#  information sheet

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**BREXIT**

*6 July 2017*

**10. UK negotiating position on EU citizens’ rights (1)**

The UK has published its [negotiating position](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) on EU citizens’ rights in the UK and Gibraltar after Brexit. It is a stand-alone document, not a response to the [EU negotiating position](https://ec.europa.eu/commission/publications/position-paper-essential-principles-citizens-rights_en) already published. It proposes reciprocal arrangements, that British citizens be treated the same way in the EU as the UK proposes to treat EU nationals in the UK, but does not acknowledge that the EU has already made a better proposal, protecting more rights for more people, for both other EU nationals and British citizens. **Everything described here is a proposal**: the ‘worst-case scenario’. The focus in this information sheet is on proposals for EU citizens in the UK. It is focused on their immigration rights, rather than their social entitlements.

The UK document is not clear or comprehensive and there are many gaps. It is a reasonable assumption that where the EU position deals with an issue and the UK position is silent on it, this omission is deliberate, but whether because the UK does not want to cover everybody or because it has not yet decided what it wants to do, we do not know. Commentators are reading between the lines in different ways. Areas of particular confusion are discussed in [**Brexit** **information sheet 11. UK negotiating position on EU citizens’ rights (2)**](http://www.ilpa.org.uk/resource/33379/information-sheet-brexit-11-uk-negotiating-position-2)**.**

**Overview**

Irish citizens are treated as a special case and will not need to apply for settled status to continue to enjoy rights to move and stay freely in the UK after Brexit.

The UK proposal divides EU citizens and their family members into those in the UK before and after a cut-off date. It proposes a transition period of up to two years during which EU citizens and their family members who were resident in the UK before the cut-off date who are [permanent residents](http://www.ilpa.org.uk/resources.php/33185/information-sheet-brexit-8-permanent-residence-under-eu-law) under EU law by the end of the transition period can apply for settled status. ‘Qualifying’ EU citizens and their family members who were ‘resident’ in the UK before the cut-off date can apply during the transition period for a temporary status to stay until they are eligible to apply for settled status (usually after five years continuous residence), at least if they reach settled status before the end of the transition period..

Existing dependent family members, whether European nationals themselves or not, who join a qualifying EU citizen in the UK before Brexit will also be able to apply for the temporary status.

EU citizens and family members who come to the UK after the cut-off date are likely (see [**Brexit information sheet 11**](http://www.ilpa.org.uk/resource/33379/information-sheet-brexit-11-uk-negotiating-position-2)) to fall under the immigration rules that apply to non-EEA foreign nationals at the end of the transition period. EU citizens who were in the UK before the cut-off date but do not make an application during the transition period are likely to fall under the immigration rules when it ends.

Those rules change over time and might change as a result of Brexit, including to make special provision for EEA nationals.

**What will be the positon of citizens of Norway, Iceland Lichtenstein and Switzerland?**

These are not EU member States but participate in EU free movement. There is reference to ‘discussing’ arrangements ‘similar’ to those for EU citizens for them.

**Cut-off date**

The UK proposal does not commit to a cut-off date. It says no earlier than the date of notification of leaving the EU under Article 50 (29 March 2017), no later than the date of Brexit (expected as 29 March 2019).

**The need to apply**

With the exception of Irish nationals, even a person who holds a permanent residence document already will need to apply for a new status. Many commentators have doubted whether the Home Office bureaucracy can cope with documenting millions of people as is proposed.

**The test for the new settled status will be different from the test for permanent residence**

The UK will not require the self-sufficient and students to demonstrate that they have comprehensive sickness insurance to qualify for the new settled status. Thus people who are currently being refused permanent residence may succeed in their applications for the new status.

Criminal convictions and conduct will be taken into account in deciding whether to grant the new status. The UK immigration rules allow people to be excluded on these bases who are not excluded under EU law and thus some persons with permanent residence will be refused the new status.

**Rights of those who settle or with temporary status.**

The new settled status, like indefinite leave to remain and permanent residence, will normally be lost after two years continuous absence from the UK.

The UK paper suggests that those who settle will have the same rights as those with indefinite leave to remain in the UK, who in turn have many of the same rights as nationals: full access to benefits and to public services such as the NHS. Qualifying EU citizens who arrive in the UK before the cut-off date will continue to be eligible for student loans and home fee status in the same way as are those with indefinite leave to remain. There is reference to the mutual recognition of professional qualifications, but no promises. The paper states that those with temporary status will have similar access to the settled if they are workers or self-employed but more limited access if they are not working.

**Disputes**

Where there is a dispute as to whether someone in the UK qualifies (for example whether they had permanent residence under EU law before Brexit), the UK proposal is that the UK courts will decide the question, and will not be bound by the Court of Justice of the European Union although the paper arguably leaves open the possibility of a limited role in settling disputes between the UK and EU.

**Applying for a permanent residence card**

The UK paper says that there is no need for those who have permanent residence to apply for documentation to evidence it, because they will only have to apply again for settled status. It remains the case however that it is necessary to apply for a permanent residence card to apply for British citizenship. The UK paper also suggests that there will be a streamlined route to the new settled status for those who have permanent residence documentation. Besides, many prefer to assert their rights under EU law at a time when EU law, not the UK, has the last word on what those rights are.

**Legal Challenges**

Anyone in the UK has rights under the European Convention on Human Rights, which comes from the Council of Europe, of which the UK will remain a member after Brexit, not the European Union. Article 8 of the Convention protects the right to private and family life and EU nationals who are told to leave may be able to challenge the decision under Article 8.