

The UK has published its policy paper for managing the immigration status of European nationals in the UK, after the UK's departure from the European Union (EU)

The policy paper, which is still to be negotiated with the European Union, would mean that European nationals (including all EEA and Swiss nationals) and their family members who have lived in the UK for at least five years would qualify for settled status in the UK. They would need to have accrued those five years before a specified but as yet unknown date, which would be the subject of negotiation with the European Commission. If they entered the UK before the specified date but do not qualify for settled status, they would be able to apply for a temporary status to take them to five years, before applying for settled status.

Much to the surprise of commentators and experts, the proposal would also mean that permanent residence already granted under EU law would be invalidated once the UK leaves the EU, forcing European nationals to make a new application.

The key points



European nationals resident in the UK for five years before a specified date (to be determined and subject to negotiation) would be granted settled status in the UK

- Individuals who arrived in the UK prior to a “specified date” (still to be decided, but no earlier than 29 March 2017) and have accrued five years residence would be granted “settled status” under UK law, subject to rules on criminality. The current scheme for European nationals would no longer apply.



Existing residence documents would no longer be valid

- Existing residence documents obtained by European nationals and their family members in the UK under the current European regulations would be deemed invalid after the UK exits the EU.
- All European nationals and their family members would need to apply for new residence documents via a new “streamlined” digital process, even if they already hold a Permanent Residence document or registration certificate.



No “cliff edge”, but European nationals must apply to secure their status

- European nationals and their family members resident in the UK on the date the UK separates from the EU would not be required to leave. Instead, they would be given a likely two-year grace period in which to register with the UK government. Work and study is permitted during this period.
- European nationals would be able to make an application before the UK leaves the EU, should they wish to.
- Application fees would apply and be set at a “reasonable level”.



Different rules depending on the date of entry to the UK

- Different rules would apply depending on whether the European national entered the UK before or after the specified date.
- European nationals who entered before the specified date but do not qualify for settled status would be granted a temporary status to take them to five years, at which point they can apply for settled status.
- Those who entered after the specified date can apply for a temporary status in order to accumulate five years in the UK, but should have “no expectation of guaranteed settled status.”



Family members

- Dependant family members (including non-Europeans) who are resident in the UK with a European national at the point the UK leaves would also be granted the two-year grace period. They would need to apply for new residence documents in the same way as European nationals.
- Family members of European nationals who apply to enter the UK after the date on which the UK leaves the EU would be subject to the new rules in place at that time, regardless of when their European spouse entered the UK.



A streamlined process?

- Existing Government data, such as income records, would be used to reduce the documentary evidence required for applications under the new system.
- Individuals who currently hold a Permanent Residence document would have to meet “limited criteria”, and the application process would be “as streamlined as possible” for them.
- Eligibility criteria would be “tailored”. For example, the Government would no longer require economically inactive Europeans to show they held comprehensive sickness insurance to prove their residence.



Irish nationals are unaffected

- The UK government has stressed that Irish nationals would not be impacted by the proposals, given that the Ireland Act 1949 regulates the relationship between the two countries and predates membership of the EU. Irish nationals would not be obliged to make residence document applications under the new system.



The UK expects a reciprocal agreement

- The UK Government expects the EU and its Member States to offer a reciprocal agreement for UK nationals living in the EU before the specified date.



A proposal, not an agreement

- The content of the Paper is only a proposal at this stage. It will be subject to much negotiation and could leave the UK government open to political and potentially legal challenge from a range of parties, including the European Commission, pressure groups and European nationals themselves.



Should European nationals make permanent residence applications now?

- That is a personal decision. European nationals will need to understand that the UK position is to invalidate permanent residence documents granted under EU law, but this remains a point for negotiation and may not take effect. Regardless, it may still be useful to make an application for Permanent Residence if the European national intends (and is eligible) to apply for British citizenship shortly after obtaining Permanent Residence. This is a complex area and applicants should seriously consider seeking legal advice on the particular facts of their case.



Challenging decisions under the new system

- The UK government has always maintained that once the UK leaves the EU, the European courts will no longer have jurisdiction in the UK. Any negative decisions in relation to applications from European nationals under the new systems could not then be appealed to the Court of Justice of the European Union.
- In this Proposal, the UK government reasserts this position. They do not go on to confirm to what extent applicants would be able to challenge negative decisions, to whom the UK immigration tribunals could refer a question of law or if an independent supervisory body would be appointed to oversee disputed decisions or conduct.



The status of Norway, Iceland, Lichtenstein and Switzerland

- The paper confirms the UK government intends to put in place similar reciprocal arrangements with these countries. These arrangements will also be subject to negotiation.

Should you wish to read the Government paper it can be found [here](#)

The accompanying factsheet can be found [here](#)

For further information contact brexit@fragomen.com