

A SELF-HELP GUIDE FOR EU, EEA AND SWISS NATIONALS AND THEIR FAMILY MEMBERS CURRENTLY LIVING IN THE UNITED KINGDOM

Introduction

We have prepared this guide to advise European Union (EU), European Economic Area (EEA) and Swiss nationals (collectively referred to as “European nationals” in the guide) and their family members currently living in the United Kingdom to decide what, if any, action they should be taking now to protect their continuing right to live in the United Kingdom.

Such individuals, understandably, are confused as to what their current rights are and as to whether and how they may take steps now to protect such rights.

While Brexit is scheduled to proceed on 29 March 2019, the Home Office still does not have a system up and running to register European nationals and is now saying that the EU Settlement Scheme under British law will not open fully until next year.

At the same time, many horror stories have appeared in the press regarding those European nationals who have lodged applications under European law with the Home Office only to have them rejected on some technicality with an accompanying letter suggesting that the individuals concerned should leave the United Kingdom immediately because they had not met the requirements to be issued with whatever documentation they had applied for.

These same reports refer to 100 page long applications needing to be filled out by those seeking documentation from the Home Office and how such applications are incredibly difficult to fill out correctly.

The purpose of this guide is to provide some basic simple guidance as to the existing rights of European nationals and their family members and to offer some advice as to what steps can be taken to protect those rights.

Always check the current position

Please note that immigration law in the United Kingdom, because of its political sensitivity, changes frequently.

At present, this is especially the case with respect to the particular areas of immigration law covered in the present guide which has been prepared to explain currently applicable European immigration law and tries to guess, based on recent government pronouncements, how rights granted under European immigration law will be converted into rights under British immigration law. Given the imminent approach of Brexit, which is likely to occur in March 2019, and the ongoing negotiations between the United Kingdom and the European Union,

these issues relating to the interplay between European immigration law and British immigration law are going to remain very much in flux. This guide is being re-published on 8 October 2018 and its contents are correct as of that date. Given the rapid changes which are taking place, however, you should not rely on the information contained in this guide in the future without double-checking that the situation remains the same. At the end of the guide you will find contact details for organisations that might be able to help in providing updates.

Who can benefit from this guide?

European immigration law, as it is applied in the United Kingdom, covers nationals of the following countries:-

- a. Countries which are members of the European Union (EU), namely Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.
- b. Countries in the European Economic Area (EEA) who are not also members of the EU: Iceland, Lichtenstein, Norway.
- c. Swiss nationals.

To complicate things further, nationals of Ireland also enjoy a separate special set of rights under British immigration law. For example, Irish nationals in the United Kingdom are deemed to have indefinite leave to remain in the United Kingdom under British law.

UK nationals are not generally considered under British law to enjoy the benefits attached to European immigration law except under certain exceptional circumstances.

Finally, in light of Croatia's status as the newest member of the European Union, special regulations still apply to Croatian nationals seeking to exercise European rights in the United Kingdom.

The European immigration rights of nationals of Croatia and the United Kingdom, therefore, are not covered in this guide, nor are the automatic British immigration rights of Irish nationals. Nationals of those countries facing issues as to strategy to follow in the run-up to Brexit should seek specialist advice.

For ease of reference throughout the remainder of this guide, the term "European nationals" is used to refer to nationals of those countries listed in categories a, b and c above, with the exception that, in at least some cases, the situation of those from Croatia, Ireland and the United Kingdom are likely to be treated differently.

It should be noted, as well, that most of the information in this guide is also applicable to the “family members” of European nationals exercising their rights in the United Kingdom but that “family members” is a very specifically defined category in European law. It includes:

- a) a spouse or civil partner;
- b) a direct descendent of the European national or his/her spouse/civil partner under the age of 21 or otherwise dependent on the European national or his/her spouse/civil partner; and
- c) dependent direct relatives in the ascending line of the European national or his/her spouse/civil partner (e.g. parents, grandparents, etc.).

There is also a separate category defined under European law as “extended family members” which includes those individuals who have been determined to be the “durable partners” of a European national on the basis of having lived together for two years. People already recognised in the United Kingdom as “extended family members” will gain the same treatment as “family members”.

However, the individuals defined as “extended family members” are a varied group and you should consider seeking specialist legal advice if you fall within this category.

“Automatic rights” under European immigration law

In most cases, European immigration law gives European nationals in the United Kingdom “automatic rights”. This means that the European national in question, if he or she qualifies, immediately benefits from the right given under European immigration law. The European national does not need to apply for a document to confirm the right since the right exists whether or not a piece of paper has been issued stating that the individual concerned has been granted the right.

These are the categories for which “automatic rights” are available under European law:

- a. Each time a European enters the United Kingdom, there is an automatic right for such European national to be here for three months.
- b. Being a jobseeker in the United Kingdom (for a “limited” period of time falling within the very specific and somewhat complicated conditions set out in Regulation 6 of The Immigration (European Economic Area) Regulations 2016 – Revised Version).
- c. Being an employed person in the United Kingdom.
- d. Being a self-employed person in the United Kingdom.
- e. Being a self-sufficient person in the United Kingdom able to support oneself without recourse to public funds (but note that, in order to qualify for this category, you need to have “comprehensive sickness insurance”, i.e. full medical insurance).

- f. Being a student (but you would also need to have “comprehensive sickness insurance”).
- g. Someone temporarily or permanently incapacitated from working after coming here and taking employment for a period of time.
- h. Retired workers and retired self-employed persons who meet certain criteria.
- i. “Family members”. (This does not include “extended family members” such as unmarried partners who do not automatically acquire the right to be here but only obtain the right when they are issued with documentation by the Home Office confirming these rights.)
- j. Permanent residents, a right which a European national or family member acquires after being here for five years in one of the categories above.

How is Brexit going to affect these automatic rights?

The short answer to this is that no one knows for sure.

The UK government set out their initial bargaining position in a sixteen page document published on 26 June 2017 entitled “The United Kingdom’s Exit from the European Union: Safeguarding the Position of EU Citizens living in the UK and UK nationals living in the EU”. See: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu/the-united-kingdoms-exit-from-the-european-union-safeguarding-the-position-of-eu-citizens-living-in-the-uk-and-uk-nationals-living-in-the-eu>.

This was then summarised – and to a certain extent elaborated upon – by a statement made by the Prime Minister Theresa May in the House of Commons on 26 June 2017. See: <https://www.gov.uk/government/speeches/pm-commons-statement-on-european-council-26-june-2017>.

Subsequently, in a speech given on 22 September 2017 in Florence, the Prime Minister suggested that there would be a “status quo” transition period lasting “around two years” from the time that the United Kingdom left the EU in March 2019. The implication drawn from this is that, at least with respect to European nationals and their family members already in the United Kingdom as of a “cut-off date”, they would have a period of two years within which to obtain whatever status might be available to them under British immigration law. (With respect to European nationals and their family members arriving after the “cut-off date”, there was the suggestion that they would be subject to a separate new regime for registering in the United Kingdom without any promise of a long-term right to remain here.)

A draft Withdrawal Agreement between the EU and the United Kingdom was published on 19 March 2018. It shows the areas which have been agreed upon including providing for the future of European citizens’ rights. It should though be remembered that this document has as yet not been signed and therefore things are still subject to change.

However, on 21 June 2018, the Home Office published a Statement of Intent which gives the best summary of the government’s position to date.

The Home Office intends to put into place a scheme which will allow EEA citizens and their family members living in the United Kingdom to apply for UK immigration status through the new EU Settlement Scheme. It is currently being trialled as a pilot scheme in Liverpool and will be open in a phased way and will be fully open by March 2019. It is supposed to go live for all European nationals by that date.

All EEA nationals and their family members who are currently in the United Kingdom or who arrive before 31 December 2020 will be protected and allowed to continue living in the United

Kingdom, working, accessing public funds, healthcare and pension provision, as they currently are entitled to do.

In the future, family members of EEA nationals who are living overseas on 31 December 2020, but where a relationship exists before 31 December 2020, will be allowed to join their EEA citizen family member resident in the United Kingdom even after 31 December 2020. Furthermore, children born after 31 December 2020 to EEA citizens living in the United Kingdom will also be protected.

The rights of citizens of Norway, Iceland, Lichtenstein and Switzerland are currently being negotiated but the British government's intention is that the Settlement Scheme will be open to them too.

Irish nationals will not need to apply under this new scheme although non-Irish family members may need to.

EU Settlement Scheme - How will I apply and what will the Home Office check

The application will be made online, although the Home Office is also looking at whether some applicants should be allowed to apply by completing a paper form. The government is also intending to provide an assisted digital service for those who need support to make an online application, possibly through libraries. In addition, there will be an application process which can be done on mobile phones.

The Home Office will check three things:

1. Proof of identity

Applicants will need to provide evidence of their identity, by submitting their passport data or, for EEA citizens, their national identity card. If you have a biometric identity document, you will be able to use an App on your mobile phone. Otherwise, the original document will have to be sent to the Home Office by post.

Applicants will also need to provide a passport sized photograph. EEA nationals can upload it online. Non-EEA nationals who have a Biometric Residence Permit issued under current EU law, will also be able to upload their photo online. Other non-EEA nationals will need to attend an Application Centre to give their fingerprints and a photograph.

2. Confirmation of residence in the United Kingdom

Applicants will need to have been living in the United Kingdom before 31 December 2020. The plan is that applicants will not initially be asked to submit evidence of residence and the Home Office will carry out their own checks through HMRC and

DWP. If HMRC and/or the DWP do not hold evidence confirming the applicant's residence, then applicants will have an opportunity to upload evidence of residence, such as bank statements, letters from employers, P60s, etc.

3. *Criminality*

Applicants will need to self-declare their criminal convictions. The Home Office will carry out their own checks. Serious criminal convictions might lead to a refusal.

Family members will also need to show they are related to the EEA national.

Costs

Applications will cost as follows:

- £32.50 for children under the age of 16.
- £0 for those who already hold indefinite leave to remain and have not been absent for two consecutive years since obtaining it; those who already have a document certifying permanent residence, and have not been absent for more than five consecutive years or lost their right because a deportation order was made against them; those who have been granted pre-settled status and are applying for settled status after April 2019 and children in local authority care.
- £65 for all other applicants.

What status will I be granted?

EEA nationals and their family members who have lived in the United Kingdom for five years will be given settled status. (Please note that there are some categories of people who can qualify for settled status before accumulating five years' residence provided certain conditions are met, e.g. those who have stopped working due to retirement or incapacity or the family members of deceased EEA nationals.)

Children of EU nationals who have been granted settled status will also be given settled status, even if they have not themselves lived in the United Kingdom for five years.

Those who have not yet lived in the United Kingdom for five years will be granted pre-settled status for a period of five years. Once they have reached five years' residence, they will be able to switch to settled status.

If you a non-EEA national and do not have a Biometric Residence Permit then you will be issued with one.

Timing

The new system is being rolled out and should be open to all at the very latest in March 2019. Applications will need to be made no later than 30 June 2021.

The Home Office has stated that most applications should be decided in a few days although less straightforward ones might take longer.

These proposals are without prejudice to Common Travel Area arrangements between the United Kingdom and Ireland and the rights of British and Irish citizens in each other's countries rooted in the Ireland Act 1949 which provide that Irish nationals in the United Kingdom are treated as already having indefinite leave to remain in the United Kingdom under British law.

Should you be making an application now for a document confirming your rights in the United Kingdom under European law?

Whether you decide to make an application and apply for a document to confirm your status at this point in time will depend on your particular circumstances.

One category of such documents would be permanent residence documents:

- a) a document confirming your permanent residence if you are a European national who has exercised your rights as an EU citizen for five years continuously; or
- b) a permanent residence certificate if you are a family member of such an individual.

Another category would be relevant in the event that you have not "clocked up" five years but are a European national currently exercising your right to be here as an EU national in a qualifying capacity. In this case you could apply for a registration certificate and, at the same time, any family member could apply for a five year residence card if they did not already have one.

The Home Office website has, until recently, included guidance for European nationals indicating that, while they should register their email addresses with the Home Office to get information updates, they need not make any application for the time being until receiving information from the Home Office regarding how they might apply in due course for "settled status" or a short term status leading to "settled status". It is more than likely that this position by the Home Office was largely an act of self-preservation, it not wanting to have a flood of two to three million potential applications being made by EU nationals in the United Kingdom now before the EU Settlement Scheme under British law comes fully into effect.

Cases where you definitely should be applying for a document confirming your permanent residence

Notwithstanding the Home Office's reluctance to receive applications from European nationals, there are very clear cases where European nationals **must apply** for a document confirming permanent residence:-

1. If you want to apply for British citizenship, since it is essential to have a document confirming permanent residence before naturalising as a British citizen.
2. If you now, prior to the implementation of the new "settled status" scheme, want to make an application under British law for a dependant to be granted leave to enter or remain in the United Kingdom under British law rather than European law, avoiding all the uncertainty attached to statuses obtained under European law.

The Home Office itself has now, effectively, acknowledged the need to apply if you fall into these two categories. On the cover sheet to the application form for a document certifying permanent residence, for example, it says that a document confirming permanent residence is necessary if "you want to apply for British citizenship" or if "you want to sponsor your partner's application under the Immigration Rules" (which in fact is only one of several categories where holding a document confirming permanent residence might be relevant to sponsoring a dependant).

In terms of nationality, obtaining a permanent residence document swiftly, and then naturalising, could be particularly important for German citizens. German citizens are currently allowed to hold dual nationality with the United Kingdom as it is a member state of the European Union. This may not be the case after 29 March 2019 if a Withdrawal Agreement extending the transition period to the end of December 2020 is not signed. German citizens will not be asked to relinquish their British nationality if they acquired it before 29 March 2019 (or December 2020 if there is a Withdrawal Agreement) and so those who have obtained British nationality before Brexit would be able to continue to hold dual nationality. Similar situations may arise for other European nationals and each individual will need to consider carefully the issues about holding dual nationality.

There is also another category where there might be a clear benefit derived from applying for a document confirming permanent residence now. This is with respect to individuals who have already automatically acquired permanent residence in the United Kingdom under European law but who, since then, for one reason or another, have not been living in the United Kingdom continuously. This could include, for example, a European family who have been living and working in the United Kingdom for more than five years and, therefore, have automatically acquired permanent residence but are then, for a period of time, transferred to another country because of the employment of one of the parents. Such individuals, under European law, would continue to hold permanent residence provided that they returned to the United Kingdom at least once in every two year period.

Another example of this would be the children of European nationals raised in this country for most of their lives and who have acquired permanent residence as the dependants of their parents but who then, subsequently, have gone on to further education or to take up work positions abroad while still considering their family home to be here. Under European law, such individuals as well would also retain their permanent residence provided that they return home, e.g. to spend holidays with family, at least once every two years.

It is not at all clear, however, how such individuals who have already acquired permanent residence but who are at least temporarily living abroad will be treated under the scheme mooted by the Government which, as stated, so far appears to be based on individuals actually residing in the United Kingdom for the last five years. One would hope that maintaining their permanent residence status in this country would “count” for purposes of acquiring “residence status”, but this is far from certain. It seems clear that their positions would be reinforced, however, by obtaining documentation now confirming their permanent residence.

Is it worthwhile to apply for a document confirming permanent residence in other cases?

It remains unclear how and whether people not in these exceptional categories should also now be applying for documentation confirming their permanent residence. Decisions will need to be taken on a case by case basis. What we do know though is that if you hold a permanent residence card you will not have to pay a further fee to obtain settlement.

While the details outlined above have emerged relating to the European Settlement Scheme being implemented in British law, it remains to be seen how this will operate on a practical level.

The Home Office will take into account a grant of a document confirming permanent residence when processing applications for “settled status”. Not only will people holding a permanent residence card not have to pay to obtain settled status, they will also not have to prove residence for the period the Home Office assessed before issuing their permanent residence document. At the same time, no one can be sure how much getting such a document confirming permanent residence will assist in the “settled status” process. It is difficult to state categorically, therefore, that it is necessary for people to get such documents and that they would be foolish not to prepare and lodge such applications now.

You will also note, later in this guide, that your having acquired permanent residence at some point in the past may have a very significant effect on the rights of your children. Children born in this country to European nationals who have automatically acquired permanent residence under European law are British nationals upon birth and entitled to a British passport, often without the family knowing it. Other children born in the United Kingdom will

have acquired the right to apply to register as British citizens after a parent has automatically acquired permanent residence in this country. While, therefore, in such cases it is not absolutely necessary to apply for a document confirming permanent residence, at the very least it is worthwhile to go through the exercise of determining whether in fact you have automatically acquired this status.

Is it worthwhile to apply for a registration certificate if one hasn't yet automatically acquired permanent residence?

It is probably the case, however, that with respect to Europeans not yet qualifying for permanent residence, applying for a registration certificate is not a very important step for such an individual to take today. It is more important that individuals who will, in due course, be applying for "settled status" keep good documentation about their work histories, proof of their living here, etc. Obtaining a registration certificate now is not in and of itself likely to carry much weight in proving an entitlement to settled status.

Applying for a document confirming Permanent Residence

Making an application is no longer difficult.

Assuming that you have taken the decision that you want to make an application for a document confirming your permanent residence based on the guidance above, the good news is that this, in many cases, is no longer a complicated procedure. For a long time, many Europeans entitled to apply for a document confirming their permanent residence were put off the procedure because of the nearly one hundred page document which they needed to complete which even lawyers found very difficult to understand and use. Happily, however, there is now a simple online alternative which can be used in many cases. Filling out the online application is a relatively straightforward process and you will receive a list after completing the online form explaining exactly what you need to submit to the Home Office and how to submit it.

Both options continue to exist and here are the links to the online application and the paper application:

1. Online application form for a permanent residence document: <https://visas-immigration.service.gov.uk/product/eea-pr>
- OR**
2. Paper application form: <https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr>

Current guidance notes to help you fill out either version of the application form can be found here:

Have you automatically acquired permanent residence?

An important question you need to ask yourself before making such an application for a document confirming your permanent residence is whether or not you have automatically acquired permanent residence already under European law and, therefore, are eligible for a document confirming this.

If there has been a continuous five year period since you have come here during which you have exercised your rights as a European national, you probably have acquired permanent residence and can apply for a document confirming your permanent residence if you decide to do so.

As to how to define “continuous”, short breaks in continuity are acceptable, e.g. a period of job-seeking for a few months. You must not have been out of the United Kingdom for more than a total of six months during any of the five years or for more than two years at a time after the five year period in order to qualify for permanent residence.

Family members can apply with you, if they have been here as your family members for a five year period.

If you come from the Czech Republic, Estonia, Lithuania, Latvia, Hungary, Poland, Slovakia, or Slovenia, you may not be eligible to count time up to 30 April 2009 if you were a worker and did not register under the Worker Registration Scheme for the first year of your employment. Although workers from these countries had to register up until 2011, a recent court case has declared the last two years of the scheme were illegal. Therefore, even if the Home Office during the period April 2009 to April 2011 considered you should have registered with them, if you did not then you will still be considered to have been here legally. The Home Office has confirmed that they accept the court’s judgment and people working during that period without being registered can count the time towards the five years.

Current flaws in the online application form

It is worth pointing out that, at the time of finalising this guide in October 2018, the Home Office has not corrected, as it had previously suggested it would, one set of flaws in the online application form.

In many cases, individuals will be basing their applications on a five year period of employment or self-employment but may also have spent time in the United Kingdom as well as a student and/or as a self-sufficient person, both of which statuses require that the individual concerned also have ‘comprehensive sickness insurance’.

At present, regardless of the basis on which a person is applying, the form asks “Have you been a student or done vocational training since entering the UK?” and then asks “Were you a student or self-sufficient person?” Answering these questions affirmatively may then lead to an inaccurate document checklist requiring proof of ‘comprehensive sickness insurance’ when in fact this ought not to be required.

In correspondence with the Home Office, Wesley Gryk Solicitors has suggested that these questions should be replaced by one question querying whether the present application is based at least partly on a period of time as a student and another querying whether the present application is based at least partly on a period of time as a self-sufficient person. While the Home Office has responded that appropriate changes will be made, this has not yet occurred.

One way of dealing with these anachronistic questions in the meantime would be to respond ‘no’ to the two questions if they are not relevant to the particular application. Then, in the final section where additional information can be supplied, the applicant can explain that the present application is being based on a continuous five year period of employment/self-employment and, while the applicant has indeed pursued studies or been self-sufficient while here, the applicant has ticked ‘no’ to those questions because they are not directly relevant to the present application.

Procedure for making an application through the European Passport Return Service

If opting to use the online form, you can also opt to use the European Passport Return Service.

This enables you to keep hold of your passport while your application is with the Home Office, as a local authority Register Office (“RO”) will (for a small fee) take a certified photocopy of your passport and forward that onto the Home Office as part of your application package. To use the service, you need to do the following:

- ❖ Within a maximum of 5 days of submitting your online application form, attend a participating Register Office (lists of participating ROs in England, Greater London, Scotland, Wales and Belfast can be found at the bottom of this page: <https://www.gov.uk/government/collections/european-passport-return-service>) You may need to book an appointment at the relevant RO to use this service. Contact them in advance of submitting your online application to check whether this is the case.
- ❖ You must take with you to the RO your entire application package, containing all supporting documents (including a printed copy of the application form you submitted online).

- ❖ You will need to pay a small fee (in the range of £10-£25) for the RO to make a certified photocopy of your passport.
- ❖ The RO then, having made a certified copy of your passport, will forward the whole package (including the copy of your passport) onto the Home Office on your behalf.
- ❖ You will have to pay a separate fee for Special Delivery postage, but you should then be given a tracking number to enable you to trace the package as it is sent to the Home Office.
- ❖ Further information about the passport return service can be found here:
<https://www.gov.uk/government/collections/european-passport-return-service>

Applying for a registration certificate

While, as indicated above, there may not be much point in applying for a registration certificate now, given the imminence of Brexit, the application process for such a registration certificate is similar to that for a document confirming permanent residence. There are two ways to lodge such an application.

1. Online application for a registration certificate: <https://visas-immigration.service.gov.uk/product/eea-qp>
- OR**
2. Paper application form : <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-as-a-qualified-person-form-eea-qp>

Current guidance notes to help you fill out either version of the application form can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673052/EEA_QP_guide-to-supporting-documents_v1_3_2015-12-04_KP.pdf

Again, if you want to keep your passport while the application is being considered, you can use the passport return service described in the previous section. You can also, if you are an EEA national, apply for a registration certificate at a Home Office Priority Service Centre, and receive a same-day decision on your application

Becoming a British Citizen

The most fool proof way to protect your right to be in the UK is to naturalise as a British citizen.

The law changed on 12 November 2015, however, to require European nationals to obtain a document confirming their permanent residence before they could become British citizens. Prior to that they could simply rely on their automatically acquired right to permanent

residence when applying for British nationality. So you must go through the process of obtaining such a document before you apply to naturalise. (See below, however, information regarding the special situation of children.)

You also need to demonstrate that you have held permanent residence for at least one year before you can naturalise. Remember, however, that you may well have **automatically** acquired permanent residence a long time ago, when you completed five continuous years of exercising your European rights.

When you apply for a document confirming your permanent residence, you should therefore be sure to document, if possible, a period which ended over a year ago. Then, when the Home Office issues your document confirming your permanent residence, it should specify the date on which you acquired permanent residence, which will be at the end of the five year qualifying period which you documented.

The result may be that you will immediately be able to apply to naturalise upon receipt of the document confirming your permanent residence if that document shows that you in fact automatically acquired your permanent residence at least one year ago.

If you have a non-European national family member who is relying on European law to remain here as your family member, you should consider carefully whether or not to become a British citizen. This is because your family member's right to be here under European law depends entirely on you being here on a European law basis. However, there are some circumstances where an EEA national can naturalise and family members will still be able to rely on European law to remain in the United Kingdom.

A dual British and EEA national will continue to be regarded as an EEA national if:

- The dual British and EEA national exercised free movement rights in the United Kingdom as a worker, self-employed person, self-sufficient person or student, or had a right of permanent residence in the United Kingdom prior to the acquisition of British citizenship.
- Subsequently acquired British citizenship, while also retaining their nationality of origin.
- The dual British and EEA national continues to exercise Treaty rights or holds a right of permanent residence.

The rules in this area though are somewhat complex, particularly if the EEA national holds dual nationality and was born in the United Kingdom. You may therefore want to consider taking legal advice if you are in this position of being a family member of a dual EEA/British national.

Benefits to your children if you have acquired permanent residence

You need to be aware that there may be special benefits to your children in asserting your entitlement to permanent residence.

Children born to a parent who has permanent residence under European law

A child born in the United Kingdom to a parent who is British or “settled” at the date of the child’s birth will be considered British by birth. “Settled” in this context means that the parent has indefinite leave to remain under British law contained in the United Kingdom’s Immigration Rules, or has acquired the right of permanent residence under European law.

This means that, if you are entitled to apply for a document confirming your permanent residence as of a certain date in the past when you had completed a continuous five year period of exercising European rights, any child or children you had after that date on which you had acquired permanent residence would automatically be British “by birth” under Section 1(1) of the British Nationality Act 1981. This means that such children can apply for a British passport straightaway. (Please note, however, that it is not mandatory for you to have been issued with the document confirming your permanent residence in order to take advantage of this rule but, instead, you could simply prove in the context of the passport application that you have exercised your European rights for a continuous five year period and have not been absent since then for more than two years at a time.)

Children born in the United Kingdom to a parent who later acquired permanent residence

Furthermore, a child born in the United Kingdom to a parent who later becomes settled has an entitlement (i.e. an absolute right) to register as a British citizen under Section 1(3) of the British Nationality Act 1981, although such an application must be made while the child is still a minor. Because of this provision, if you are applying for documentation confirming your permanent residence before lodging this application to register your child as a British citizen, there is not really a need to include in the application for a document confirming your permanent residence your minor children as dependants since, as soon as you are issued with a document confirming your permanent residence, your children will be able to use that document to demonstrate that they have the right to register as British citizens, after which they will be entitled to British passports.

Children born in the UK who have lived here for the first ten years of their life

Furthermore, a child born in the UK who has lived in the UK for the first ten years of their life is entitled to register as a British citizen under Section 1(4) of the British Nationality Act 1981. This entitlement exists independently of the immigration status of the parents. Unlike an application under Section 1(3), this application can be made by adults as well as children.

Further rules relating to children

Changes in the law over time mean that different rules may apply depending on when the child was born:

- ❖ A child born in the United Kingdom before 2 October 2000 to an EEA national parent will be a British citizen if the parent was exercising treaty rights at the time of the child's birth. (There has been doubt cast on this by recent case law. If this applies to you or your child, please check the Passport Office guidance here before you apply: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374616/TreatyRightsPolicy.pdf);
- ❖ A child born between 2 October 2000 and 30 April 2006 to an EEA national parent will be a British citizen if the parent had indefinite leave to remain in the UK at the time of the birth (indefinite leave under British being required since permanent residence under European law only became available after 30 April 2006); and
- ❖ A child born in the United Kingdom after 30 April 2006 will be a British citizen if their parent had been in the United Kingdom exercising Treaty rights for more than 5 years (and therefore has automatically acquired permanent residence) or has indefinite leave to remain.

If you need to find legal assistance to help you with an application

In many cases, if you decide to make an application for a document confirming your permanent residence or for a registration certificate now, you should be able to do this yourself given the relative simplicity of the online application form. Even if you were to make a mistake and the application were to be refused, you could make a fresh application correcting the error made in the first application. The only negative consequence would be that an additional fee of £65 would be payable. However, if you wish to have a lawyer in private practice review the application and are in a part of the United Kingdom where there are lawyers specialising in immigration law, you can contact one of the following bodies to help you find such a lawyer:-

1. The Immigration Law Practitioners' Association (ILPA), a highly respected organisation bringing together the best and most committed immigration law practitioners, has a search directory:- <http://www.ilpa.org.uk/search-directory.php>.
2. The Law Society has a tool for finding specialist lawyers in your area:- <http://solicitors.lawsociety.org.uk>.

Contact details for the law firms providing the presentation

Wilson Solicitors LLP

697 High Road

London N17 8AD

Phone: 020 8808 7535.

<https://www.wilsonllp.co.uk/>

The email addresses of Matthew and Ana are:

Matthew Davies – m.davies@wilsonllp.co.uk

Ana González – a.gonzalez@wilsonllp.co.uk

Wesley Gryk Solicitors LLP

140 Lower Marsh

London SE1 7AE

Phone: 020 7401 6887.

<http://www.gryklaw.com/>

The email addresses of Wesley and Alison are:

Wesley Gryk – wesley@gryklaw.com

Alison Hunter – alison@gryklaw.com

Useful links setting out basic information and guidance to making applications under European law

“ACT NOW TO STAY HERE FOR GOOD – A Self-Help Guide for EU, EEA and Swiss Nationals and Their Family Members Currently Living in the United Kingdom” co-authored by Alison Hunter and Wesley Gryk of Wesley Gryk Solicitors LLP and Liz Barratt and John Halford of Bindmans LLP was published by Here for Good, a new NGO committed to working for the rights of European citizens and their family members. It can be accessed here:-

<https://hereforgoodguide.com/>

“EU Citizens Living in the UK: A Self-Help Guide” from Barrister Adrian Berry

<https://www.linkedin.com/pulse/eu-citizens-living-uk-self-help-guide-adrian-berry>

A series of free e-book guides produced by Barrister Colin Yeo aimed at EU and EEA nationals wanting to apply for residence documents here in the UK on the basis of being workers, self-employed individuals, self-sufficient individuals or students for making applications for documentation confirming your right to be in the UK under European law. All of the guides can be found and downloaded for free here:

<https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens>.

“Children and their rights to British Citizenship” produced by the Project for the Registration of Children as British Citizens: https://issuu.com/prcbc/docs/british_citizenship_claims.

The European Commission has prepared a helpful guide to the rights of EU nationals in the UK and how Brexit might affect these which can be found here;

https://ec.europa.eu/unitedkingdom/services/your-rights_en

Example application

We are attaching to this guide an anonymised printout of an online application form for a document confirming permanent residence for a European national and for his dependent partner.