

Extended Absences From Portugal

By Steve Robinson
18th September 2020

LEGAL NOTICE

This document is not legal advice.

It is a translation of some parts of the Portuguese immigration laws to assist readers in understanding their obligations.

The Articles quoted were those in force on the date this document was created.

It is the reader's responsibility to read the applicable laws for them to ensure the information is still current.

Legislators spend years writing laws to arrive at the final text so it is important to read exactly what the text says, not what you think or want it to say.

If you have been advised differently than what the legal text specifies please don't argue the point with the author; the only interpretation of the legal text that carries any validity is what a court of law decides.

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It's often asked how long a resident of Portugal can be absent from the country & still retain residency rights & the most common answer is you usually need to reside in Portugal for at least 6 months of every year but that's the short answer & the longer & more accurate answer is it depends on a number of things such as is the individual a holder of an EU member state passport or a non EU member state passport or is/is not a citizen & the Brexit situation complicates matters more as UK passport holders have to comply with one set of criteria if they registered residency before Brexit happened (and the Withdrawal Act ended) or after that point in time which at the time of writing is 31st December 2020.

Another factor is what reason the extended absence is for as there are a number of reasons longer absences are permitted such as some long term or extended overseas work contracts or similar, long term medical treatment & military service & this can (in some cases) include employment by overseas law enforcement (or similar) services.

What follows after this paragraph is pretty much guaranteed to give you a headache as it addresses all of the legal situations related to extended absences so you might like to reach for the Ibuprofen or pour a glass of relaxative about now but before you do, you might also check Article 85 para 4 of the link below which states: "4 – The residence permit shall not be cancelled for citizens who are absent for periods longer than those provided for in paragraph 2, where they prove that during their absence from national territory they have developed professional or business or cultural or social activity". Which to me suggests that there may be some flexibility to some situations especially if you consult or inform SEF of the reasons & duration of your planned extended absence.

[LEGISPÉDIA SEF - Artigo 85.º – Cancelamento da autorização de residência \(google.com\)](#)

In the case of EU member state citizens (Oh how I hate that term!) then Lei 37/2006 will apply but you also need to be sure to cross reference to the WA protected rights.

For holders of non EU member state passports (non EUMS includes UK passports where residency was commenced after 31st December 2020) then Lei 23/2007 will apply & the English translation of the relevant Articles from both acts are below.

Also be aware that extended absences can often have unexpected tax implications both in Portugal & in the country you are in during those extended absences & as always, where tax is concerned, you should always seek professional advice from a specialist & there are a number of accountants listed in the Trade & Business Directory which is also in the

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files section of this group & whilst you're in the files you might also like to read 'Residency vs Tax Residency vs Citizenship vs Non Habitual Residency' as it might have some bearing on your particular case.

So for EU member state passports (and their non EUMS family members) then this act will apply:

Law No. 37/2006

Publication: Diário da República No. 153/2006, Series I 2006-08-09

- **Issuer:**Assembly of the Republic
- **Type of Diploma:**Law
- **Number:**37/2006
- **Pages:**5717 - 5724

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- **Eli:** <https://data.dre.pt/eli/lei/37/2006/08/09/p/dre/pt/html>
PDF version: [Download](#)

CHAPTER V

Right of permanent residence

Artigo 10.º

Right of permanent residence of Union citizens and their families

1 - Union citizens who have legally resided in the national territory for a period of five consecutive years are entitled to permanent residence.

2 - The same right enjoys third-country national spouses who have legally resided with the Union citizen in Portugal for a period of five consecutive years.

3 - The right of permanent residence of Union citizens and their families is not subject to the conditions laid down in Chapter IV.

4 - The continuity of residence shall not be affected by temporary absences not exceeding 6 consecutive months per year, for longer absences for the fulfilment of military obligations, or by an absence of a maximum of 12 consecutive months for justified reasons, such as pregnancy or childbirth, serious illness, studies or vocational training, or posting for professional reasons to another Member State or third country.

5 - The Union citizen or his/her family member loses only the right of permanent residence acquired due to the absence of the national territory for a period exceeding two consecutive years.

6 - The continuity of residence may be attested by any means of admissible proof.

7 - The continuity of residence is interrupted by any valid decision to remove the person in question that is executed.

Artigo 11.º

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Derogation for workers who have ceased their activity in Portugal

1 - By way of derogation from the previous article, they shall enjoy the right of permanent residence in the national territory, before five consecutive years of residence have elapsed:

(a) subordinated or self-employed workers who, on the date on which they ceased their activity, have reached the age provided for by law to be entitled to an old-age pension or subordinated workers who have ceased their activity on grounds of early retirement, provided that they have worked in Portugal for at least the last 12 months and have resided here continuously for more than three years;

(b) subordinate or self-employed workers who have continuously resided in Portugal for more than two years and have ceased their activity on grounds of permanent incapacity for work;

(c) subordinate or self-employed persons who, after three consecutive years of activity and residence in Portugal, are active, subordinate or independent, in the territory of another Member State, maintaining their residence in the Portuguese territory, to which they generally return every day or at least once a week.

2 - For the purposes of the acquisition of the rights set out in points (a) and (b) of the preceding paragraph, periods of activity in the territory of the Member State in which the citizen in question works shall be considered to remain in Portugal.

3 - Periods of unemployment duly recorded by the Institute of Employment and Vocational Training, I.P., periods of suspension of activity for reasons beyond the will of the person concerned and absence from work or termination of work due to illness or accident are considered periods of employment.

4 - The conditions of residence and activity duration laid down in paragraph 1 (a) and the condition of residence duration provided for in paragraph 1

(b) shall not apply if the spouse or partner, in the meaning of Article 2(e)(i)

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(e), of the subordinate or independent worker is a national or has lost Portuguese nationality following the marriage.

5 - For the purposes of paragraph 1 (a), if the citizen has pursued a self-employed activity for which the right to an old-age pension is not recognised under the law, the age requirement shall be deemed to have been fulfilled when the person concerned reaches the age of 60.

6 - For the purposes of paragraph 1(b), if the incapacity results from an accident at work or professional illness entitled to a benefit in whole or in part from a national institution, the period of residence requirement shall be waived.

Artigo 12.º

Derogation for relatives of workers who have ceased their activity in Portugal

1 - Without prejudice to paragraph 2, the relatives of a subordinate or self-employed worker residing with him in Portuguese have, regardless of his nationality, the right to permanent residence in the national territory if the worker himself has acquired the right of permanent residence in Portugal, in accordance with the preceding article.

2 - In the event of the death of the subordinate or self-employed worker, still during his professional life, but before having acquired the right of permanent residence in Portugal, in accordance with the preceding article, family members who reside with him in the Portuguese territory are entitled to permanent residence provided that they meet one of the following conditions:

(a) the subordinate or self-employed worker, at the time of his death, has resided in the Portuguese for two consecutive years;

(b) his death was caused by an accident at work or work sickness;

(c) the surviving spouse has lost Portuguese nationality following the marriage to that worker.

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Artigo 13.º

Acquisition of the right of permanent residence by family members of third states

Without prejudice to Article 12, the relatives of a Union citizen, under the conditions laid down in Article 8(3), acquire the right of permanent residence after having legally resided for a period of five consecutive years in the Portuguese.

CHAPTER VI

Administrative formalities

SECTION I

Artigo 15.º

Family residence card of a third-country national

1 - The relatives of the citizen of the Union nationals of a third State whose stay in the national territory lasts for more than three months must request the issuance of a residence card, according to a model approved by order of the member of the Government responsible for the area of internal administration.

2 - The application for the residence card referred to in the preceding paragraph shall be made to the directorate or regional delegation of the Foreigners and Borders Office of the residence area, within 30 days of entry into the national territory.

3 - At the time of submission of the application, a certificate proving the application for a residence card is issued.

4 - For the issuance of the residence card, the following documents are required:

a) Valid passport;

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(b) document proving the family relationship with the Union citizen or of the quality of partner, in the meaning of Article 2(ii)(i) (i) ;

(c) certificate of registration of union citizens accompanying or to whom they meet;

(d) in the cases provided for in Article 2(iii) and (iv) (e) documentary evidence that they are borne by the Union citizen;

(e) in the case provided for in Article 3(2), a document issued by the competent authority of the country of origin or provenance certifying that they are in charge of or living with the union citizen, or proof of the existence of serious health reasons which require the personal assistance of the family member by the Union citizen.

5 - The residence card referred to in the preceding paragraph is issued within a maximum period of three months from the submission of the application.

6 - The residence card referred to in paragraph 1 is valid for five years from the date of issue, or for the expected period of residence of the Union citizen, if this period is less than five years.

7 - The right of residence of family members is not affected by temporary absences not exceeding 6 consecutive months per year, for longer absences to comply with military obligations, for an absence of a maximum of 12 consecutive months for important reasons, such as pregnancy or childbirth, serious illness, studies or vocational training, or posting for professional reasons to another Member State or third country.

SECTION II

Right of permanent residence

Artigo 17.º

Permanent residence card for relatives of union nationals of a third state

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1 - The family members of a citizen of the Union nationals of a third State who are entitled to permanent residence shall be issued a permanent residence card, a model to be approved by order of the member of the Government responsible for the area of internal administration.

2 - The permanent residence card provided for in the preceding paragraph is issued by the Foreigners and Borders Service no later than three months from the submission of the application.

3 - The application for a permanent residence card must be submitted before the residence card referred to in Article 15 has expired.

4 - Interruptions of residence not exceeding 30 consecutive months do not affect the right of permanent residence.

5 - For the issuance of the permanent residence card it is sufficient to present the residence card of a family member of a Union citizen.

For non EUMS passport holders the following law applies.

Law No. 23/2007

Publication: Journal of the Republic No. 127/2007, Series I 2007-07-04

- **Issuer:** Assembly of the Republic
- **Type of Diploma:** Law
- **Number:** 23/2007
- **Pages:** 4290 - 4330
- **Eli:** <https://data.dre.pt/eli/lei/23/2007/07/04/p/dre/pt/html>
- **PDF version:** [Download](#)

Artigo 70.º

Visa cancellation

1 - Visas can be cancelled in the following situations:

(a) where the holder does not satisfy the conditions for its concession;

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(b) where they have been issued on the basis of the provision of false statements, use of fraudulent means or by invoking reasons other than those which motivated the holder's entry into the country;

(c) where the holder has been the subject of a removal measure from the national territory.

2 - Residence and temporary stay visas may also be cancelled when the respective holder, without relevant reasons, is absent from the country for a period of 60 days, during the validity of the visa.

3 - The provisions of the preceding paragraphs shall also apply during the validity of the length of stay granted in accordance with this Law.

4 - The residence visa is also cancelled in case of rejection of the application for a residence permit.

5 - After the entry of the visa holder in national territory the cancellation of visas referred to in the preceding numbers is the responsibility of the Minister of Internal Affairs, who can delegate to the Director-General of the SEF, with the power to subdelegate.

6 - The cancellation of visas pursuant to the preceding paragraph is communicated electronically to the Directorate-General for Consular Affairs and the Portuguese Communities.

7 - The cancellation of visas before the arrival of the holder to national territory is the responsibility of diplomatic missions and consular career posts, being communicated electronically to the SEF.

CHAPTER VI

Residence in national territory

SECTION I

General

provisions Artigo

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85.º

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Cancellation of residence permit

1 - The residence permit is cancelled where:

(a) its holder has been the subject of a decision to expel it from national territory; Or

(b) the residence permit has been granted on the basis of false or misleading statements, false or falsified documents, or through the use of fraudulent means; Or

(c) there are serious reasons for the holder to believe that he has committed serious criminal acts or there are real indications that he intends to commit such acts, in particular in the territory of the European Union; Or

(d) for reasons of public order or security.

2 - Without prejudice to the application of special provisions, the residence permit may also be cancelled where the person concerned, without relevant reasons, is absent from the country:

(a) being the holder of a temporary residence permit, six consecutive months or eight interpolated months, in the total period of validity of the authorisation;

(b) being the holder of a permanent residence permit, 24 months in a row or, within a period of three years, 30 interpolated months.

3 - The absence beyond the limits provided for in the preceding paragraph shall be justified upon request submitted in the SEF before the departure of the resident from the national territory or, in exceptional cases, after his departure.

4 - The residence permit shall not be cancelled for citizens who are absent for periods longer than those provided for in paragraph 2, when they prove that during their absence from the national territory they were in the country of origin and that they have carried out a professional or business or cultural or social activity therein.

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5 - The cancellation of the residence permit shall be notified to the interested party and communicated electronically to ACIDI, I. P., and to the Advisory Board with an indication of the grounds for the decision and implies the seizure of the corresponding title.

6 - The Minister of Internal Affairs, with the power of delegation to the Director-General of the SEF, is competent for the cancellation of the Minister of Internal Affairs.

7 - The cancellation order is liable to challenge the court, with purely devolutive effect, before the administrative courts.

CHAPTER VII

Status of long-term resident

Artigo 126.º

Conditions for the acquisition of long-term resident status

1 - Long-term resident status shall be granted to a third-country national who:

(a) have legal and uninterrupted residence in national territory during the five years immediately preceding the submission of the application;

(b) have stable and regular resources that are sufficient for their own subsistence and that of their relatives, without resorting to the solidarity subsystem;

(c) have health insurance;

d) Have accommodation;

e) Demonstrate fluency in Portuguese basic.

2 - Periods of residence for the reasons referred to in points (e) and (f) of paragraph 2 of the preceding article shall not be taken into account for the

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purposes of calculating the period referred to in point (a) of the preceding paragraph.

3 - In the cases covered by paragraph 2(a) of the preceding Article, where the third-country national has obtained a residence permit enabling him to qualify for long-term resident status, the period in which he has been a holder of residence for the purposes of study, unpaid vocational training or volunteering shall be taken into account in half , for the calculation of the period referred to in paragraph 1(a).

4 - Periods of absence from the national territory do not interrupt the period referred to in paragraph 1 (a) and enter into the calculation of paragraph 1, provided that they are less than 6 consecutive months and do not exceed, in full, 10 months included in the period referred to in paragraph 1(a).

5 - However, periods of absence due to posting for reasons of employment shall be taken into account in the calculation of the period referred to in paragraph 1(a) due to posting for work reasons, in particular in the context of a cross-border supply of services.

6 - For the purposes of the application of paragraph 1(b), resources shall be assessed by reference to their nature and regularity, taking into account the level of the minimum wage and pensions prior to the application for the acquisition of long-term resident status.

7 - Periods of uninterrupted residence in national territory under a work visa or a residence permit, issued in accordance with the previous legislation, shall be limited to the calculation of the period provided for in paragraph 1(a).

Artigo 131.º

Loss of status

1 - Long-term residents lose long-term resident status in the following cases:

(a) fraudulent acquisition of long-term resident status;

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(b) the adoption of an expulsion measure in accordance with Article 136;

(c) absence from the territory of the European Union for a period of 12 consecutive months;

(d) acquisition in another Member State of long-term resident status;

(e) absence of national territory for a period of six consecutive years.

2 - Absences from the territory of the European Union for more than 12 consecutive months justified by specific or exceptional reasons do not entail the loss of status, in particular where the long-term resident has remained in the country of origin in order to develop a professional or business activity there, or of a cultural or social nature.

3 - The absence of national territory for more than six consecutive years justified by specific or exceptional reasons does not imply the loss of status, in particular where the long-term resident has remained in the country of origin in order to develop a professional or business activity there, or of a cultural or social nature.

4 - Where the loss of status is due to the verification of the situations provided for in paragraph 1 (c) and (e), the person concerned may regain the status of long-term resident upon application, provided that the conditions laid down in Article 126 (1) (1) (b) are fulfilled, provided that the conditions laid down in Article 126 (1) (b) are fulfilled, provided that the conditions laid down in Article 126 (1) (1) are fulfilled, provided that the conditions laid down in Article 126 (1) (1) are fulfilled, provided that the conditions laid down in Article 126(1) (b) are fulfilled.

5 - The decision on the application referred to in the preceding paragraph shall be given within three months.

6 - The expiry of the EC long-term residence permit does not imply the loss of long-term resident status.

7 - The loss of long-term resident status implies the cancellation of the residence permit and the seizure of the eC long-term residence permit.

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8 - The cancellation of the residence permit of the long-term resident is the responsibility of the Minister of Internal Affairs, with the power of delegation to the Director-General of the SEF.

9 - If the loss of long-term resident status does not lead to removal, the person concerned shall be granted a residence permit with visa waiver.

