

NHS Employers/Capsticks – FAQs on Brexit

On 29 March 2017, the two-year negotiation period leading to the UK's exit from the European Union (EU) commenced. Negotiations are at an early stage, and the implications of Brexit remain unclear for employers and EU citizens living and working in the UK.

The government has confirmed that workers' rights will be protected by [The Repeal Bill](#), which will convert existing EU law into UK law. It's not anticipated that many changes will be made to UK employment law, at least not in the short term.

In collaboration with our strategic partner, Capsticks LLP, we have produced these frequently asked questions surrounding the immigration implications of the UK's exit from the EU for staff in the NHS. As yet, many of these questions cannot be fully answered, but what we do know, and our current recommendations, are set out below. These FAQs will be updated as the negotiation process continues.

Definitions

Brexit	The informal term for the UK's exit from the EU, following the government's triggering of Article 50 of the Treaty on European Union.
European Economic Area (EEA)	A free trade zone consisting of the member states of the EU, plus Iceland, Norway and Liechtenstein. In these FAQs, the term EU nationals includes nationals of both the EU and the EEA.
European Union (EU)	A political and economic union of 28 member states.
EU citizen	A national of one of the EU or EEA member countries.
Indefinite leave to remain (ILR)	The right to remain indefinitely in the UK once an EU citizen has been resident in the UK for five years or more. This is not granted automatically but is subject to a successful application. It will cease to exist following Brexit.
Naturalisation	The process of obtaining British citizenship following a qualifying residence period. Once an individual is naturalised, they are entitled to apply for a British passport. The immigration status of

	naturalised citizens will be unaffected by Brexit.
Settled status	The new right to remain in the UK for qualifying EU citizens that will effectively replace ILR following Brexit.

1. How will the outcome of the EU referendum affect our current staff from the EU?

The government has confirmed that until the UK exits the European Union, EU citizens that are resident in the UK will continue to benefit from their existing rights to live and work here. Following Brexit, it is intended that there will be a grace period to enable EU citizens to regulate their status. This would protect those EU citizens from having to leave the UK immediately on the exit date, who would otherwise have the right to remain here.

After the UK leaves the EU, under the government's current proposals as set out in the [policy paper](#) published in June 2017, qualifying EU citizens will be able to apply for settled status. This is similar to the current right of indefinite leave to remain (ILR). To qualify for settled status, they must have been resident in the UK before a specified date, and have five years' continuous residence in the UK. The specified date has not yet been determined, but will be no earlier than 29 March 2017, and no later than the date on which the UK leaves the EU.

EU citizens who were resident in the UK before the specified date, but who do not have five years' continuous service, will be able to apply for temporary status to remain in the UK until they accrue five years' service and are able to apply for settled status.

EU citizens who arrive in the UK after the specified date will be able to remain in the UK for a period and may become eligible to settle permanently, depending on their circumstances. However, this is not guaranteed.

Citizens of the Republic of Ireland will be unaffected and will be permitted to remain in the UK due to existing arrangements between the UK and the Republic of Ireland outside the EU freedom of movement.

2. What action should I advise our EU staff to take now?

Employees should not apply for indefinite leave to remain (ILR) under the current system. ILR will not have any legal effect after the UK leaves the EU, and EU citizens will need to make another application for settled status when the new rules come into force. The current system for making ILR applications is also complex and lengthy, and it is intended that the settled status application system will be considerably simpler.

Employees should be encouraged to retain any documents to prove their continuous residence in the UK, such as travel documents. They should also keep a record of any absences, and the reasons for such absences, that might impact on any future settled status application.

3. If an EU member of staff has British citizenship how will the UK leaving the EU affect them?

EU citizens who have been naturalised as British citizens will be unaffected by the UK's exit from the EU and will be permitted to retain their citizenship.

EU citizens who have held a document confirming permanent residence for 12 months or more are eligible to apply for naturalisation as a British citizen. EU citizens considering naturalisation will need to ensure that the rules of their home country permit dual nationality, and whether any of their family members may be affected by them obtaining British citizenship. A naturalisation application is also expensive – currently £1282 for adults and £973 for children. EU citizens who have legitimately obtained ILR will be guaranteed settled status once the new system is in place and therefore an application for naturalisation may be unnecessary.

4. We have a shortage of qualified healthcare professionals and have planned a recruitment trip to an EU country in the next few months, shall we still proceed with our recruitment?

The UK remains a member of the EU until March 2019, and the rights of EU citizens to live and work in the UK will be unaffected until that date. Therefore, existing arrangements around recruitment and employment of individuals from within the EU currently remain unchanged.

5. What should we advise an EU member of staff who has applied for indefinite leave to remain under the current process and was turned down?

There is no need for your EU staff members to request a reconsideration now as, the government has confirmed that until the UK exits the European Union, EU citizens that are resident in the UK will continue to benefit from their existing rights to live and work here. Following the UK's exit from the EU, the individual will need to make a new application for settled status.

However, if the application is refused for a seemingly straightforward reason (under the current system, many applications fail due to the applicant's failure to provide the correct documentation) an applicant would be well advised to request a reconsideration now. The process for obtaining settled status is expected to be considerably simpler for those who have already gained ILR.

6. What will happen to an EU national who has already obtained UK residence documents, will these be valid after the UK leaves the EU?

EU citizens who have been naturalised as British citizens will be unaffected by the UK's exit from the EU and will be permitted to retain their citizenship. EU citizens who hold other residence documents, such as a permanent residence document or residence card, will need to apply for settled status under the new system. However, it is expected that the process will be streamlined for such applicants.

7. When should we be advising our EU staff to apply for settled status?

EU staff who meet the qualifying conditions should be advised to apply for [settled status](#) as soon as the new system is introduced, which is expected to be some time in 2018. Those who meet the qualifying conditions following this date should submit their application as soon as possible. While EU citizens will have a grace period following Brexit when they will be granted temporary leave to remain in the UK, it is sensible to make an application for the new settled status as soon as possible as the system is likely to be busy.

The application process and requirements for obtaining settled status have not yet been confirmed. It is thought that the process will be less complicated than the current process for obtaining residence and the current 85-page form will be discontinued.

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8. What is the situation for families of our EU staff?

Family dependents may join a qualifying EU citizen any time before the UK's exit from the EU. Those joining after the UK's exit will become subject to the same rules currently in force for family dependents joining UK nationals ie their spouse or civil partner must meet a minimum income threshold, currently £18,600. For lower earners, it may be preferable for them to bring their family dependents to the UK before Brexit if they are planning to do so.

9. What evidence will EU citizens be required to provide with their application for settled status under the new system? Can we expect previous EU staff to get in touch requiring proof of employment?

The application process and requirements for obtaining [settled status](#) have not yet been confirmed. It is likely that the new system will be available during 2018. It is thought that the process will be less complicated than the current process for obtaining residence and the current 85-page form will be discontinued.

An online digital application system is being established. This is expected to use existing official data sources to minimise the need for applicants to produce wage slips or other documents to demonstrate five years' continuous residence. This

should minimise the impact of the application process for both applicants and former employers. Applicants may need to produce a passport and have biometric prints taken in order to use the digital system.