

THE BOLD, THE AMBITIOUS AND BREXIT - WHAT NEXT FOR EU CITIZENS IN THE UK?

On 22 September 2017 Theresa May stated that EU citizens' rights will be enshrined in the final Brexit treaty and called on European leaders to strike a "bold and ambitious" trade deal with Britain in two years. So what can EU citizens do now to prepare?

Policy Paper Proposals

In June the Government published a policy paper setting out their proposals to safeguard the post Brexit position of EU citizens currently living in the UK. Key points are:

- Post-Brexit, all EU citizens will need to apply for a residence document to confirm their immigration status (currently, qualifying individuals do not need a document to confirm this).
- Qualifying EU citizens and their family members' resident in the UK before a 'specified date' will be granted 'settled status' meaning the holder is free to live and work in the UK in any capacity. This is also a step towards applying for British citizenship.
- Criteria yet to be specified will need to be met to obtain 'settled status'.
- Individuals may apply for settled status under a new regime in advance of the UK leaving the EU, but the application process may not be open until 2018.
- There will be a 'specified date' and EU citizens who arrive after that date will be able to remain in the UK for at least a temporary period and may be able to become 'settled', but there should be no expectation of this. The 'specified date' is yet to be confirmed, but will be no later than the date of the UK's withdrawal from the EU.
- Family members arriving after the specified date will be subject to same rules as individuals joining British Citizens or, if they themselves are EU citizens, the post-Brexit arrangements.

Obtaining 'Settled Status'

The new scheme to obtain settled status will not be the same as the current scheme because the UK will no longer be bound by the Free Movement Directive. The Government intends to make the qualifying criteria more tailored. Whilst only limited information is available, the following can be deduced from the paper:

- To qualify for settled status, the EU citizen must have been resident in the UK before a specified date and must have completed five years' continuous residence in the UK before applying, at which point they must still be resident.
- The requirement to have held 'comprehensive sickness insurance' during periods of economic inactivity in order to be considered continuously resident will be scrapped.
- EU citizens who have not yet been in the UK for 5 years will have the option to apply for temporary status in order to remain resident in the UK until they have accumulated five years continuous residence at which point they may apply for settled status.

What we know so far

- The rights of EU citizens have currently not changed
- No EU citizen currently in the UK lawfully will be asked to leave at the point the UK leaves the EU.
- The ability of EU nationals to stay in UK beyond Brexit depends on the agreement between the UK and the EU
- Businesses and individuals can take steps now to prepare themselves for the future while we wait for negotiations to unfold.

- EU citizens who already have a document confirming permanent residence will not automatically have their status replaced with a grant of settled status, but they will enjoy a streamlined application process for settled status.

What happens next?

- Post-Brexit, the Government intends to implement a period of grace to allow EU citizens and their families to continue to reside in the UK whilst they wait to obtain a UK residence document.
- The grace period is expected to begin on exit day and last for up to two years; this is yet to be confirmed.
- At the end of the grace period, EU citizens who do not have permission to stay in the UK, are not covered by any applicable exemptions and have no other basis to remain in the UK, will no longer have permission to remain in the UK. What happens next for these citizens remains to be seen.

Action planning - steps to take now

In this period of huge uncertainty as to what will eventually emerge, both from the UK's negotiations with the EU and from the deliberations on the Government's Immigration Bill, there are practical steps you can take now to prepare for Brexit.

- Although not mandatory, EU citizens can currently still apply for either a registration certificate or a document confirming permanent residence.
- EU citizens who may want settled status should be vigilant about identifying when they enter and exit the UK from now on and keep a sufficient record of their activity whilst in the UK.
- The current application process is reasonably straightforward and applicants do not need to be without their passport (with limited exceptions).
- Non-EU family members of EU citizens should consider applying for an immigration document now, rather than face the tougher and more expensive UK immigration rules that may apply post-Brexit.
- Employers can undertake an audit to identify the extent to which their domestic workforce relies on the UK's membership of the EU to work in the UK to assess possible areas of vulnerability.

British Citizenship

Settled status is not the same as having a British passport. It is also known as indefinite leave to remain and having this status means that the holder can stay in the UK without any time restrictions. However, settled status can be lost if the holder stays outside the UK for a continuous period of more than two years.

Under EU law, EU citizens may apply for a document to confirm their permanent residence status after having exercised a treaty right in the UK for a continuous period of five years. Their non-EEA family members may apply for a permanent residence card provided they have been living in the UK in accordance with the EEA regulations for a continuous period of five years. Successful applicants may then apply to naturalise as a British citizen as a precautionary measure once they have held permanent residence for one year and all other criteria are met.

Before applying, individuals should check whether the advantages of obtaining permanent residence and/or British citizenship will outweigh any potential disadvantage(s) for example in relation to tax status and/or loss of another citizenship, and so on.

To view the full report as released by HM Government, please see the following link:

<https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>

CONTACTS

Chris Goodwill
Partner

T +44 20 7006 8304
E chris.goodwill@cliffordchance.com

Stephanie Dare
Chartered Legal
Executive, Immigration

T +44 20 7006 1965
E stephanie.dare@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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