



HOW TO OBTAIN UK PERMANENT RESIDENCY BEFORE AND AFTER BREXIT?

Among the many and very complex issues that the United Kingdom (UK) exit process from European Union sets out, doubtlessly one of the most relevant refers to the right of residence of European citizens in the UK.

So far nationals of a Member State from the European Union (EU) have enjoyed a specific and privileged legislation that allowed them to reside for a certain or uncertain time in other Member State. In contrast to this legislation, those foreigners who come from Third States like Turkey, will have to justify and fulfil a string of requirements in order to legally reside in a Member State.

Nowadays, the member countries of European Economic Area (EEA) - made up of twenty-seven countries of EU, plus Iceland, Liechtenstein and Norway - have benefited from the Immigration Regulations 2016. This legislation have allowed European citizens and family members to reside in UK for a certain time (right of initial residency for three months) with the only requirement of having to prove through a valid national ID card or valid passport the belonging to any of the Member States.

Once this initial period of residence runs out, those who want to extend their right of residence in the UK is required to comply with one of the following situations; 1) Job seeking, 2) Working, 3) Self-employed, 4) Studying, or 5) Self-sufficient. According to one of these categories, the residency applicant will be officially named “qualified person”. This “qualified person” could then gain the right of permanent residency after five years of continuous stay. This right of residency grants an indefinite leave to remain in UK.

In order to fulfil this previous period of five years of continuous residency and so to satisfy the right of permanent residency, the applicant must not have been absent from the UK for more than six months in any twelve months period given. This means at least six months per each year of effective residence.

However, following the UK’s exit from the EU, this set of rights has been substituted by the so-called Settled Status. For this reason, in order to protect and safeguard the rights of European people to legally reside in the UK, the EU Settlement Scheme Applications has been set up. It applies to EU citizens from European Economic

Area and their family members. This EU Settlement Scheme Applications, which assembles the Settled Status, must be requested by all EU citizens and their family members living in UK who wish to remain working and living in the UK after 31 December 2020. Despite of this regulation, Irish citizens maintain a specific regime and do not need to apply for the EU Settlement Scheme.

Within the Settled Status, there are two fundamental classification categories that are closely linked to the legal situation above explained. First, EU citizens that have been residing for less than five years in the UK will obtain the Pre-settled status at the EU Settlement Scheme Applications. Meanwhile, secondly, those who can prove five years of effective residence in the UK will acquire the Settled status. The status obtained will exclusively depend on how long the applicant has been living in the UK since the time of applying. It is important to mention that civil rights will be different according to the status obtained.

At this point, it should be noted too that the application at the EU Settlement Scheme is voluntary. Moreover, an application is not strictly necessary once obtained the indefinite leave to remain. However, the UK authorities always recommend registering in order to avoid defencelessness, legal uncertainty or being unable to evidence their own residency or that of their family members.

In conclusion, it seems that the UK wants to maintain a certain priority of rights for EU citizens in comparison to other foreigners. Such is the reason for the voluntary EU Settlement Scheme. It grants some certainty to all EU citizens currently residing in the UK. Nevertheless, inversely, all EU citizens who enter the country from the 1st of January 2021, and who expect to remain, will have to accept the whole immigration limitations that British Government has laid down. There will then be no difference between being a EU citizen or not.

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