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Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

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BREXIT

1. The rights of EEA and Swiss nationals in the UK

In the first of a series of ILPA information sheets related to Brexit, this sheet gives an overview of the rights of residence in the UK of citizens of European Economic Area (EEA) and of Switzerland. It explains how these rights will continue unchanged until Britain formally leaves the EU and outlines steps that people may consider taking now.

Rights of residence guaranteed under EU law

Under European Union (EU) law, EEA and Swiss nationals and certain members of their family have an initial right of residence in the UK for a period of up to three months without any restrictions on their stay. Beyond this period, EEA/Swiss nationals and their family members have a right to reside where the EEA/Swiss national undertakes activity as:

- a **worker** or employed person (including a person looking for work, or a person temporarily unable to work or out of work, in certain circumstances);
- a **self-employed person**;
- a **student**; or
- where the EEA/Swiss national is a **self-sufficient person**.

This is known as 'exercising Treaty rights' because, by undertaking these activities, the person is exercising rights of free movement that are guaranteed under the EU treaties. ILPA has prepared separate information sheets on when people qualify under these categories.

The right of residence is accompanied by other rights, such as the right to be treated equally with British citizens in many circumstances, for example in access to employment. EEA/Swiss nationals and their family members may apply for residence documentation confirming their right to reside in the UK. However, the right arises from undertaking the activity rather than the issuing of the document which simply provides proof of the citizen's existing entitlements as a result of exercising Treaty rights in the UK.

Permanent residence under EU law

EU citizens who have had the right to reside in the UK for a continuous period of five years, because they have been exercising Treaty rights in any of the above categories or a combination of these, automatically acquire permanent residence in the UK under EU law. Permanent residence is only lost where the person is absent for two or more years or is expelled or deported from the UK. In certain circumstances, permanent residence may be acquired in fewer than five years by workers, self-employed persons and their family members on retirement, the permanent incapacity to work or the death of the worker or self-employed person. EEA/Swiss nationals and their families may apply for documentation confirming their permanent residence. See ILPA's information sheet on permanent residence under EU law.

The rights of EEA and Swiss nationals and their families during the Brexit process

The UK is required to comply with EU law until it has formally left the EU. This means that the rights and status of EU citizens did not change following the referendum held on membership of the EU. They will not change when Article 50 of the Treaty of the European Union is triggered giving formal notification of the UK's intention to withdraw from the EU. Nor will their status and entitlements change during the Brexit negotiation process. This process may last for up to two years unless it is extended by agreement. Any change to the rights and status of EU citizens would only take effect, at the earliest, once the UK has formally withdrawn from the EU at the end of the negotiation process.

The UK government's position on the rights of EU citizens after it leaves the EU

The UK government has so far not offered certainty about the position of EEA and Swiss nationals citizens in the UK after it leaves the EU, stating that this will be a matter for negotiation with the EU. Their rights of residence in the UK will be an issue that the EU will prioritise in the negotiations. While it is likely that there will be some form of political settlement on the rights of residence of EEA and Swiss nationals, their status and entitlements, as well as the basis on which these will be determined, remain unclear.

What can EU citizens do now to help protect their position?

Though action might not be necessary in the event of an inclusive and protective settlement on rights of residence, there are steps that EU citizens can take now to ensure they are able to prove the rights they have acquired and to help protect against risks that rights under any political agreement may be granted on a more restrictive basis. EU citizens may therefore:

1. Consider if they have acquired permanent residence in the UK, either in their own right or through an EU citizen who is a family member and **apply for documentation confirming their permanent residence**.
2. **Apply for documentation confirming their right to reside** in the UK on the basis of their activity as a worker, self-employed person, student or self-sufficient person or a combination of these activities if they have not yet acquired permanent residence.
3. Begin **exercising Treaty rights**, for example through undertaking work or self-employment, if they do not currently meet the criteria under EU law for a right of residence or permanent residence either through their own or a family member's activities. This will enable them to accumulate rights of residence before the UK withdraws from the EU.
4. In all of the above cases, **keep records of residence and evidence of exercising Treaty rights in the UK** (such as utility bills, payslips, records of study etc).
5. **Consider applying for British citizenship with caution** as it will be necessary to check that doing so will not lead to the loss of their existing nationality (if they are from a country that does not permit dual citizenship). It is also necessary to consider the impact on family members who may not qualify to remain in the UK under the more onerous requirements of the immigration rules on the family members of British citizens, which will apply if the EEA/Swiss national becomes a British citizen.
6. **Campaign to protect the rights of EU citizens**, using their voice to lobby and influence both the UK government and the government in their EU country of origin.

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/>
Securing EEA nationals residence rights, by Matthew Evans (The AIRE Centre), <http://www.ilpa.org.uk/resource/32960/ilpa-brexite-advocacy-series-securing-eea-nationals-residency-rights-matthew-evans>

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