



COMMENTARY

Here today, gone tomorrow? The status of EU citizens already living in the UK

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The UK's vote to leave the EU raises fundamental questions about the future of UK migration policy. One of the most immediate is what will happen to more than 3 million EU citizens who are already living in the UK.

Prior to the referendum there was comparatively little discussion about this issue. Vote Leave campaigners [argued that](#) EU citizens already living in the UK “will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present.” Legal analysts have noted that existing laws [do not guarantee](#) permanent residence for this group, however, and that much will depend on policy decisions by the UK government.

So far, the government has made broad statements supporting the principle of protecting the rights of EU citizens already living here – for example, a Cabinet Office [statement](#) on the 11th July said that the government “fully expects” EU nationals’ legal status to be “properly protected” and Brexit minister David Davis [has been quoted](#) predicting a “generous settlement for EU migrants here now.” Prime Minister Theresa May [has also said](#) that the only circumstance in which the rights of EU citizens in the UK would not be guaranteed would be if rights of UK citizens in the EU were not similarly protected.

However, the details of how this will be implemented have not yet been resolved and some of the details could be quite complex, including questions such as who will qualify as “already living in the UK”, what conditions they will have to meet, and what the application process will involve.

This commentary examines what we know about these questions. In particular, it looks at the process that already exists for EU citizens registering as permanent residents in the UK. While the actual process that EU citizens will face in coming years may be quite different, examining the current process of acquiring permanent residence process gives an insight into the kind of issues that could arise as any future registration mechanism is implemented.

The administrative task ahead

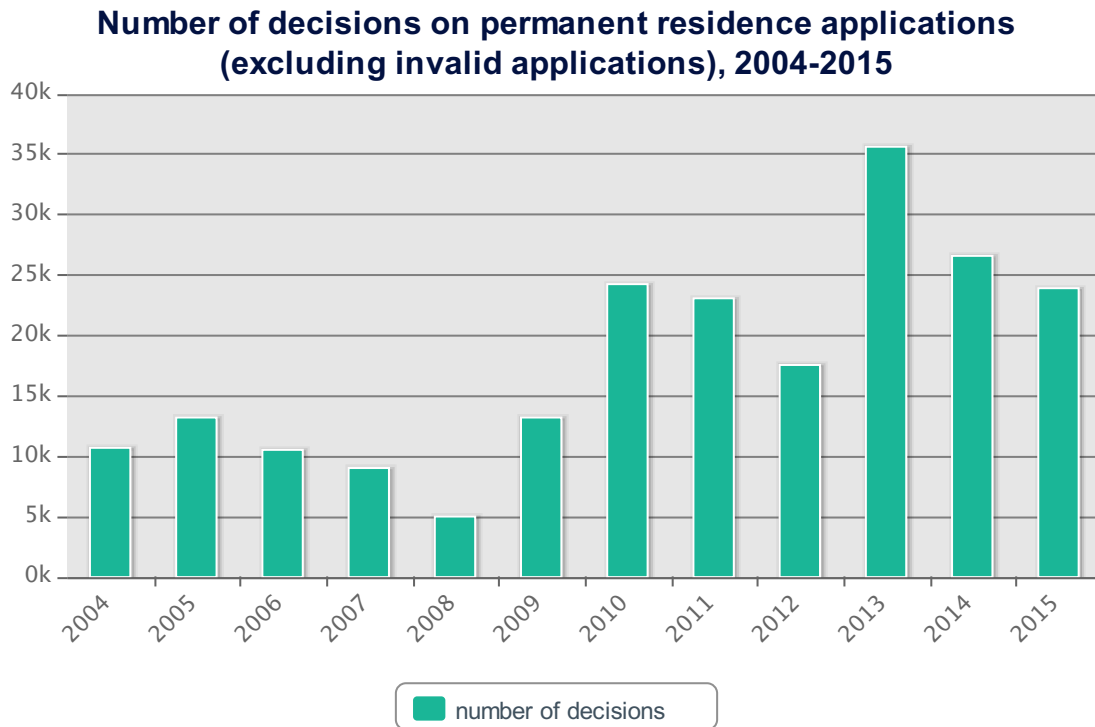
Assuming that free movement comes to an end after the EU exit process is formalised, EU citizens may need to obtain documents demonstrating their residence rights within a relatively short period of time, in order to distinguish themselves from newly arriving EU citizens who do not continue to enjoy free movement rights.

Because EU citizens have enjoyed very similar rights to UK citizens until now, the vast majority have had no need to register as residents or permanent residents in the UK. The main reason for registering to date has been to gain residence rights under EU law for a non-EU spouse or child. In 2015, 47% of permanent residence cards [were granted](#) to non-EU nationals.

Over the past five years (2011–2015), the Home Office has been processing an average of 25,500 permanent residence applications per year from EEA citizens and their family members (Figure 1). The total population of citizens of EEA countries plus Switzerland (henceforth ‘EEA+’) living in the UK was more than 3.5 million by the beginning of 2016, according to Migration Observatory analysis of the Labour Force Survey.

The scale of the administrative exercise that would be required to register all EU citizens already living in the UK for permanent residence is therefore considerable. If all EEA+ citizens were to apply in the same year, this would be equivalent to approximately 140 years’ worth of permanent residence applications. While, of course, a large and dedicated team would be expected to take this process on to deal with applications much more rapidly, these figures illustrate the scale of the administrative challenge ahead.

Figure 1



Source : Home Office Immigration Statistics, table ee_02

Note: data include both EEA nationals and their non-EEA family members. Invalid applications, which are sent back to the applicant without a decision because they did not contain all the necessary information, are excluded from the workload statistics presented here.

Note that while applications for permanent residence are likely to have increased as a result of the referendum debate and result, data for 2016 are not yet available.

The current legal situation

The UK is still a member of the European Union and EU rules on free movement still apply today. It is not known exactly when the formal process of leaving the EU will be complete, although EU law envisages a negotiation period of up to 2 years after the UK triggers Article 50 of the Lisbon Treaty. It is currently expected that Article 50 will be triggered by early 2017.

What happens after that depends on the agreements and decisions made in the UK and the EU in the coming months and years. If the government chose to leave the EU but remain part of the European Economic Area (like Norway), free movement rules would remain in place indefinitely. However, this outcome may be politically unlikely, given the [importance of immigration](#) in motivating many voters' decision to opt for Leave.

Assuming that the UK leaves the EEA, the UK will need to set out the policies that will apply both to EU citizens who have already moved to the UK and to those who will move in the future.

In the interest of simplicity, this analysis assumes a common set of rules applied to all EEA nationals, regardless of their country of origin. However, note that different rules may apply to some groups – at the very least Irish citizens, who have enjoyed free movement rights [under separate rules](#) not stemming from EU membership.

The application process

It is not yet clear exactly how any registration process for EU citizens already living in the UK will be implemented. There are different ways to design such a process, ranging from a simple application documenting physical presence in the UK before a given cut-off date, to detailed scrutiny of EU citizens' history of activity in the UK.

EU citizens are considered to be exercising their treaty rights under EU law (and can apply for documents confirming this) if they are working, self-employed or looking for work; or if they are either self-sufficient or a student and have 'comprehensive sickness insurance'. After 5 years of continuous residence in one or more of these categories, they can apply for permanent residence provided that they meet the other requirements. Applicants must be able to document their activities in the UK, providing evidence such as payslips or letters from an employer.

While some commentators have suggested that a registration process for EU citizens could take as the main criterion [whether someone had registered](#) for a National Insurance Number (NiNo) before a given cut-off date, relying on NiNos would be complicated by the fact that many people with UK NiNos are no longer living in the UK, while some people who do live here may not need one - for example, students or self-sufficient people who are not working. A process that involves documenting UK residence using payslips, leases, bank statements, or other evidence of activity here therefore seems more plausible.

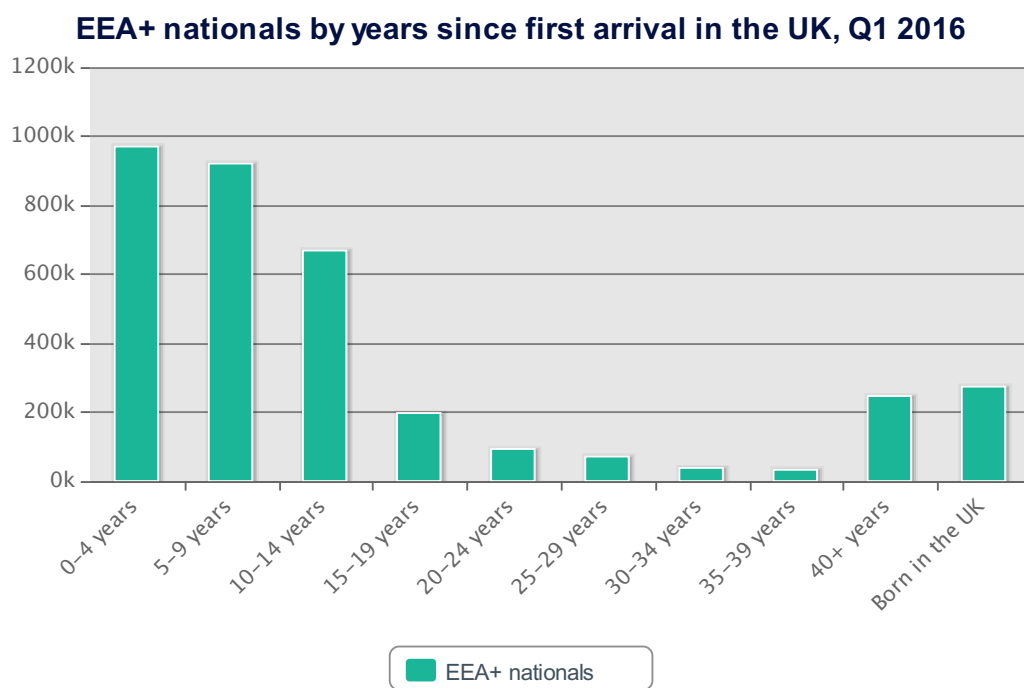
Who is already eligible for permanent residence under current rules?

Because many EU citizens have been in the UK for years or even decades, a large share are already potentially eligible for permanent residence - assuming that they can demonstrate they were continuously exercising their treaty rights for a period of at least 5 years.

Permanent residence is an EU law concept similar to - but not exactly the same as - indefinite leave to remain in the UK for non-EU citizens. It is not guaranteed that the concept of permanent residence will continue to exist after Brexit. However, it is useful to examine the criteria for permanent residence both because it is likely to be more difficult (politically and legally) for the government to remove this status from people who already hold it, and because it gives an insight into the kind of issues that may arise when implementing a programme for giving EU citizens the right to live in the UK indefinitely.

Figure 2 shows the year of arrival for EEA+ citizens. By the first quarter of 2016, an estimated 64% of EEA+ nationals were born abroad and had first arrived in the UK at least 5

Figure 2



Source : Migration Observatory analysis of Labour Force Survey, Q1 2016

Note: time in the UK is an approximate estimate based on year of arrival (i.e. 2016 = 0 years, 2015 = 1 year, etc), because data on month of arrival are not available. EEA+ nationals include citizens of all EEA countries plus Switzerland. The LFS excludes certain groups of people living in communal establishments (such as hostels).

years previously (that is, in 2011 or earlier), according to the Labour Force Survey. This is approximately 2,300,000 people, out of a total EEA+ national population of 3,580,000 in the UK. A further 280,000 – or 8% – were EEA+ nationals born in the UK who do not report having British citizenship; 93% of this group comprised children under the age of 18. These two groups together made up 72% of all EEA+ citizens.

The remaining 975,000 EEA+ citizens – just over one quarter of the total – had not lived in the UK long enough to be eligible for permanent residence by early 2016 (Table 1). However, as long as the UK remains a member of the EU, these people will continue to accrue years of residence that could qualify them for permanent residence before the UK's exit process is formalised. If the UK remained in the EU for another 2 years, for example, people who have currently been in the country for 3 or 4 years would meet the residence requirement during this time. This would be the case for an estimated 435,000 or 12% of all EEA+ citizens already in the UK as of Q1 2016 (Table 1, rows 1 + 2).

Table 1: EEA+ nationals with less than 5 years residence in UK as of Q1 2016, by year of arrival

Year of arrival	Estimated years of UK residence by 2016	Estimated years of UK residence by 2018	Number of people	Percent of all EEA+ nationals
2012	4	6	229,000	6%
2013	3	5	206,000	6%
2014	2	4	261,000	7%
2015	1	3	265,000	7%
Total			975,000	27%

Source: Migration Observatory analysis of Labour Force Survey, Q1 2016. Note: time in the UK is an approximate estimate based on year of arrival (i.e. 2016 = 0 years, 2015 = 1 year, etc), because data on month of arrival are not available. EEA+ nationals include citizens of all EEA countries plus Switzerland. Figures do not sum to total because the total includes a small number of 2016 arrivals with 0 years residence; these numbers are small because most 2016 arrivals will have arrived too recently to be included in Q1 2016 data collection.

By contrast, more than an estimated 500,000 EEA+ citizens – or about 15% of the total – who arrived in the UK by early 2016 would still not have 5 years of residence if the UK were to have completed its exit from the EU in 2 years (Table 1, rows 3 + 4). This is in addition to people who will have arrived in 2016 itself but are not yet included in the Q1 2016 data. Separate arrangements will need to be made for this group if they are to retain the right to live in the UK, as the government [has suggested](#) they should.

What other criteria must applicants meet?

Five years of residence is not enough to qualify automatically for permanent residence under current rules. Applicants must currently also show that they were continuously exercising their treaty rights in one of the categories mentioned above (workers, self-employed, jobseekers, students or self-sufficient). Whether similar criteria apply in any post-Brexit registration process could be crucial in determining how many people will qualify.

For some, such as employees who have been employed full time in the UK without breaks, the process is relatively straightforward. For others, the process may be more complicated.

One such group comprises students and those who are inactive/self-sufficient (for example, retired people relying on their savings to support themselves). These two groups are required to have 'comprehensive sickness insurance'. However, it is not clear how many EU citizens know about this requirement and there is some uncertainty, even among immigration lawyers, about how to meet it. The rules on sickness insurance – which cannot include reliance on the NHS, although EU citizens are eligible to use it – are [complex and disputed](#).

For the self-employed, collecting the necessary documents may be difficult, requiring them to have kept the [relevant paperwork](#) over a period of several years.

Others who have lived in the UK for more than 5 years but may be ineligible for permanent residence are those who have been working but were unemployed or absent from the UK for more than 6 months at a time, potentially breaking the period of 'continuous' activity. Low earners may also have trouble, since their work may not be deemed to have been '[genuine and effective](#)'.

Requirements such as these will not necessarily remain in place under any new post-Brexit settlement for EEA citizens: this will depend on government decisions and/or negotiation with the EU. If they do, however, some people who have lived in the UK for several years may find themselves ineligible for permanent residence.

It is difficult to know how many of the EU citizens living in the UK could face these kinds of barriers if they applied for permanent residence. Table 2 shows the current activity of EEA citizens living in the UK as of 2015. This gives a sense of the relative size of the different groups of applicants by activity, but not the history of their activity over the years or whether students/self-sufficient people have health insurance. (For example, a person who is inactive now may qualify because of past employment, while a person who is working now may have breaks in their employment history.)

A majority of citizens of EEA + countries were working in 2015, mostly as employees (Table 2). Note that the 61% of EEA+ citizens working in 2015 is not the same as the 'employment rate' because it includes children; the employment rate is much higher - 79% among EU-27 citizens age 16-64 in the [last quarter of 2015](#). Among EEA+ national employees, 88% reported gross weekly earnings of at least £155 per week, the current threshold at which EEA workers are automatically considered to be in 'genuine and effective work,' while 12% or approximately 200,000 did not.

Table 2 - Citizens of EEA+ countries, by reported economic activity, 2015

Activity status	Number of people	Share of all EEA+ citizens
Working	2,018,000	61%
Employee	1,695,000	51%
Self-employed	314,000	9%
Not working	1,307,000	39%
Unemployed	111,000	3%
Student	135,000	4%
Under 16	563,000	17%
Looking after family	162,000	5%
Retired	221,000	7%
Other	115,000	3%
Total	3,324,000	100%

Source: Migration Observatory analysis of Labour Force Survey, weighted average of four quarters.

Note: Numbers may not sum to total due to rounding; breakdown of working category does not include government employment/training schemes and unpaid family workers. International students are undercounted in the Labour Force Survey because people living in halls of residence whose parents are not at a private address in the UK will not be sampled.

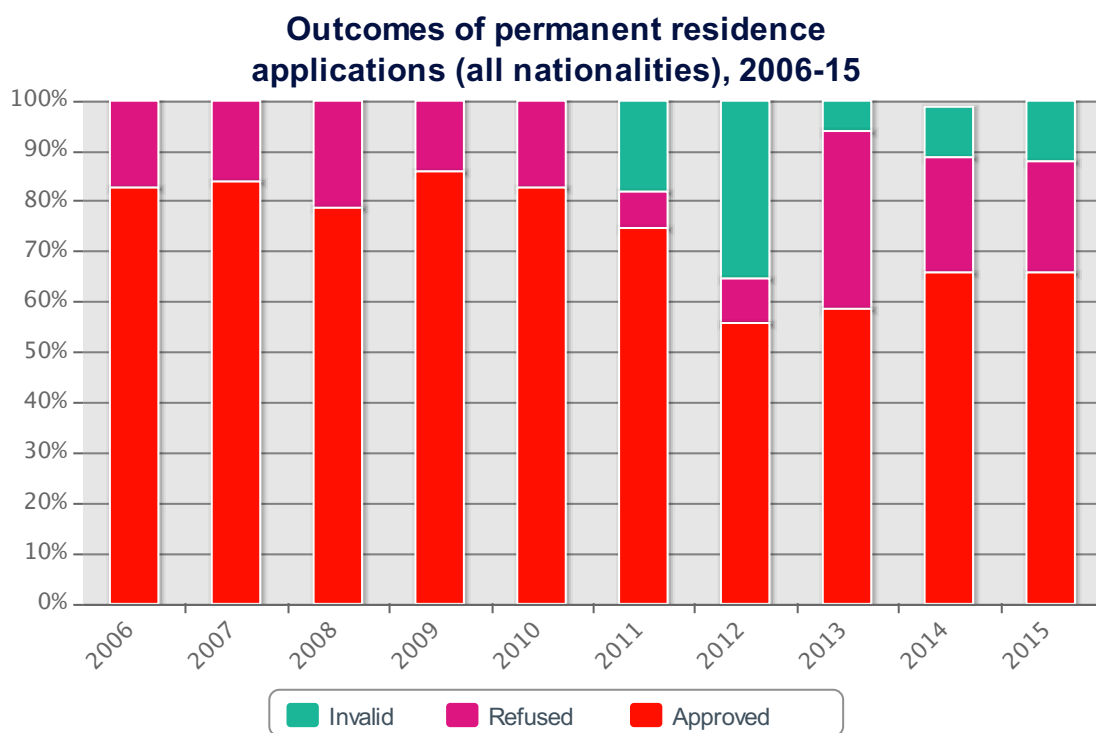
Among those who were not working, the most common reason is that they were children under 16 (this is the case for 17% of EEA+ citizens). Many of these children will have parents who are eligible; children can be included in parents' applications and receive permanent residence at the same time. Likewise, many of the 7% of EEA+ citizens who report not working because they are looking after family would be eligible through their partners.

The estimated 221,000 retired people, 135,000 students and 115,000 people inactive for other reasons, may face a more complex situation – at least under current rules – including the need to demonstrate comprehensive sickness insurance. Collecting the relevant paperwork may be a challenge among the estimated 314,000 self-employed.

Past permanent residence applications: approvals and refusals

A substantial minority of permanent residence applications by EEA citizens and their non-EEA family members are currently either refused or are considered invalid because not all the necessary information or documentation was included in the application. In 2015, 66% of permanent residence applications were approved, 22% were refused and 12% were rejected as invalid (Figure 3). If invalid applications are excluded, the ‘approval rate’ in 2015 was 75%.

Figure 3 - Outcomes of permanent residence applications (all nationalities), 2006-2015



Source: Home Office Immigration Statistics table ee_02.

Note: individuals may be repeated in the data, since invalid or refused applications may be followed by a successful application in subsequent year(s). Data include both EEA nationals and their non-EEA family members. The Home Office attributes the larger number of invalid applications in 2011 and 2012 to a ‘pre-consideration sift’ of applications that identified those missing key information or documentation, but was discontinued in late 2012.

Analysis of the data by nationality suggest that approval rates are lower among nationals of EU-14 countries (those that were already members of the EU before 2004). Excluding invalid applications, 72% applications by EU-14 nationals were approved in 2015, compared to 80% of A8 nationals and 87% of Romanians and Bulgarians. The figures including invalid applications were 61%, 72% and 79%, respectively.

A refusal rate of a quarter or more is not unusual in the [UK visa system](#) (for example, grant rates for family visas for non-EEA citizens averaged 71% from 2011 to 2015), although it is considerably higher than the refusal rate for settlement applications by non-EEA nationals, which [has fluctuated](#) around 5% since 2010.

Rejection of the permanent residence application does not mean that the person is not living legally in the UK or that they have to return home – just that they have not met the criteria for permanent residence. People who are initially refused may reapply and be approved later.

There are no published data on why applications are refused or considered invalid. Reasons could include people applying too soon, having breaks in their employment, or not having comprehensive sickness insurance; as well as not providing sufficient documentation, providing an incomplete application or forgetting to include the fee.

Regardless of the reasons, the data suggest that there may be a level of confusion about who qualifies and how to complete the [85-page application](#). (The application form is not technically necessary, although UKVI advises applicants to use it to ensure that all relevant information is provided.) Moreover, past grant rates are based on the small minority of EU citizens who actually applied for permanent residence, and thus are likely to have been more aware of the process and the documentation requirements compared to the majority of EU citizens who have not applied.

In other words, significant numbers of EU citizens in recent years appear to believe that they are eligible for permanent residence but are not approved – at least, not on the first attempt. This would now become particularly relevant if the government were to rely on a similar process for several million potential new applicants registering to stay in the UK following the referendum.

Conclusions

As Brexit negotiations are still in early stages, the Government has not yet laid out what any registration process for EU citizens would look like and who would qualify. It is possible that this process will be similar to the current permanent residence application for EEA citizens, but it is also possible that a different or simpler procedure will be introduced.

The phrase ‘people already living in the UK’ is not precise. While most cases involving people employed in the UK in stable, full-time jobs have the potential to be relatively straightforward, many EU citizens may find themselves in more complex situations. This includes students, self-sufficient people, low earners and the self-employed. If the current rules for determining that a person has been exercising their treaty rights in the UK were the model for any new post-Brexit application process, there would be groups of people who would not qualify despite having lived in the UK for several years.

Finally, the administrative task facing the Home Office is formidable, with a much larger volume of applications expected in a complex area of law that has received relatively little attention to date.

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The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



COMPAS

The Migration Observatory is based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

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