

Briefing: A settlement for European children in the UK

Summary

In 2016, 679,000 European national children under the age of 18 resided in the UK.¹ A small additional number of non-European children also live in the UK under rights provided for by EU law. A significant proportion of these children live here long-term: around 258,000, or 38%, were born in this country.² Children living in the UK under EU law are often 'well-integrated', attending school, making British friends and speaking English.³ Some children have no memories of life in another country, lack relationships with family or friends abroad, and/or have no meaningful connection with their 'home country'.

It is critical that any new rules governing the rights of European nationals in the UK after Brexit must be workable, fair and take into account the rights of children and young people who have grown up in this country. EU national children and young people should not be seen merely through the free movement prism as 'family members': appendages of their parents/relatives with status in the UK dependant on their parents' status and residence.

Non-EU children currently struggle to regularise their immigration status in a system which is complex, expensive and for which there is no free legal advice.⁴ Any new system for EU nationals must avoid an increase in children finding themselves undocumented as a result of practical barriers or policy decisions. The application system must be as simple as possible and the evidential threshold must be one that *all* children can meet. It is positive that the Government has committed to limiting the cost of applying for settled status to no more than the cost of applying to a UK passport (currently £46 for a child and £72 for an adult) and to there being a statutory appeal right for those refused under the new scheme. The barriers to children registering as British citizens, including prohibitively high fees, should also be considered against the benefits to the individual and to the UK as a whole.

The plans outlined by the Government in June 2017 in 'Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU'⁵ suggested that individuals who had five years' *continuous residence* in the UK would be granted settled status with new modernised procedures that are 'as smooth and simple as possible'. The UK position for EU children in the UK outlined in the technical note published on 7 November 2017 represents a serious diminution of the offer made by the Government.⁶ It states that in order to gain settled status, an EU citizen will now be required to demonstrate that they have five years' *lawful and continuous residence*, with 'lawful' defined to mean that they have been

¹ Migration Observatory analysis of *Labour Force Survey 2016, Quarter 1 (Jan-Mar), conducted May 2017*, Numbers are rounded to nearest 1,000 prior to calculating percentage

² Ibid and Migration Observatory, *Young People and migration in the UK: an overview*, December 2016 <http://www.migrationobservatory.ox.ac.uk/resources/reports/young-people-migration-uk-overview/>

³ Migration Observatory, *ibid*

⁴ Coram Children's Legal Centre, 'This is my home', 2017 <http://www.childrenslegalcentre.com/this-is-my-home/>

⁵ Home Office, Prime Minister's Office, 10 Downing Street, UK Visas and Immigration, Department for Exiting the European Union, and Foreign & Commonwealth Office, 'Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU', at <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>

⁶ Home Office and Department for Exiting the European Union, 'Technical note: Citizens rights – Administrative procedures in the UK', at <https://www.gov.uk/government/publications/citizens-rights-administrative-procedures-in-the-uk>

'exercising treaty rights' while living in the UK.⁷ This means that an individual will have to show 'five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof'.

Neither the European Commission⁸ nor the Government have addressed the specific needs and rights of children in their plans. Equally neglected is what will happen to other EU nationals who may never reach the narrow definition of five years' lawful and continuous residence based on the exercise of Treaty rights as a result of disabilities, reliance on welfare benefits, or because they are exercising derived rights not found in Article 16 of the free movement Directive. We are concerned that EU national children will fall through the gaps to become undocumented. Some British national children, too, will be prejudiced as a result of their parents being unable to meet the requirements for settlement. If thousands of EU nationals end up undocumented because they are not covered by the settlement they will be subject to the 'hostile environment', seriously limiting their lives, opportunities and access to services.

A child-friendly settlement for European nationals currently residing in the UK should:

- Allow all European nationals in the UK with permanent residence and all European nationals who are able to show simply *five years' residence*, as well as all family members and those with derivative rights, indefinite leave to remain through a simple process that is easy to administer with no application fee; and
- Ensure that all children and young people who wish or need to are able to apply for settled status in their own right; and
- Ensure there is a route to settlement for EU national children and families whose lives are in the UK but who are unable to meet the permanent residence criteria.
- Ensure that all applicants are able to protect their rights through a right of appeal in domestic courts and access to an independent adjudication mechanism (the European Court of Justice); and
- Provide and promote clearer guidance on European national children who may be automatically British but unaware of it, who may be eligible to apply to become British, or who may be registered as British citizens through the Secretary of State's discretion.

⁷ 'We have already agreed with the EU that the conditions for EU citizens acquiring permanent residence/settled status under the Agreement will be as per the conditions set out in Article 16 of Directive 2004/38 (five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof)', in HM Government, 'Technical Note: Citizens' Rights – Administrative Procedures in the UK'

⁸ Brey, [2013] EUECJ C-140/12 (19 September 2013)

Context for the recommendations

Hasn't the Government already announced its proposals and all EU nationals will get settled status after five years?

Under the current British proposals, 'qualifying' EU nationals (and their family members) will get settled status (indefinite leave to remain under the Immigration Act 1971), once they have been in the UK exercising treaty rights in the UK for five years (those with less than five years' residence will get temporary residence status until they qualify for settled status). This 'settled status' will not be automatically conferred – all EU nationals, including those with permanent residence documents, will have to make an application. Those who have already achieved permanent residence will be eligible to apply for the new settled status. However, the UK's proposal has become more restrictive since it was first proposed in summer 2017. Now those who qualify will be limited to those with five years *lawful and continuous residence*, defined so that all applicants will have to show 'five years of continuous and lawful residence as a worker, self-employed person, student, self-sufficient person, or family member thereof'. Potentially thousands of people who have established their lives in the UK will not be able to show this.

The Home Office is renowned for using lengthy, complex forms that would prevent a child or young person making their own application without legal advice. Though not stated, failure to make this application successfully could see an individual's right to be in the UK lapse, which would result in their losing their right to work in the UK, rent private accommodation, or have a bank account or a driving licence.

The proposals raise a number of questions concerning:

- The individual rights of children
- What precise criteria that will be used to assessed eligibility for settled status
- Fees and evidential requirements
- Accessibility of the application form and process.

Why do we need to look at the rights of children and young people specifically?

The only reference to children in the Government's proposals simply states that:

*"Children of EU citizens eligible for settled status will also be eligible to apply for settled status. This applies whether those children were born in the UK or overseas, and whether they were born or arrived in the UK before or after the specified date. Specifically, children of EU citizens who hold settled status and are born in the UK will automatically acquire British citizenship (and with that, the right to live in the UK)."*⁹

Children are only mentioned in the Government's plans as family members of their parents, not as individuals in their own right with their own legal protections. Currently no

⁹ *ibid*, para 31

consideration is given to European children separated from their parents, either with other family members or in social services care. The Government's proposal suggests they would need to rely on their parents having been here for five years exercising Treaty rights. Children may have a right of residence that their family members do not have, or they may not be in contact with family members in the UK. Given that children can be exercising their treaty rights while being in education,¹⁰ for example, they must have an independent right to the new settled status where appropriate. Any decisions on residence and status must take into account the best interests of the child,¹¹ and children's rights should not be made contingent on the rights or actions of their parents.

It is also critical that children in care are not left out. There are currently 70,440 looked after children in England, but no information on how many are European nationals, because the data is not collected. These children must be given the stability they require before they become adults. Local authorities caring for them need to provide them with clear information and legal assistance.

EXAMPLE: Daniel is a Portuguese child who came to the UK at the age of two and entered the care system when he was six. He is now 11 and in foster care. All contact with his parents has ceased, and their whereabouts unknown. He will not be adopted or automatically acquire British nationality. Any settlement must take account of such children's need for permanence and stability and their claim to stay.

The Government's proposals currently accept that children and young people who are third-country family members can be granted settlement. This is very important. The right to free movement including extended family members for workers has given rise to complex family relationships of dependency.

What should the application process look like?

The proposals do not offer any detail on *how* EU nationals will be able to apply for settled status, and what the evidential requirements will be. There have been assurances that EU citizens who lived in the UK as self-sufficient will not need to show that they had comprehensive health insurance in order to qualify for the new settled status. It is not clear whether this would extend to students, including children in compulsory education. However, the requirement that the residence be 'lawful' (i.e. the individual will need to have been exercising treaty rights for five years) means that those who are studying or self-sufficient cannot be a 'burden' on the UK – for example by receiving benefits. However, some people may struggle to stay in work, particularly those with disabilities, or those caring for someone with a disability. This means there will be many people who cannot show that they have been continuously exercising treaty rights for five years, and even given more time after the Withdrawal Bill, they will not be in a position to achieve this.

¹⁰ A child who is in compulsory education is exercising treaty rights where they meet the additional requirement of holding comprehensive sickness insurance, and not being a burden on the host state. The UK Government has proposed eliminating these additional requirements for an application for settled status.

¹¹ Under Article 3 of the UN Convention on the Rights of the Child

The Government proposes to minimise the burden of documentary evidence. Caseworkers will use existing government data, such as income records, to determine how long EU nationals have resided in the UK. However, much of this data is not available for children. By requiring lawfulness defined narrowly as exercise of treaty rights, the Government is creating an additional evidential burden, even though they have said they will no longer require evidence of comprehensive sickness insurance.

It is important that data about children in care, collected by the Department for Education, is used to ensure that they are able to access settlement. The burden to ensure that they do not become undocumented should not fall on looked after children themselves.

CCLC has written extensively about the problems facing children making immigration applications and the onerous evidential burdens that are placed on them. It is essential that any new system must be sufficiently simple for children and young people to complete by themselves, given the absence of legal aid for immigration applications. Where a child is able to meet the criteria, they should not be prevented from making an application by evidential hurdles, and the evidential threshold must be one that *all* children can meet. CCLC believes that the only evidential requirement for this policy is demonstrating the period of residence, for example, through GP or school records, or bill payments. The evidence must be sufficiently flexible to ensure that a child has access to the right documents and is able to demonstrate their own entitlement.

The fee for the application has not yet been decided – the proposals states that they will be set at ‘a reasonable level’, not more than the cost of a passport. However, those who are unable to demonstrate their entitlement under the new scheme may be forced to use the costly Immigration Rules routes and rely on their family and private life rights to remain in the UK. It costs a staggering £8269 to apply for indefinite leave to remain through this route, paying application fees every 30 months over a ten-year period – all fees set by the Home Office. The cost for a family of four would be equivalent to a deposit on a detached house.¹² The EU citizens least able to afford these fees, and particularly EU children, should not be required to pay the equivalent of a house deposit for a family of four to remain in the UK.

Legal rights are meaningless unless they can be enforced in the event that they are breached. There should be a right of appeal for all applications under this new scheme and the Court of Justice of the European Union should continue to have jurisdiction in the UK. If these rights are enshrined only in UK law, the UK Parliament could unilaterally legislate at any time to amend or remove these rights. In light of the Government’s attempts in recent years to codify its own, very narrow approach to Article 8 of the European Convention on Human Rights in the Immigration Rules,¹³ this is a relevant concern.

¹² See Coram Children’s Legal Centre, ‘The fee barrier: can you afford the place you call home?’, November 2017, at http://www.childrenslegalcentre.com/wp-content/uploads/2017/05/Fees_briefing_2017_Final.pdf

¹³ Coram Children’s Legal Centre, ‘Growing up in a hostile environment: the rights of undocumented migrant children in the UK’, 2013, at http://www.childrenslegalcentre.com/wp-content/uploads/2013/11/Hostile_Environment_Full_Report_Final.pdf

Which children might not qualify?

The Government proposals require five years' continuous *lawful* residence, begun prior to the yet to be determined cut-off date. The issue of lawfulness is particularly important to children, because lawful residence excludes those who cannot work and who are reliant on state support. Children may be exercising treaty rights themselves, as students or if they are self-sufficient, but this alone is not enough to be lawful. It is more likely that they will be reliant on a family member, whose activities they have no control over. For example, the child of a carer or a disabled parent who has been reliant on state benefits would not be considered self-sufficient or a student, even if they were in full time education, nor would their parent. Similarly, a child who has a disability and who is cared for by an EU national parent in receipt of carers allowance may not be considered self-sufficient, and the child may not be an independent rights holder. It is unclear whether a child in education would be able to rely on their own rights as a student, but in any event, this would only apply after a child has been in full-time education for five years and is not a burden on the social security system. Children under ten will not be able to demonstrate their own entitlement to settled status unless they are self-sufficient.

EXAMPLE: L is a child with severe autism. His single mother, Agnieszka, cares for him full-time and is unable to work because of his high level of care needs. L is seven years old and was born in the UK. Agnieszka worked in the UK for three years before L was born, and for nearly 18 months from when he was a year old. However, as he has got older, his care needs have become demanding and she was forced to give up work. Agnieszka relies on state benefits, including L's disability living allowance and her carer's allowance. L does not want to return to Poland because she has lived in the UK for over ten years, and the provision that L needs is based near her home. L is mostly non-verbal but understands some English. He would be unable to understand Polish if the family were forced to return there.

We are particularly concerned that little thought has been given to children in care, for whom the local authority is the corporate parent. These children cannot be considered self-sufficient because they are completely reliant on the state to support them. Their family relationships may have been severed by becoming looked after. There has been no central collection of data about this group, and not all local authorities are capturing data on the numbers of EU national children in their care. Coram is endeavouring to help with this, and early responses from our Freedom of Information requests suggest at least 1,500 European national children are in care in England.

Although the cut-off date is unclear, the Government has suggested that it may be retrospective. This would cause considerable unfairness. There will be children born throughout the transitional period who will not qualify on this basis. There will also be children who cannot meet five years' residence before the deadline because they will not yet be five years old. It is clear that these children will need to have settled status in line with their parents and siblings and should not be excluded from rights due to the timing of their birth. However, the total lack of consideration of this group in the Government proposal is concerning, and illustrates the wider view on the rights of European children.

Eligibility for settled status will be subject to an assessment of 'conduct and criminality, including not being considered a threat to the UK'. The lack of definition of these terms is

concerning, especially in light of the problems currently faced by children trying to register as British citizens, or those who apply for indefinite leave to remain (settlement).¹⁴

Currently, the UK Government can remove or exclude European nationals only on the grounds of public policy, security or health. Where European nationals have permanent residence, only in the most serious cases are individuals removed from the UK. There are additional safeguards for children.¹⁵

In comparison, someone who has an out of court disposal (for example, a caution) would be forced to wait two years before applying for settlement under current criminality rules. If the same rules applied to EU nationals under the new scheme, it would risk leaving children and young people who have committed minor misdemeanours outside the new settlement regime. It is unclear what status they would qualify for, and whether they would then be pushed into the onerous human rights route under the Immigration Rules. Forcing this group through a human rights route would cause administrative delays while human rights applications and appeals are processed and would be a very significant diminution in the rights of this group who would suddenly have to pay high application fees and could lose access to public funds.

This could impact children who have spent all their lives lawfully in the UK as European citizens, and suddenly find themselves without stability because they cannot obtain the new settled status in the time limit. It will also impact children with parents who have criminal records. The proposal is silent on whether the child's rights to remain in the UK would trump a parent failing to meet the 'conduct and criminality' assessment.

EXAMPLE: Elizabeth is a 17-year-old French child. Ten weeks ago she accepted a caution for a shoplifting offence. She was with a group of friends and was the only one caught. It is not clear whether she would be eligible to apply immediately for settlement with the rest of her family, or whether she would be caught by the importation of the criminality threshold from the Immigration Rules and would be forced to wait two years from the date of the offence.

Surely children who are born here are British?

British nationality law does not give nationality to children on the basis of where they are born. Their nationality depends on their parents' status, or the length of time they are in the UK.¹⁶ Children born before 30 April 2006 are only British if at least one parent had confirmation of their settled status in the UK at the time of their birth. After that date, a child is British only if a parent had permanent residence at the time of birth. For children to subsequently gain citizenship, an application for registration will need to be made, together with a fee.

We do not know how many European children are born in the UK but do not have citizenship. Last year, 192,227 children were born in England and Wales to a mother who was born

¹⁴ See, for example, Project for the Registration of Children as British Citizens, 'Systemic obstacles to children's registration as British Citizens', 2014, at <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

¹⁵ See Immigration (European Economic Area) Regulations 2016, reg 27

¹⁶ British Nationality Act 1981, sections 1 & 3

outside the UK.¹⁷ That statistic does not tell us whether the mother or her children had already gained British nationality.

In addition, some children and young people may not want to apply for British nationality, either because the cost of the application, or because it may mean giving up another nationality they hold. The cost of registering as a British citizen is very expensive: considerably higher than in other EU member states. The expense, complexity of forms and lack of available legal aid all act as barriers to applying for nationality as a child.¹⁸

What about family reunion rights?

One issue is the preservation of the special status of EU nationals in terms of the family reunion rights they currently hold. Family members arriving after the UK leaves the EU will be subject to the same rules as those joining British citizens.

Under the Immigration Rules, only immediate family members (children and spouses) are in general allowed to apply for leave to enter or remain as relatives of workers, or British family, in the UK. For example, many students are not eligible to bring dependants with them when they apply to study in the UK. Rather than create a two-tier set of rules for family reunion, the Immigration system must provide real family reunion rights for all which properly reflect the right to respect for family life under Article 8 of the European Convention on Human Rights.

Recommendations

1. A simplified system based on five years' residence

Allow all European nationals in the UK with who are able to show simply **five years' residence** should be eligible for settled status (indefinite leave to remain). We advocate for including all family members including those with retained rights in any settlement and believe that this is a key principle for the rights of EU nationals. It is now important that the proposed system is significantly simplified, low cost and with an evidential threshold that all children can meet. Children unable to achieve the five years following the cut-off date (because of their date of birth) should be granted settlement in line with their parents at birth, through the low-cost route.

2. Conversion of permanent residence to ILR

Those who have permanent residence, or are in the UK as family members of someone with permanent residence, should also see their leave automatically converted to ILR, without needing to make a further application. The system of requiring re-applications is onerous and

¹⁷ Office of National Statistics, Parents Country of Birth: England and Wales: 2015
<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/bulletins/parentscountryofbirthenglandandwales/>

¹⁸ For more information on barriers to citizenship see Coram Children's Legal Centre, 'This is my home: Securing permanent status for long-term residents of the UK', 2017, at <http://www.childrenslegalcentre.com/this-is-my-home/>

unnecessary. It requires the Home Office to process additional applications, encourages Europeans currently in the UK to delay resolving their status and creates a further burden for families who have already secured their permanent residence documents. Officials are already familiar with a wide range of different documentation, there is no particular advantage to altering existing UK issued permanent residence cards.

3. Ensure that rights to family reunion are addressed as part of any final settlement

We do not believe that EU citizen children, or children with EU family, should lose out on growing up in family units with extended family members once the UK leaves the EU. If we value the contribution made by those working or self-employed in the UK, then we should look to guarantee allowing entry and leave to remain for a broader number of family members than currently set out in the Immigration Rules. We know that the current Immigration Rules have deprived children of growing up with grandparents where the stringent threshold cannot be met and we do not believe that this should impact still more children. Currently visit visas for non-EU nationals are difficult to obtain and can mean children being deprived of the sort of relationships they have previously been able to have.

4. Include those with derivative rights

Some European nationals resident in UK derive their rights to live, study and work in the UK from the determinations of the European Court of Justice, and from citizenship of the European Union. These are known as derivative rights, because they are derived from interpretations of EU law not from the Free Movement Directive. If the UK will not be bound by EU law, provision should be made for persons exercising derived ('derivative') rights of residence to remain lawfully in the UK without having to make new applications under the Immigration Rules.

5. Citizenship for children

Children who are European citizens need to be in a secure position so that they may continue in education, to access healthcare and to have stability in their future. Many children who are born in the UK and live here for the first ten years of their lives can apply for British citizenship, and a child may also be registered as a British citizen through the Secretary of State's discretion. There should be guidance issued and promoted on how this discretion can be exercised in favour of EEA national children whose futures lie in the UK: including both children in care and those with families.

6. This settlement should apply to all those who arrived before UK withdrawal

All European nationals who arrive before the date when the UK's actual withdrawal at the end of negotiations takes effect should fall within the new arrangements settlement and should have the opportunity to acquire indefinite leave to remain after five years. Any other cut-off date would be arbitrary and could give rise to protracted legal challenges.

Case studies

The Migrant Children's Project advice line at Coram Children's Legal Centre we saw a 50% spike in the number of inquiries related to European law following the referendum vote. These case studies are anonymised examples of the queries we have received:

Care-leaver and baby - demonstrating five years residence

We received a call from the hospital assisting a 19-year-old pregnant Polish care-leaver. She had come to the UK in 2008 with her parents who were working. It is not clear whether they were registered under the Workers Registration Scheme, and she no longer had any contact with them. Establishing her right to be here for the new settlement route may be difficult, as she has lived in a variety of different placements and did not have much evidence of the length of her stay and may not be able to demonstrate lawful residence because she will have been dependent on local authority support.

Family – meeting the eligibility criteria if the cut-off date is before Brexit

We spoke to an Italian/Brazilian woman who had grown up in the UK. Her elderly parents had lived in the UK for over twenty years, and she had gone to school and university here. As an adult, she had gone to Brazil where she had married a Brazilian man and had children. Although her parents were Italian nationals, she had let her documents lapse, and had not taken steps to ensure her children had Italian nationality. As a result of the Brexit vote, and knowing that her parents were elderly and would need family care in the UK, she decided to return with her family to Britain. The caller will need to re-apply for her Italian identity documents, and in order for her husband to work, he will need to apply for a family permit to show to employers. Having made the decision to return after Article 50 was triggered, the family has already made the move from Brazil to the UK because of fears that they would not be able to do so in the future, and now they face the prospect of having to move to Italy, or apply under the Immigration Rules, if they are unable to meet the five years settlement criteria. They will not know whether they are able to stay until the cut-off date is decided and publicly announced.

Young person – minor criminality

We spoke to an Italian national aged 19 who was born in the UK in 1998. However, he only held Italian nationality as his mother took a career break to have children and was not working at the time of his birth, so he was not eligible for automatic British citizenship at birth. However, as he grew up in the UK, he and the rest of his family acquired permanent residence through his mother's work. As a teenager he committed a series of minor offences relating to drug-taking. As he had been in the UK for over ten years, under EU law he could only be deported if the Home Office was able to show there were imperative grounds of public policy, health or security. This is an extremely high threshold, based on an understanding that the UK is his home, where he was brought up and educated. However, as he had spent some time recently in a youth offending institution, it is unclear whether after Brexit the EU rules would apply and he could convert his permanent residence to ILR or if the UK rules would apply and he would lose his settled status and not be eligible for indefinite leave to remain for seven years after his release date. This would be a major upheaval for a young person who has only ever lived in the UK and whose family are based here.

Background

All European Economic Area (EEA) nationals (EU nationals plus nationals of Iceland, Liechtenstein and Norway – we will refer to this group as European nationals) face an uncertain future in the UK after Brexit. For most non-European migrants residing in the UK, their eligibility for leave to remain in UK, and the conditions attached to it, are laid out in the Immigration Rules.¹⁹ For European nationals, a different set of legal rules apply. The Treaty establishing the European Union enshrines the principle of freedom of movement and rights of residence within the territory of the EU for any nationals of the European Economic Area. This is set out in EU law, in what is known as the Free Movement Directive (also referred to as the 'Citizens' Directive').²⁰ The free movement of persons constitutes one of the fundamental freedoms of the European Union, but the free movement principle primarily relates to adults' economic activities and was not conceived with children in mind.

In the UK, the Citizens' Directive is converted into domestic legislation by the Immigration (EEA) Regulations (2006 and consolidated 2016). This makes provision for an initial right of residence in another member state for up to three months. After this period, only those who are engaging in certain activities continue to have a right of residence. These activities essentially involve being economically active in a prescribed way. The Regulations term this 'exercising a treaty right'. Someone who is exercising a treaty right is referred to as a qualified person; in general, only a European national may be a qualified person. The Directive also sets out the circumstances in which someone can be excluded or removed from the UK: on the grounds of public policy, health or security. The longer someone spends exercising treaty rights, the less likely it is that they can be forced to leave the UK.

To be a 'qualified person', an EU national may be working (full- or part-time), or self-employed. Alternatively, they may be retired, a student or self-sufficient (for example raising children) where they have comprehensive sickness insurance and have sufficient resources to avoid becoming a burden on the state. Where someone loses their work, they may keep their status by becoming a job-seeker. After five continuous years of engaging in qualified activities, an EEA national becomes permanently resident in the UK. Permanent residence means someone does not have to continue exercising treaty rights in the UK in order to have a right of residence. The Citizens' Directive describes it as a form of settlement, and it is a right that is in both the Directive and the UK regulations.²¹

European citizens who have a right of residence as a qualified person have the right to be joined in the state where they are living by their family members, regardless of nationality. In some cases, their family member may be someone who is European but who is not themselves exercising treaty rights. The family members who can join a European national may be divided into 'direct' family members: their children (under the age of 21, or still dependent), grandchildren or step-children, grandparents, and a spouse or recognised civil partner. Additionally, in some circumstances extended family members (dependent aunts, uncles, siblings and their children, and a live-in partner) will be able to accompany a European citizen and will have a right to reside as long as the European citizen is exercising treaty rights. Only these indirect family members require documents as a family member. However, it is likely that other family members who are not themselves European nationals will have acquired documentation to demonstrate their right to work, rent property and open a bank account in the UK. A family member who is in the UK for five years with someone with permanent residence or exercising treaty rights is then entitled to permanent residence.

19 The Immigration Rules are statements of policy with which the Secretary of State for the Home Department must comply.
20 DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
21 Ibid, Article 16

Part of the Coram group, Coram Children's Legal Centre is a leading children's legal charity, committed to protecting and promoting the rights of children. Founded in 1981, CCLC has over 35 years' experience in delivering legal services, guidance, training, policy and law reform and international consultancy on child rights. CCLC is a centre of specialist expertise in the rights of children affected by UK immigration control. See www.coramchildrenslegalcentre.com

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