



## **ILPA evidence for the Home Affairs Select Committee Home Office delivery of Brexit: immigration inquiry**

*The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.*

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### **BACKGROUND**

This inquiry is designed to consider the impact of Brexit on the Home Office's capacity to deliver services. ILPA notes that the evidence provided in this inquiry is limited by the fact that the detail of the post-Brexit immigration system has not yet been agreed. Analysis of how the Home Office will respond to this 'system' can therefore be no more than speculation based on a proposed model of registration. Regardless of the specifics of the post-Brexit immigration system implemented, any process that will require the registration of all EEA nationals, and their family members residing in the UK under domestic immigration law will have an unprecedented impact on the Home Office.

In presenting this briefing, ILPA would particularly like to acknowledge the contribution of ILPA member Sundeep Rathod of Magrath Sheldrick LLP.

We have had the benefit of seeing, in draft form, the submission of evidence on this subject made by the Joint Council for the Welfare of Immigrants (JCWI). We agree with the points raised by JCWI and fully support their submission.

## KEY RECOMMENDATIONS

- I. **The Home Office does not currently have the capacity to register EEA nationals in the UK** – while responsive to problems when they arise, the Home Office critically lacks planning capacity.
- II. **Significant risks are posed if Home Office staff are not competently trained in new procedures, and if the number of EEA nationals in the UK has been underestimated.**
- III. **The Home Office's ability to effectively manage immigration at the border will be impacted to its detriment if there are not enough staff to deal with the increase in immigration checks, and IT systems cannot cope with the rapid increase in processing.**
- IV. **If the system for registration is not streamlined, the enforcement of the immigration system post-Brexit could be significantly challenged, for example if lack of capacity results in Home Office errors.**
- V. **There is currently scope for the Home Office to streamline existing immigration processes** – including the application process for permanent residence, allowing family members to use the online form and the European Passport Return Service, and through closer collaboration with HMRC.
- VI. **Fairness, transparency and flexibility are the key principles which must underpin a future immigration system.**

## ANALYSIS

### *Home Office Capacity*

ILPA submits that the Home Office does not currently have the **capacity** to register EEA nationals already in the UK. ILPA has been working with the Home Office over recent months to discuss current capacity issues and resultant casework processing problems. During ILPA's Annual Business Immigration Conference (25 September 2017), UKVI representatives confirmed that the department is currently having problems with growing its staffing capacity. For example, a particular problem confronting UKVI is enticing staff to move to Sheffield, the city having been designated as the global processing centre.

ILPA gained further insight into the Home Office's current staffing at a meeting with the Home Office on 20 June 2017. During this meeting, ILPA learnt that an additional 200 staff had been recruited to the area of the department that deals with applications by EEA nationals. It was acknowledged by the Home Office representatives, however, that this phase of upscaling was a reaction to the dramatic increase in the number of permanent residence (PR) applications made following the EU referendum. Thus, it was reactionary rather than preparatory, with the Home Office representatives noting that there will need to be significant further investment to deal with post-Brexit registration of EEA nationals currently living in the UK.

Moreover, there are a range of **mistakes** ILPA members are seeing repeated across Home Office decisions. ILPA believes that these errors will only be exacerbated by the inevitable intensifying of pressure on the department through the Brexit process. For example, applications are currently being incorrectly marked as "complex" and applicants are being incorrectly told they have no legal ground to be in the UK. As widely reported, in August 2017 approximately 100 EEA nationals were sent letters by the Home Office notifying recipients that "a decision has now been taken to remove you from the United Kingdom", which included a threat of deportation if they did not leave the country within a month. To this end, processing times are currently exceeding the stated service standards, indicating that the Home Office is unable to meet demand currently.

Through ILPA's meetings with the Home Office, we have raised the above issues and have been met with some action by representatives. ILPA is therefore not suggesting that there is unwillingness on the part of operations teams to try to respond to problems when they arise or address inefficiencies. It does appear, however, that due to overburdened resourcing the Home Office lacks the **capacity to effectively plan and anticipate changing service needs**. With the dramatic increase in workload inevitability signaled through the registration of EEA nationals, and the rolling out of a new immigration system, the problems resultant from the lack of planning capacity will undoubtedly broaden. It is this reactionary state of constantly 'putting out fires', rather than preventing them, which ILPA believes to be the greatest threat to the Home Office's capacity to deliver Brexit.

In light of these current capacity issues, ILPA submits that, if there is to be a system of registration, steps must be taken now to ensure that the process for registering EEA nationals after the UK's departure from the EU is as smooth as possible. Notably, the number of Home Office **staff needs to be increased** to ensure that the workforce is of both a size and a level of expertise to cope with Brexit. Moreover, the Home Office should strongly consider moving to a streamlined, online application process. Heavy investment should be made in technology if necessary to provide such a service. The documentary requirements need to be as minimal as possible especially for those EEA nationals who have already obtained Permanent Residence. ILPA stresses, however, that the online application process cannot be the only option available. Some individuals and members of minority communities may not have the computer literacy or

English language proficiency to utilise such a service. This reality must be taken into account when designing the registration process.

Moreover, ILPA submits that the Home Office should allow greater flexibility by empowering Solicitors to verify passports. Currently, only local authorities can offer this service. In addition, non-EEA national family members should be able to apply online with their EEA national spouse/family member. The inconvenience imposed by these kinds of existing restrictions will only be exacerbated through the registration processes. Ultimately, the restrictions will distract from the primary goal of registration if applications are incorrectly submitted and require correction, or individuals cannot easily register and have to be assisted.

### ***Anticipated Risks***

The first obvious risk with the process is that with any new procedure, the staff involved in the decision making process may not be trained properly on how to process applications or use the new systems. In turn, this could lead to delays with applications where the actual intention is to have these applications processed as quickly and smoothly as possible.

Secondly, if the number of EEA nationals living in the UK is under estimated, and the Home Office do not have the correct level of resources to deal with such volume, this will lead to significant delays. If such a situation were to arrive, there is the potential for application to be mishandled and even go missing – as previously happened with legacy asylum cases.

### ***Challenges to Effective Management of Immigration***

The first challenge Brexit presents for the Home Office's effective management of immigration at the border is the issue of **staffing**. Prior to the end of free movement, EEA nationals are subject to minimal immigration checks at UK borders. If EEA nationals will now be subject to immigration checks at the border akin to that applied to Third Country Nationals, this will require a significant upscaling of border staff. Any plans to increase staff numbers will have to be implemented in a timely fashion to avoid a situation of overwhelming immigration queues the day after the UK leave the EU.

If EEA nationals will join the 'Rest of the World' line at airports, this is bound to lead to considerable delays in processing each individual as they enter the UK. In addition to the frustration for both passengers and border staff, the image of unprecedented holdups could damage the UK's reputation on a global level. Linked to this is whether the UK's IT systems at airports will be able to deal with this volume of individuals. If not, the UK will need to invest heavily in their IT systems now to ensure they can deal with the additional volume of people as quickly as possible.

## ***Enforcement Challenges***

The challenge Brexit poses to the enforcement of the immigration system is that if the process to regularise the stay of EEA nationals is not seamless and simplified, there is a risk that UKVI may incorrectly communicate to EEA nationals that they are required to leave the UK. As noted above, there have already been reported cases of individuals being incorrectly asked to leave the UK. Further, now that banks have the power to close current accounts, there is a risk that certain EEA nationals who are legally entitled to stay here will have their bank accounts closed due to incorrect information fed by UKVI.

The largescale registration of EEA nationals will generate an unprecedented workload for the Home Office. In light of the Home Office's history of errors when under pressure, ILPA is concerned that there will be more cases of people being wrongly deported or asked to leave the UK or have their bank accounts frozen.

## ***Streaming of Existing Immigration Processes***

The Home Office can act now to **streamline** many of its existing processes and free up resources to plan for the registering EEA nationals living in the UK. A key procedure which could be streamlined and simplified is the application process for PR. For example, the current form is onerous and only EEA nationals can use the online form. Their family members cannot.

Moreover, if the Home Office collaborates more closely with HMRC, applicants will be relieved of the onerous and complicated task of collating pay slips and P60 forms. Ultimately, this information already sits with the government. In addition, applicants should not be required to account for every departure from the UK for the five year period they are relying upon. Rather, only absences greater than six months during the qualifying period, or absences greater than two years thereafter, should need to be noted.

With respect to the online application form for PR, the inclusion of more free text boxes and less mandatory questions would allow applicants to more easily move through the form and put together an application which accurately reflects their unique situation.

## ***Principles Underpinning a Future Immigration System***

The post-Brexit immigration system should reflect three key principles.

ILPA suggests that the first principle an immigration policy needs in order to achieve consensus is **fairness**. An approach is required that takes account of the benefits of migration for the UK (i.e. benefits to the UK economy, society, and culture through the contribution of migrants), and also factors in and off-sets certain local costs (while migrants are net contributors in fiscal terms, in particular areas there may be a growth in population that leads to temporary pressure on services such as health or housing while Government catches up and allocates

resources to match changing requirements). The contributions that migrants make to the UK should be recognised and rewarded. That does not entail special treatment over and above settled persons or British citizens. Migrants should not be penalised or unfairly targeted. A successful policy would on balance bring greater benefits to the country than costs. This would be supported by, and based on, evidence, as outlined above.

The second principle is **transparency**. As described above, all sections of society and all regions of the UK should be invited and encouraged to give their views, and must feel that those views have been heard. Following this, the resulting policy needs to be clearly set out, and should be accompanied by evidence as to why the policy looks like it does, so it is clear that views have been taken into account and, where difficult decisions have had to have been made, the reasons why those decisions were taken. The actual implementation of the policy then also needs to happen in a transparent and open way and there must be ongoing accountability of both the government and those with decision-making power within the new system.

The third principle required to achieve consensus is **flexibility**. The modern world is fast-moving and globalisation is increasing, whether politically popular or not. The needs and aspirations of the country will continue to change and shift over time and any immigration policy needs to take account of that. There must be mechanisms to make changes when evidence suggest these are necessary or desirable and those mechanisms should adhere to the principles of both fairness and transparency set out above.

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