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18 April 2017

## **8. Permanent Residence under EU law**

This information sheet explains what permanent residence under European Union (EU) law is, when and how it is acquired, and how citizens of European Economic Area (EEA) countries and of Switzerland, and their family members, may apply for documentation confirming their rights of permanent residence.

### **What is permanent residence under EU law?**

European Union (EU) law recognises a right of permanent residence for EEA and Swiss nationals who have lawfully resided in another state as a worker, self-employed person, student or self-sufficient person and have chosen to settle there on a long term basis. Permanent residence is acquired automatically by EEA/Swiss nationals and their family members once the relevant criteria are met.

### **What will happen to this right after the UK leaves the EU?**

The Government has not given clear guarantees on the status and entitlements of EEA/Swiss nationals and their family members after the UK leaves the EU. The EU will prioritise the residence rights of EU citizens in the UK in its negotiations with the UK and so there is likely to be some form of political settlement on the status and entitlements of EEA/Swiss nationals and their family members living in the UK. It is anticipated that provision will be made to recognise rights of permanent residence acquired under EU law.

### **How is permanent residence acquired under EU law?**

An EU citizen acquires permanent residence after they have resided lawfully as a 'qualified person' in the UK for a continuous period of five years. A 'qualified person' is a person undertaking qualifying activity as a worker, self-employed person student or who is a self-sufficient person. This is also known as 'exercising Treaty rights' as these are rights of free movement protected under the EU treaties. See ILPA's information sheets on the different categories. A person may gain permanent residence having undertaken qualifying activities in one of these categories or in a combination of these during the relevant five-year period. For example, they may have resided as a student for two years before becoming a worker for the following three years. Permanent residence may also be acquired by workers or self-employed persons earlier than five years in certain circumstances (see below).

EU citizens may acquire permanent residence as a result of any continuous five-year period of residence, not just the five-year period prior to the application. Their right of permanent residence will be retained unless they leave the UK for a period of more than two consecutive years or are expelled from the UK. This means that a person who exercised Treaty rights for a continuous period of five years in the past will continue to hold permanent residence acquired from that period even if they are no longer a worker, self-employed, a student or self-sufficient, provided they have not since been absent from the UK for over two years.

A continuous five-year period is defined as one in which the individual has not been absent for more than six months in any calendar year. A person may be absent for a longer period, however, in order to undertake compulsory military service. They may also be absent for up to a year where they can demonstrate an important reason for this, such as childbirth, serious illness, study or vocational training or being sent by their employer to another country for work.

### **How do family members acquire permanent residence under EU law?**

The family members and extended family members of EEA/Swiss nationals citizens who acquire permanent residence will qualify for permanent residence on the basis of their family relationship provided they have also lived in the UK for a continuous five-year period. This applies to both family members who are EEA/Swiss nationals themselves and to family members from outside the EEA. EEA/Swiss nationals in the UK may qualify for permanent residence in their own right as a worker, self-employed person, student or self-sufficient person or through their family relationship with another EEA/Swiss national who gains permanent residence.

### **When may permanent residence be gained earlier than five years?**

Workers, self-employed persons and their family members may gain permanent residence on retirement if they worked in the UK for at least the 12 months immediately prior to retirement and resided in the UK for more than three years. Those who stop work as a result of permanent incapacity gain permanent residence along with their family members if they resided in the UK for more than two years immediately before being incapacitated. If their incapacity was the result of an accident at work or occupational disease recognised by the UK authorities, permanent residence is acquired immediately. There are further provisions that enable the family members to gain permanent residence in circumstances where the worker or self-employed person died after residing in the UK for two years or as a result of an accident at work or an occupational disease.

### **How do people apply for documents confirming permanent residence?**

EEA/Swiss nationals, their family members and their extended family members may apply for documents to confirm their right of permanent residence in the UK. There is no requirement to apply for permanent residence documents as this right is acquired automatically on meeting the criteria for permanent residence. These documents can help prove that a person has the right to reside permanently in the UK and this may, although we do not know for sure, become more important in the context of Brexit.

Most applicants may apply for permanent residence documents using an online application process. Otherwise applications must be made using Home Office form EEA (PR). The online process can be combined with the use of a local authority service for checking passports so that these can be retained by the applicant and their family members while the application is considered. The application needs to be submitted with a valid passport or identity document for each applicant, documents confirming the family relationship where relevant, and with evidence demonstrating that the EU citizen exercised Treaty rights during a continuous five-year period and that they have not since been absent from the UK for more than two years. It is also necessary to pay a fee with the application of £65 for each person.

EU citizens are issued with a document certifying permanent residence. Family members from outside the EEA and extended family members are issued with a permanent residence card. The Home Office is legally required to issue documents within six months.

### **Further information**

*Free ebook application guides for EU citizens*, by Colin Yeo (Barrister, Garden Court Chambers), <https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens/>

All ILPA's Brexit information sheets are available at: <http://www.ilpa.org.uk/pages/brexit-information.html>