the UK in June. This is a stand-alone document, not a response to the EU negotiating position already published – hence, it cannot necessarily be relied upon as a guide to what EU nationals can do now, as it makes its proposals on the basis that they would be reciprocated by the EU, and this has not been confirmed. The UK document is not clear or comprehensive and there are many gaps.

So, we are advising EU national individuals and employers to make applications for permanent residence if possible now.

Making an application now - note:

1. When the UK leaves the EU, freedom of movement will end. Rights enjoyed now by EU nationals will not be carried forward into a post Brexit UK legal regime. It's best therefore to secure your status as an EU national, make an application now which could resolve any uncertainty as soon as possible, and open up the possibility of being able to remain indefinitely through acquiring permanent residence or naturalising as a British Citizen.
2. Future rules are unclear – there is no definition of 'settled status' as referred to in the policy document; no certainty about the 'cut-off date' by which applications have to be made; no assurances for family members of EEA nationals; no detail on the type of application process and how the UK will deal with the process – there is likely to be a deluge of applications resulting in lengthy delays and uncertainty.

There are steps that EU nationals can take now to secure their long term future in the UK:

1. Permanent residence

You may be eligible to apply for permanent residence, if you have been in the UK for five years or more exercising a 'Treaty right' – i.e., working, studying, self-employed, self-sufficient – throughout that time. As a European citizen, you are deemed to acquire permanent residence automatically after completing five lawful years in the UK. Currently, an application for a permanent residence card costs £65.

What if you have been in the UK for less than five years? If you do not qualify for permanent residence, you may consider applying for a registration certificate... this could help to protect your position.”

Actions to take:

- 1 Prepare a schedule of all your travel covering a five year period, including dates of entry/exit, location & purpose of each trip
- 2 Gather evidence that you have been working, studying, self-employed, self-sufficient or looking for work e.g. payslips, P60 forms, SA302s, bank statements, utility and council tax bills, letters from government departments
- 3 Prepare to submit the form (available at www.gov.uk) and supporting documents with your original passport or EEA ID card – either by post to the Home Office, or you can make an appointment with the European Passport Return Service if you need your passport to travel

Important points to consider:

1. How long you have been in the UK?
2. How much time have you spent outside of the UK?
3. Family members/dependants: will those here with you apply for permanent residence at the same time, and do you have any dependant family members who are non EEA nationals?
4. Have you committed any crimes or do you have any spent or unspent convictions or civil penalties?
5. Do you have comprehensive medical insurance? In some circumstances you will need to have been covered by comprehensive medical insurance in order to have been effectively exercising Treaty Rights.
6. Applications submitted to the Home Office can take up to six months to process. Due to the influx of applications, be aware of possible delays.
7. The Home Office are very prescriptive in the evidence they will accept in support of an application. Omission of a key document or submission of a document in an incorrect format could lead to refusal of your application and loss of the application fee.

2. Registration certificates

If you have been in the UK for less than five years and do not qualify for permanent residence, you may consider applying for a registration certificate (available at www.gov.uk) to confirm that you are in the UK now exercising Treaty rights. This could help to protect your position in the event that EEA nationals become subject to immigration control. Registration certificates evidence that you have the right to live in the UK. Again, the processing time for this type of application is up to six months (subject to additional government delays) and it currently costs £65.

3. Naturalisation – applying for citizenship

To ensure your long term future in the UK is assured, you may want to obtain British Citizenship (naturalise as a British citizen). An application to naturalise as a British Citizen costs £1,236 per applicant.

What will you need?

- A travel spreadsheet, which logs all travel you have made since entering the UK. The Home Office currently require details of all of the travel made outside the UK covering the relevant period – five years for most applicants, and three years for those married to British citizens.
- The travel log must cover the last five/three year period. It should show that you have not been outside the UK for more than 90 days in the year prior to your application, or more than 450 days in the five years prior to submission of your application.
- Prepare for your Life in the UK test and attend a local Life in the UK test centre. Obtaining a Life in the UK test certificate is a requirement, and you can start the process at any time before you intend to submit your naturalisation application. The test costs £120.
- If you have not studied in an accredited English speaking institution, or are not from a majority English speaking country, you will have to prove you can speak English and provide a test pass certificate or degree certificate (confirming the qualification was gained in English if taught outside of an English speaking country).
- Consider whether you can hold dual nationality. Certain countries have restrictions on dual citizenship.



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Employers

As an employer, what do you need to consider if you employ EEA nationals or their family members/dependants? What applications are available to your EEA employees and their dependant family members and how you and they can prepare?

What can/should you think about now?

- 1** Your EEA workforce
– prepare and support your employees for the process of applying for permanent residence/ registration documents
- 2** What about those who are in the UK as non EEA family members of EEA nationals
– can they apply for permanent residence?
- 3** As part of the application process, EEA nationals will be required to list any spent or unspent criminal convictions they may have in the UK and elsewhere, including cautions, reprimands, warnings, or similar penalties – these could potentially have an impact on an application to remain permanently in the UK or take British citizenship. It's important that employers are aware of these issues as they could have a bearing on whether the applicant can stay in the UK long term, or apply to naturalise

How we help

We understand the importance of this key yet complex area for businesses and individuals, especially given the current political climate. We work in partnership with individual and corporate clients to achieve their objectives, ranging from the prevention of illegal working, transfer of individuals at all levels within an organisation, sponsor licensing, visits, applications and appeals under European law. Please contact us with any specific queries and for more advice.

Please note, the information in this guide is provided with reference to the rules and application fees as currently in place (March 2017), which can be subject to change.

This overview is general guidance. It should not be relied upon without first taking separate legal advice.

Neither the author nor Fox Williams LLP accept any responsibility for any consequences resulting from reliance on the contents of this document.