

Brexit fast approaching

European nationals' right to settle in the UK before Brexit and beyond?



European nationals and their family members who have resided in the UK for a minimum of five years can, currently, acquire permanent residence ('PR') status in the UK under the (EEA) Regulations 2016. To demonstrate their status, they have an option to make an application to the Home Office, UK Visas and Immigration.

Following the UK's departure from the EU on 29 March 2019, there will be a transitional period until 31 December 2020. Thereafter the UK will be entirely independent from the EU. **Will EU nationals' right to PR be preserved and how does this compare to settlement rights currently granted to non-European nationals?**

Is there a difference between indefinite leave to remain ('ILR') and permanent residence ('PR') status and will these become the same after the UK departs from the EU?

Current position

There is a legal distinction between ILR and PR because they exist under different legal provisions;

- ILR is granted under the UK law Immigration Rules to non-European nationals.
- Permanent Residence is granted under the Immigration (EEA) Regulations 2016 to European nationals and their family members.

Both ILR and PR are typically issued to individuals who have resided in the UK for at least 5 years. From a practical perspective there is very little difference between the two categories, however non-EEA nationals must apply for ILR, whereas European nationals and their dependents can acquire PR automatically by virtue of meeting the requirements, and can elect to apply for a document affirming this status. Once acquired, ILR and PR confer similar rights, although individuals with PR have stronger protections against revocation and deportation under EU law.

Future position

After the transitional period ends, current Brexit negotiations have proposed a new third type of status, known as 'Settled Status', similar to PR, that EU nationals and their dependents will be able to apply for. Although the specific legal framework for Settled Status has not yet been confirmed, it will be issued under a UK legislative framework and it is likely that Settled Status will confer at least the same rights as ILR – indications to date suggest that the provisions will in fact be more favourable e.g. allowing individuals to be absent from the UK for up to 5 years (compared to the current limit of 2 years) without losing their Settled Status. Settled Status will however remain a separate category.

What happens to individuals who have been away from the UK for longer than five years? Can they return to UK without visa?

Currently the wording of the joint UK/EU report states that 'persons who have acquired permanent residence rights in the host country can be absent from its territory for a period *not exceeding five consecutive years*.' This potentially leaves open the possibility that, provided the individual had at least made occasional short trips back to the UK during the five year absence, that each trip would effectively re-start the clock for determining if PR/Settled Status is lost.

This approach would be similar to that taken under UK law in relation to individuals who have acquired ILR, where a period of two continuous consecutive year's absence is required for ILR to be lost, and this period restarts each time an individual returns to the UK.

Are the rules regarding retaining PR status whilst absent from the UK, different where the period of time outside of the UK has been spent outside the EU (e.g. USA) rather than in the EU?

There is no requirement stated in the information published to date, that the permitted absence is restricted to being in another EU Member State and it is not anticipated that an absence from the UK spent in a third country would be prejudicial.

Scenario:

Country A, B and C are each European countries.

I am a European national of Country A, but hold PR status in Country B. I now currently live in Country C, am I required to return to Country B by 29 March 2019 to retain my PR status?

No specific guidance has been issued by the UK or EU on how this scenario will be dealt with in practise and remains subject to ongoing negotiations.

Is there any indication what the post Brexit immigration process will be on 30 March 2019 (or will it start at the end of the transition period?)

This is currently subject to negotiation. The UK Government has previously stated that there will be a three phase approach to immigration matters as set out below (with the assumption being that a transition period would be until 31 December 2020);



Ultimately, following any arrangements made to accommodate the transition period, a new immigration system for EU nationals wishing to reside in the UK (and vice versa) will be implemented – the rules for which are yet to be determined.

Peace of mind for you and your family members

Contacts

Our PwC Private Wealth team is highly experienced in providing the highest quality, comprehensive immigration services with innovative solutions to keep our clients on the move. If you would like to apply for a document confirming your permanent resident status now, our immigration team would be happy to assist at highly competitive rates. If you have any questions or would like to discuss this in further detail, please do not hesitate to contact:



Lyudmyla Davies
*PwC | Head of Private Wealth
Immigration, Director and Solicitor*
T: +44 (0)7803 456020
E: lyudmyla.davies@pwc.com



Olga Nechita
PwC | Solicitor and Senior Manager
T: +44 (0)7889 654678
E: olga.nechita@pwc.com



Sacha Wooldridge
PwC | Solicitor and Manager
T: +44 (0)7753 458676
E: sachan.wooldridge@pwc.com

A further announcement on immigration, in relation to Brexit, is expected in Summer 2018, stay in touch for further updates as to how you might be impacted and any action you may need to take

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2018 PricewaterhouseCoopers LLP. All rights reserved. PwC refers to the UK member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

180515-180731-SW-OS