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**BREXIT**

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## Status of EU Nationals in the UK following Brexit

This information sheet discusses the position agreed between the UK Government and the EU regarding the status of EU nationals in the UK following Brexit. It predominantly draws upon two key documents issued in December 2017. The first is the *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union* (8 December 2017) ('the Joint Report'). This information sheet also references the *Joint technical note expressing the detailed consensus of the UK and EU positions on Citizens' Rights* (8 December 2017) ('the Joint Technical Note').

### Who Is Protected?

The agreement reached by the UK and the EU will be reflected in the final *Withdrawal Agreement*. As outlined in the Joint Report, the 'overall objective of the Withdrawal Agreement with respect to citizens' rights is to provide reciprocal protection...to enable the effective exercise of rights derived from Union law and based on past life choices'.<sup>1</sup> Individuals who come within the scope of the agreement will therefore benefit from the protections negotiated. The *Withdrawal Agreement* will cover **all EU citizens who are lawfully residing in the UK** on the 'specified date'. It has been agreed that the specified date is the date that the UK leaves the EU, which is scheduled for 29 March 2019 (although this date, as with other aspects agreed, does not 'prejudge any adaptations that might be appropriate in case transitional arrangements were to be agreed in the second phase of the negotiations'). The conditions of 'lawful residence' are the same as those under current EU law, as set out in Directive 2004/38/EC on Citizens' Rights, with express reference made to the ability of the UK or EU 27 Member States to apply more favourable provisions under Article 37 of the Directive.<sup>2</sup>

With respect to **family members**, it has been agreed that all family members as per Article 2 of the Directive 2004/38/EC, who are legally resident in the UK at the time of exit, will be protected by the Withdrawal Agreement. This protection is guaranteed irrespective of the nationality of the family member.

### New Status

EU nationals and their family members who have been lawfully residing in the **UK for a five year period** prior to Brexit will be automatically granted 'settled status' upon application. Please note, the granting of settled status will be subject to verification of identity, a criminality and security check and confirmation of ongoing residence. Pre-Brexit criminal conduct will be considered in line with the protections on expulsion contained within the Directive. If an applicant holds an existing Permanent Residence (PR) document, the new **settled status documentation will be free of charge**. If a PR document is not held, the fee for obtaining the settled status document will not exceed that imposed on British nationals for the issuing of similar documents. For example, UK nationals currently pay approximately £70 for a British passport. The UK Government has assured

<sup>1</sup> Joint Report paragraph 6.

<sup>2</sup> UK Government Technical Note: Citizens' Rights - Administrative Procedures In The UK, November 2017, paragraph 11,

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/657694/TECHNICAL\\_NOTE\\_CITIZENS\\_RIGHTS\\_-\\_ADMINISTRATIVE\\_PROCEDURES\\_IN\\_THE\\_UK.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/657694/TECHNICAL_NOTE_CITIZENS_RIGHTS_-_ADMINISTRATIVE_PROCEDURES_IN_THE_UK.pdf).

that the application process will be streamlined and will be significantly less burdensome for the applicant than the current PR application system.

EU nationals and their family members who have been residing in the UK for **less than five years** on the date of Brexit will be given the opportunity to apply for a *temporary status*. This temporary status will grant individuals the right to continue to live and work in the UK on the same basis as before exit, with a view to accumulating five years residence and therefore qualifying for settled status. This temporary status too will be granted subject to the checks outlined above for settled status.

Following the UK's exit from the EU, it will be **compulsory for all EU citizens and their family members residing** in the UK and their family members to follow these procedures and hold residence documents. Individuals will have at least two years after exit day to apply for a new status in the UK.

### Notable Features

- The *Withdrawal Agreement* does not require physical presence in the UK on the date of the UK's withdrawal;<sup>3</sup>
- EU students who started their studies in the UK before Brexit will continue to be eligible for 'home student status' and will have access to student loans on the same basis as UK students;<sup>4</sup>
- EU nationals who are frontier workers on the specified date will retain the rights they currently enjoy to enter and work in the UK and vice versa;<sup>5</sup>
- Recently arrived EU nationals looking for jobs in the UK on Brexit date will continue to enjoy the right to seek employment for a six month period;
- The *Withdrawal Agreement* will specify that the UK cannot require anything more than is strictly necessary and proportionate to determine lawful residence from applications for settled or temporary status;
- EU nationals and their family members will be able to be absent from the UK for up to five years without losing their settled status.

### Rights of Future and Extended Family Members

**Children born in the UK before or after Brexit to EU families** protected by the *Withdrawal Agreement* will be entitled to residence under the terms of the agreement. Accordingly, children who are born to existing EU families after the specified date of March 2019 to relationships which existed before this date will be covered. The *Withdrawal Agreement* will also protect the rights of children who are born to an EU parent who resides in the UK, while the child and the other parent do not at the date of exit. That is to say, the agreement protects not only those close family members who have lawfully resided with an EU citizen on Brexit, but also those **close family members who were related to an EU citizen on Brexit but were not residing in the UK**. Such families will be given the right to be reunited in the UK following the UK's withdrawal.

There are, however, categories of both extended and future family members who will not be protected by the *Withdrawal Agreement*. The deal does not cover **extended family members of EU citizens** (except those in durable partnerships) who were related to an EU citizen on the date of the UK's withdrawal but were not residing with their relative on that date. The right of such persons to reside in the UK will be subject to UK immigration law.

Similarly, **family relationships which are formed after the specified date** are not protected with the *Withdrawal Agreement*. For example, if an EU national resides in the UK at the date of exit and subsequently meets and marries their spouse after Brexit, the future spouse will have to comply with UK immigration rules in order to come to the UK. If such a couple were to later have a baby, the child will only be able to join an EU citizen resident in the UK before Brexit under EU law

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<sup>3</sup> *Questions and Answers – the rights of EU27 and UK citizens post-Brexit, as outlined in the Joint Report from the Negotiators of the European Union and the United Kingdom*, 12 December 2017 page 1, [https://ec.europa.eu/commission/publications/questions-and-answers-rights-eu27-and-uk-citizens-post-brexit-outlined-joint-report-negotiators-european-union-and-united-kingdom-government\\_en](https://ec.europa.eu/commission/publications/questions-and-answers-rights-eu27-and-uk-citizens-post-brexit-outlined-joint-report-negotiators-european-union-and-united-kingdom-government_en)

<sup>4</sup> Ibid, page 10.

<sup>5</sup> Joint Technical Note, paragraph 4.

conditions if that parent has legal custody of the child. Otherwise, the child can apply to reside in the UK along with the future spouse under UK immigration rules.

### **Unresolved Issues**

In December 2017, ILPA published a paper by Bernard Ryan, Professor of Migration Law, University of Leicester, '*Who will remain after Brexit? Ensuring protection for all persons resident under EU law*'. The paper highlighted groups of people who might be left vulnerable or without protection under the *Withdrawal Agreement*. The latest negotiation documents continue to exclude various identified categories of vulnerable persons from the protection of the *Withdrawal Agreement*. For example, the right of residence for family members, irrespective of nationality, where their stay in a Member State is necessary to ensure that an EU national can remain within the EU is implied in Article 20 of the Treaty on the Functioning of the European Union (the *Ruiz Zambrano* Principle). The negotiation documents are silent on the ongoing right of residence in the UK for individuals relying on this principle.

### **Further Information**

This information sheet provides a limited analysis of the December 2017 negotiation documents. For further information please full text of the documents referenced. For practical examples from the EU's perspective, please see the memo issued by the European Commission titled *Questions and Answers – the rights of EU27 and UK citizens post-Brexit, as outlined in the Joint Report from the Negotiators of the European union and the United Kingdom* (12 December 2017) (access here: [https://ec.europa.eu/commission/publications/questions-and-answers-rights-eu27-and-uk-citizens-post-brexit-outlined-joint-report-negotiators-european-union-and-united-kingdom-government\\_en](https://ec.europa.eu/commission/publications/questions-and-answers-rights-eu27-and-uk-citizens-post-brexit-outlined-joint-report-negotiators-european-union-and-united-kingdom-government_en)). The UK has updated its relevant guidance, including its case studies (access here: <https://www.gov.uk/government/case-studies/example-case-studies-eu-citizens-rights-in-the-uk>).