
IMMIGRATION HAZARDS POST BREXIT

By **Hesham Shoeb** Immigration Law

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PERMANENT RESIDENCE VS SETTLED STATUS

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On 8 December 2017 the British Government reached an agreement with the EU about the legal status of EU nationals living in the UK, and those who might arrive before 31 December 2020.

The proposed plans will allow EU citizens and their family members, who by 31 December 2020 have been continuously resident in the UK for five years, to be eligible for “settled status”, enabling them to stay indefinitely. The draft version of these rules is set out in a new “Appendix EU” to the Immigration Rules.

SHOULD I APPLY FOR PERMANENT RESIDENCY NOW OR WAIT FOR THE SETTLED STATUS CATEGORY TO OPEN?

The answer to this question will depend on the individual circumstances of each case. Where EU nationals have well documented continuous employment in the UK that exceeds 5 years, it will often be a straightforward application process and will be the best way of securing their immigration status in the UK.

All EU nationals and their families in the UK will have to apply for Settled Status by 30 June 2021, regardless of

whether they have Permanent Residence or not. Failure to do so may lead to them becoming unlawfully resident in the UK.

There is an obvious benefit to EU nationals in acquiring Permanent Residence cards now, as they should find the process of obtaining Settled Status free and relatively easy, providing peace of mind amid the confusion surrounding the UK’s exit from the European Union. The Statement of Intent published by the Home Office on 21 June 2018 confirms that those who already have Permanent Residence, will be able to exchange them free of charge for Settled Status, subject only to criminality and security

checks to confirm their residence has not lapsed. The assessment of their previous residence done at the time the Permanent Residence card was issued, will not be repeated.

Another benefit will be if the EU national intends to naturalise as a British Citizen. It is a requirement that they will need to have held either Permanent Residence or Settled Status for 12 months prior to the application. In the case of Permanent Residency, this 12 months does not start from when the card is issued, but rather from the end of the 5 year qualifying period. That means that if an EU national has in fact been a qualified person for 6 years, they can apply

for naturalisation immediately after receiving the card and do not have to wait 12 months.

Students, the self-employed and economically self-sufficient persons, may potentially fall foul of requirements to hold comprehensive sickness insurance under EEA regulations, and may be better off applying for the new Settled Status where it is not a requirement.

Those who do not qualify for Settled Status because they have not been resident for long enough when the category opens will be entitled to register for “pre-settled status”, to allow them to accrue 5 years residency and transition to Settled Status.

WHAT IS THE DIFFERENCE BETWEEN APPLYING FOR PERMANENT RESIDENCE AND SETTLED STATUS?

In the rest of this article, we consider the differences between making an application for permanent residence under existing EEA regulations, and applying for “settled status” under the new route.

EEA (PERMANENT RESIDENCE)	SETTLED STATUS APPLICATION
The cost	The cost
An application for permanent residency will cost £65 per person.	An application for Settled Status will cost £65 however those who have already been granted permanent residence will be exempt from the fee as long as they have not been absent from the UK for more than 5 consecutive years.
The evidence that must be provided	The evidence that must be provided
For an application for permanent residency, applicants will need to provide documentary evidence of their identity and that they have been a “qualified person” for a continuous 5 year period. A qualified person will be: <ul style="list-style-type: none"> ■ A worker ■ A job seeker ■ A self-employed person 	For Settled Status, applicants will need to show 5 years continuous residence in the UK, which is wider in scope than the existing EEA definition of a “qualified person”. The default position will be for the Home Office to carry out automated checks of data held by HMRC and the DWP. This will confirm when an applicant...

EEA (PERMANENT RESIDENCE)	SETTLED STATUS APPLICATION
<p>The evidence that must be provided cont'd</p> <ul style="list-style-type: none"> ■ An economically self-sufficient person ■ A student <p>The evidence can take different forms, such as bank statements, pay slips and invoices.</p> <p>Applicants relying on periods as a student, self-employed person or economically self-sufficient person must show that they have held comprehensive sickness insurance throughout this period.</p>	<p>The evidence that must be provided cont'd</p> <p>...has been employed or in receipt of benefits as a job seeker.</p> <p>Economically self-sufficient people who do not work will need to manually upload evidence of residence such as bank statements, business accounts, mortgage statement or council tax bill in order to prove they have been resident for 5 continuous years. Gaps in the evidence may lead to the application being refused.</p> <p>There will be no requirement for EU nationals to show that they held comprehensive sickness insurance.</p>
<p>The process</p> <p>Applications can be made either online or using a paper application form. Family members of EEA nationals applying alone must use the paper application.</p> <p>The online process is simpler than the paper form as irrelevant questions are automatically skipped, whereas the paper version is fairly hefty at 85 pages long.</p> <p>Applicants then post physical evidence to the Home Office for consideration. EEA nationals have the option of utilising a passport returns service when applying online.</p>	<p>The process</p> <p>Applicants will need to use the digital application process which will be on GOV.UK. It remains under consideration in what circumstances to offer a paper application option.</p> <p>It is planned that applicants will use an official smartphone app to read the biometric chip in their national passport or ID card. It is likely applicants will have to submit their passport or ID card where they do not have biometric enabled chips.</p> <p>Applicants will then enrol their facial image by uploading a photo, so that the image can be compared to the photo registered with the ID document, so the Home Office are satisfied it is the same person.</p> <p>Non EU family members who have not obtained biometric residence cards will need to attend a designated application centre to enrol their fingerprints and facial image.</p>

EEA (PERMANENT RESIDENCE)	SETTLED STATUS APPLICATION
<p>Family members that can be included in the application</p> <p>Applications can be made either online or using a paper application form. Family members of EEA nationals applying alone must use the paper application.</p> <p>EU nationals can include both family members and extended family members as dependents.</p> <p>Family members are defined in Regulation 7 of the EEA Regulations 2016 as:</p> <ul style="list-style-type: none"> ■ Spouse or civil partner ■ Direct decedents in both the ascending and descending line who are either under 21 or dependent on either the EEA national or their spouse <p>Extended family members are defined in Regulation 8 as:</p> <ul style="list-style-type: none"> ■ a relative of an EEA national who is residing in a country other than the UK and is dependent on the EEA national ■ a member of their household and either is accompanying the EEA national to the UK or wishes to join them ■ has joined them in the UK and continues to be dependent on them or to be a member of their household ■ a relative of an EEA national who strictly requires the personal care of the EEA national due to serious health grounds ■ a relative of an EEA national who would meet the requirements of the Immigration Rules for indefinite leave to remain (other than those relating to entry clearance) as a dependent relative of an EEA national as if the EEA national was a person present and settled in the UK ■ the partner (other than a civil partner) of an EEA national who can prove they are in a durable relationship with the EEA national <p>There is no limit on the distance of the relationship between the EEA national and the extended family member as long as they can provide valid proof of the relationship between them.</p>	<p>Family members that can be included in the application</p> <p>Applicants will need to use the digital application process which will be on GOV.UK. It remains under consideration in what circumstances to offer a paper application option.</p> <p>Family members of EU nationals will be able to apply under the scheme from 31 December 2020 in the following categories:</p> <ul style="list-style-type: none"> ■ Spouse or Civil partner – which must be legally recognised in England and Wales and must not be considered a marriage of convenience ■ Durable partner – unmarried couples who have been living together for at least 2 years ■ Child – children under 21 can be included. Children over 21 must show that they are dependent on their parents ■ Dependent parent – direct dependent relatives in the ascending line of the EU national or their spouse or civil partner ■ Dependent relative – dependent relatives who have already been granted before 31 December 2020 a family permit, registration certificate or residence card

EEA (PERMANENT RESIDENCE)	SETTLED STATUS APPLICATION
<p>Timescales</p> <p>Under Regulation 18(3) of the current EEA regulations, the Home Office must issue a permanent residence card within 6 months where the applicant has proved their right to permanent residence.</p>	<p>Timescales</p> <p>The statement of intent does not specify any timescales as to how long it will take for applications to be decided, and there are no legal requirements for the Home Office to decide the application within any given time.</p> <p>It is likely that applicants who can have their residence verified easily by HMRC and DWP will have their applications processed faster.</p> <p>More complicated cases where applicants have different forms of evidence to demonstrate residence will need to be considered by individual caseworkers and will probably take longer to decide.</p>
<p>Legal position of the EU national if the application is refused</p> <p>Applicants who are refused are still able to assert their free movement rights and are able to re-apply under the EEA-regulations until the end of the implementation period of 31 December 2020.</p> <p>If they fail to make an application prior to this date, they risk becoming unlawfully resident.</p>	<p>Legal position of the EU national if the application is refused</p> <p>Until the end of the implementation period on 31 December 2020, applicants refused status under the scheme will still be able to assert their free movement rights and will retain their statutory right of appeal against any restriction of those rights under the EEA regulations.</p> <p>A person refused will be able to make a further application at any point before 30 June 2021.</p>
<p>Rights of appeal</p> <p>An EEA national can appeal a refusal to the First Tier Immigration Tribunal under regulation 36 of the current EEA rules.</p>	<p>Rights of appeal</p> <p>Primary legislation is required to establish a right of appeal for the scheme.</p> <p>The statement of intent from the Home Office aims to ensure that those applying from 30 March 2019 will be given a statutory right of appeal against a refusal.</p> <p>Refusals of applications made prior to this date can only be challenged via Administrative Review, and then Judicial Review.</p>

CONTACT US



To discuss anything in the article further please contact Hesham Shoeb in our Employment team on **01483 748548** or alternatively email **heshamshoeb@barlowrobbins.com**

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