

## October 2017 UK Immigration Update

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The UK government has set out a plan for transitioning EU nationals in the UK post-withdrawal, and released updated guidance on Employers' Right to Work Checks.

The UK government estimates that three million EU nationals are currently in the United Kingdom and are able to live, work, and travel with only their passports as evidence of their permission to stay. As part of Brexit negotiations, the UK government has published a White Paper, "[The United Kingdom's Exit from the European Union](#)", which sets out its plans for EU nationals in the UK once the UK leaves the European Union. It proposes that once the UK leaves the EU, all EU nationals living in the UK will be transitioned into UK domestic law. This will not be an automatic transition and all EU nationals and their family members, regardless of arrival date, will need to apply to the Home Office for permission to stay under one of several new categories to be introduced under UK Immigration Rules.

Once granted, the permission to stay will enable EU nationals to demonstrate that they have the right to legally live and work in the UK. It is expected that this permission will also be extended to resident nationals of Norway, Iceland, Lichtenstein, and Switzerland. Irish citizens residing in the UK will not need to apply for settled status to protect their entitlements, as the rights of British and Irish citizens in each other's countries are rooted in the Ireland Act 1949.

### New Categories

A cutoff date will be implemented for assessing the relevant new categories for EU nationals seeking permission to stay in the UK. This "specified date" is expected to be no earlier than 29 March 2017 and no later than the date of the UK's withdrawal from the EU.

EU nationals who arrived before the specified date and have been resident in the UK for five years will be allowed to stay indefinitely by applying for "settled status". Once granted, it will mean that individuals can live, work, and enjoy the benefits of living in the UK indefinitely.

EU nationals who arrived before the specified date but have not been in the UK for five years will be able to apply for temporary status to remain in the UK until they have reached five years, after which

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they will be able to apply for settled status.

EU nationals who arrived after the specified date will not automatically be eligible to apply for settled status, and their future in the UK will depend on the forthcoming immigration arrangements for EU nationals.

Under current proposals, EU nationals who have already acquired permanent residence will not automatically be granted settled status. Those individuals will be required to apply for settled status but may be “fast tracked” under arrangements to be determined.

## **Timings and Process**

To ensure that there is enough time for people to secure their documentation, there will be a grace period of up to two years after the UK’s withdrawal from the EU to give EU nationals and their families sufficient time to submit their applications. The government also intends to introduce a voluntary scheme to enable eligible EU nationals to apply for their permission to stay and residence documents before the UK’s withdrawal from the EU. This will enable these individuals to obtain their UK immigration status at an early stage to ensure as smooth and efficient a process as possible. Further details regarding this scheme and the fees involved are expected to be published in due course.

## **What to Do Now**

As negotiations continue, EU nationals and their family members should be protecting their positions now pending any final Brexit agreement. Applying now for British nationality or permanent residence under existing EU regulations is likely to be cheaper and to provide maximum peace of mind, and in the event that a deal is not reached, EU nationals, their family members, and their employers will not find themselves in a state of limbo.

EU nationals who cannot currently apply for permanent residence should collate documents evidencing their dates of entry to the UK and their residence in the UK.

## **Future Arrangements and the MAC’s Call for Evidence**

After the UK leaves the EU, free movement will end but migration between the UK and the EU will continue. The UK government is still considering a range of options as to how EU migration will work for new arrivals post-exit, and the Home Secretary has commissioned the Migration Advisory Committee (MAC) to advise on “the economic and social impacts of the UK’s exit from the European Union and also on how the UK’s immigration system should be aligned with a modern industrial strategy”.

In response, the MAC has published its “Call for Evidence”, which seeks the views of and evidence from a wide range of interested parties across the whole of the UK, including businesses, employers, and recruiters. The MAC will provide its recommendations to the UK government on the most suitable post-Brexit immigration system for the UK’s economic strategy. The MAC is seeking public comments from immigration stakeholders by 27 October and is expected to publish a full report by September 2018. The Call for Evidence includes a full list of questions and guidance on how to provide responses.

## Updated Guidance on Employers' Right to Work Checks

With increasing scrutiny and tough penalties for non-compliance, it is vital that employers have robust procedures in place for carrying out right to work checks and keep up to date on changes in Home Office guidance. On 16 August 2017, the Home Office issued updated guidance on Employers' Right to Work Checks. The updated guidance includes

- simplified advice in respect of employing non-European Economic Area (EEA) international students;
- confirmation that Residence Cards and Accession Residence Cards from non-EEA family members of EEA nationals provide employers with a time-limited statutory excuse and Permanent Residence Cards provide a continuous statutory excuse; and
- a distinction between "volunteering" (which is permitted for individuals granted immigration permission to be in the UK) and undertaking "voluntary work" (which, with some exceptions, is not).

The guidance includes, for the first time, information regarding Closure Notices and Compliance Orders. Closure Notices and Compliance Orders are sanctions which can be imposed against an employer where illegal working is found and where an employer has previously failed to comply with illegal working legislation.

If a Closure Notice is issued, the employer's premises will be closed for a limited time. Where a Compliance Order is issued, special conditions are placed on the employer to support compliance with its duties in respect of right to work checks and preventing the employment of illegal workers.

Employers who fail to carry out right to work checks in accordance with Home Office guidance risk the sanction of a civil penalty (up to £20,000) or ramifications for their Sponsorship Licence including suspension and potential revocation.

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