

HOW BREXIT MAY AFFECT YOU

Immigration Overview for National Union of Journalists –
an update

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Introduction



- This seminar is designed to self employed members of the National Union of Journalists who are European (EU) nationals or who have family members who are EU nationals and who are concerned about the impact of the UK leaving the EU on their rights and on their family's rights to remain in the UK.
- The seminar focuses on EU law as it currently stands and is accurate as of 5 March 2019.

Negotiations to date



- The UK government published the Statement of Intent on the EU Settlement Scheme on 21 June 2018
- A draft Withdrawal Agreement was published on 14 November 2018
- A policy paper on the rights of EU nationals in a 'no deal' scenario was published by the UK government on 6 December 2018
- The UK is due to leave the EU on 29 March 2019
- If a deal is reached, a post Brexit transitional period is planned between 30 March 2019 and 30 June 2021

What do we know?



- Nothing is for certain but:
 - the Government has introduced the EU Settlement Scheme which seeks to implement the Withdrawal Agreement in respect of the rights of EU citizens. This has been implemented by Appendix EU of the Immigration Rules. This was trialled in a pilot scheme and then opened for a public test phase on 21 January 2019. It is set to open in full by 30 March 2019.
 - the Government paper from December 2018 sets out that in the event of a “no deal” Brexit, EU citizens resident in the UK by 29 March 2019 will be able to stay. To achieve this the UK will continue to run the EU settlement scheme for those resident in the UK by 29 March 2019 with important distinctions.

Indefinite leave v permanent residence



- Indefinite leave to remain is a UK domestic law term, also referred to as settled status
- Permanent residence is an EU law term
- Both rights of residence mean that the individual has no time restrictions on their stay in the UK

The EU Settlement Scheme – who is covered



- There is an important distinction between EU and EEA nationals.
- The current draft Withdrawal Agreements (and therefore the EU settlement scheme) does not cover EEA/EFTA nationals (Iceland, Lichtenstein, Norway and Switzerland). The UK Government is seeking similar agreements which are being discussed with those countries.
- The Government paper regarding a “no deal” Brexit states that the UK would still pursue agreements with the EEA/EFTA states to ensure EFTA nationals and their dependents resident in the UK (and UK nationals and their families in the EFTA) by 29 March 2019 will be able to carry on with their lives broadly as now.
- Current information on the Home Office website states that although citizens of these countries are not eligible to apply under the EU settlement scheme during the public test phase they will be able to apply when the scheme is fully opened by 30 March 2019.

EU Settlement Scheme – Brexit deal scenario



- You must be resident and living in the UK by **31 December 2020**.
- The deadline for making an application for leave under the Settlement Scheme is the **30 June 2021**.
- You will not need to apply if:
 - you are an Irish citizen (but their non Irish family members will)
 - you have indefinite leave to remain in the UK
 - you have indefinite leave to enter the UK

EU Settlement Scheme



- During the implementation period, EU nationals who have been living in the UK for a continuous period of 5 years will be able to apply for indefinite leave to remain (ILR)
- You will need to demonstrate:
 - You meet the suitability requirements e.g. no deportation order, exclusion order, removal decision, and no false/misleading information provided in application
 - residence for a continuous period of 5 years with no more than 6 months of absence in any 12 month period. A single period of absence not exceeding 12 months for an important reason will be disregarded

EU Settlement Scheme – Family Members



- Family members of EU nationals are also eligible to apply for ILR
- Who is treated as a family member:
 - Spouse / Civil partner/Durable partner
 - Child under the age of 21 of EU national or spouse/CP
 - Dependant child aged 21 or over or spouse/CP
 - There is also provision for other relatives to be treated as a family member

EU Settlement Scheme - Eligibility



- Evidence required in support of indefinite leave to remain:
 - Proof of identity e.g. valid EU identity card or passport or if non EU family member, a valid passport; and
 - a document certifying permanent residence under the current Regulations and no supervening event has occurred (this includes that the applicant has not been absent from the UK for a continuous period of 5 years since acquiring the right of PR); or
 - a valid document showing that the applicant has indefinite leave to remain; or
 - the Home Office will need to be satisfied that the applicant has completed 5 years' continuous residence in the UK with no supervening event.

EU Settlement Scheme - Eligibility



- Evidence required in support for indefinite leave to remain cont...
 - Family members will also need to demonstrate that they have been resident in the UK for 5 years as an EU family member & that they are related as stated e.g. marriage certificate, birth certificate etc as well as proof of the identity and nationality of the EU national.
 - A child under 21 years of age of the relevant EU citizen will be granted ILR with less than 5 years' continuous residence in circumstances where the EU citizen parent (or spouse/civil partner) has been or is being granted ILR under the scheme. *Note, children of Irish citizens are eligible for settled status if parents would be entitled if they made the application.*

EU Settlement Scheme - less than 5 years residence



- If EU national (and/or family member) has not been resident for 5 years:
 - Granted pre-settled status i.e. limited leave to remain for 5 years and will be able to apply for indefinite leave to remain following 5 years continuous residence; or
 - May be eligible for ILR in less than 5 years if:
 - The EU national starts working in another EU country and they:
 - i. Have lived and worked in the UK for 3 years beforehand; and
 - ii. Usually return to their home in the UK once a week.
 - Retire/ EU family member dies/ have to stop working

EU Settlement Scheme – No deal



- On 6 December 2018, the Government produced a paper setting out the situation in the event of a “no deal” scenario.
- The EU Settlement Scheme will still be implemented but EU nationals and their family members will need to be living in the UK **by 29 March 2019** to apply under the scheme.
- Applications will need to be made by **31 December 2020** as there will be no implementation period.
- Between 29 March 2019 and 31 December 2020, EU passports and national ID cards will be accepted as evidence of a right to reside.

EU Settlement Scheme – No deal



- EU citizens with settled status will be able to be joined in the UK by existing close family members if application made before **29 March 2022**.
- Relationship will have to have existed by **29 March 2019** (unless child born overseas after this date).
- Relationship must continue to exist at date of application.
- Future spouses, partners and other dependant relatives can still join EU national with settled status until **31 December 2020**, after which UK laws will apply.

EU Settlement Scheme – the process



- Application made online
- The fee has been abolished as of 21 January 2019 (anyone who pays the fee during the public test phase will have it refunded)
- Biometrics (fingerprints and digital photo) at a Visa Application Centre
- Certificate of application – digital document on receipt of a valid application
- Average time for decision – 9 calendar days (under the pilot)
- Proof of status = electronic notice (no physical document unless non EU national)

EU Settlement Scheme

Demonstrating residence



- On applying online, you will provide your National Insurance (NI) number. The Home Office will then carry out checks with relevant departments to establish that you have been in the UK for a continuous period of 5 years. If you have been continuously working for 5 years, residence will be proven automatically through your NI number.
- If your continued residence for 5 years cannot be proven automatically through the Home Office's checks, they will contact you to request that you provide further evidence. You will be permitted to upload a maximum of 10 documents. If more are required, the Home Office will contact you again. Ideally you should use documents that cover longer periods of time e.g. annual bank statements, council tax bills, employer letters, P60s. If necessary you can also rely on documents covering a shorter period for example utility bills, telephone bills, bank statements.

Applying under the public test phase



- The Home Office opened the EU settlement scheme to a public test phase on 21 January 2019. In order to apply under this scheme you will need:
 - a valid biometric passport
 - an android device with Near Field Communication technology
 - to use the Home Office app, EU Exit: ID document check
- Only non EU family members with biometric residence permits can apply during the test phase
- The cost of the application is £65 (to be refunded).

EU Settlement Scheme – rights/entitlements



- **Settled status:**

- You can stay in the UK indefinitely
- You can leave the UK for up to 5 years without losing the right (this is still subject to parliamentary approval)
- Child born in the UK after you have settled status will be born British

- **Pre-settled status**

- You can stay in the UK for up to 5 years once granted
- You can leave for up to 2 years but this will break continuity of residence
- You can apply for settled status after 5 years continuous residence

EU Settlement Scheme – rights/entitlements



- **Rights for those with settled or non-settled status:**
 - Work in the UK
 - Use the NHS
 - Study / enrol in education
 - Access public funds if eligible
 - Travel in and out of the UK

EU Settlement Scheme – Appeal rights



- Right of appeal post 29 March 2019 – this is being debated by parliament
- There is currently a right of administrative review of:
 - A decision to refuse leave on eligibility grounds
 - To grant limited leave rather than indefinite leave to remain
 - Can include evidence not before the initial decision maker
 - Fee of £80 payable (refundable if successful)

Why apply for a permanent residence document under the current Regulations?



- Permanent residence is automatically acquired. EU nationals with lengthy absences in the past 5 years may benefit from relying on earlier periods of residence.
- Depending on when you acquired permanent residence, it may also mean that you can proceed immediately to apply to naturalise as a British citizen.
- You can change your permanent residence document to settled status by applying to the EU Settlement Scheme. You will not have to prove you have 5 years' continuous residence.

Legislative Basis – current position



- The free movement of EEA nationals¹ and their family members is enshrined in the Citizens' Directive.
- Transposed into UK legislation by the Immigration EEA Regulations 2006 (now the Immigration EEA Regulations 2016)
- EEA/EFTA nationals currently covered by the Regulations .

1 For the purposes of the EEA Regulations, an EEA national includes nationals of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland and Sweden

Permanent residence



- Under Regulation 15, the following persons will acquire ***permanent residence***:
 - a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a ***continuous period*** of five years;
 - b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

Permanent residence



- Automatic acquisition.
- Earliest acquisition date is 30 April 2006 although prior residence under EEA law will count towards qualifying period.
- Permanent residence can be lost after a continuous period of two years absence from the UK.
- The UK will recognise rights which have been acquired by EU nationals before 29 March 2019 including permanent residence but that recognition will be subject to UK law.

Permanent residence

Current position



- To acquire permanent residence, an EEA national must satisfy both limbs of Regulation 15:
 1. Residence in accordance with the regulations
 2. Continuous residence

Permanent residence



1. ***Residence in accordance with the Regulations***
 - EEA nationals have to have been residing lawfully in the UK
 - Requires individuals to demonstrate they have been qualified persons during a consecutive five year period

Permanent residence



2. *Continuous residence*

- Continuous residence is not broken by:
 - a) periods of absence from the United Kingdom which do not exceed six months in total in any year;
 - b) periods of absence from the United Kingdom on compulsory military service; or
 - c) one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

Rights upon arrival



- An EEA national and their family members have rights of entry to the UK and other host EEA member states
- EEA nationals have an initial right of residence for a period of three months upon arrival.
- After an initial period of residence, an EEA national must be a **“qualified person”** to retain lawful residence in the UK.

Who is a qualified person?



- Regulation 6 sets out the various types of ***qualified person***:
 - a. Jobseeker
 - b. Worker
 - c. Self employed person
 - d. Self sufficient
 - e. Student

Jobseeker



- A jobseeker is defined as someone who:
 - a) entered the United Kingdom in order to seek employment; or
 - b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside as a qualified person in another category
- A jobseeker needs to provide evidence they are seeking employment and have a genuine chance of being employed

Worker



- The work must be *genuine and effective*
- No minimum amount of hours but the work must not be *marginal or ancillary*
- Can retain worker status in certain scenarios:
 - Where the worker is temporarily unable to work as a result of an illness/accident
 - Pregnancy/maternity leave
 - Where the worker is involuntarily unemployed following a period of employment in the UK and is seeking work
 - Where the worker has voluntarily ceased work and embarked on vocational training related to their previous employment
 - Where the worker has involuntarily ceased work and embarked on vocational training

Self-employed



- Applicants will be expected to provide evidence of their self-employment

The Home Office will want to be satisfied of the following:

- economic activity
- responsibility and personal freedom
- genuine and effective self employment
- registration with HM Revenue & Customs (HMRC)

Home Office expect documents such as:

- Registration with HMRC
- Payment of income tax and national insurance contributions
- Accounts
- Invoices etc

Self-sufficient



- The EEA national needs to demonstrate:
 1. They are not a burden on the social assistance system in the UK
 2. They have comprehensive sickness insurance

Student



A student is a person who is :

- enrolled, for the principal purpose of following a course of study at a public or private establishment which is financed from public funds; or otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training;
- has comprehensive sickness insurance cover in the United Kingdom; and
- has assured the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's intended period of residence.

Comprehensive sickness insurance



- Access to the NHS does not meet this requirement
- Evidence must be provided to cover an EEA national's five years continuous residence for PR applications.
- Accepted documents include:
 - a comprehensive private medical insurance policy document
 - a valid European Health Insurance Card (EHIC) issued by an EEA member state other than the UK (or its predecessor form E111)
 - form S1 (or its predecessor forms E109 or E121)
 - form S2 (or its predecessor form E112)
 - form S3
- Note : indications are that the UK will drop the requirement for evidence of CSI after departure from the EU

Family members



Regulation 7 defines “*family members*” of an EEA national as their :

- a) spouse or civil partner;
- b) direct descendants, or the direct descendants of their spouse or civil partner who are either
 - (i) aged under 21; or
 - (ii) dependants of the EEA national , or of A’s spouse or civil partner;
- c) dependent direct relatives in the EEA national’s ascending line, or in that of their spouse or civil partner.

Family members



- Family members' rights of residence are automatic and are dependent on the EEA national continuing to reside in the host member state as a qualified person.
- A family member, who is also an EEA national, can be a qualified person in their own right.
- Family members can apply for permanent residence at the same time as the EEA national worker provided he/she has also been resident in the UK for a continuous five year period.
- Once a family member acquires permanent residence, he/she is no longer dependant on their EEA national worker.

Extended family members



- Unlike family members under regulation 7, “***extended family members***” (**‘EFM’**) do not have automatic rights of residence.
- Their rights have to first be recognised by the UKVI and the individual issued with a family permit or residence card.
- They include:
 - Unmarried partners in ‘durable relationships’;
 - Relatives of an EEA national who strictly require the personal care of the EEA national on serious health grounds
 - A relative of the EEA national who is a dependent member of their household and wishes to join/accompany them to the UK
 - Relatives of an EEA national who satisfy the requirement of the UK immigration rules for a grant of indefinite leave to remain/enter

Extended family members



- Once issued with a family permit/residence card, an extended family member can lawfully reside in the UK with their EEA national family member.
- An “EFM” will acquire permanent residence after five years continuous residence in the UK with their family member.
- The loss rules for permanent residence apply i.e. after two consecutive years absence from the UK.

Irish nationals



- The Republic of Ireland forms part of the Common Travel Area. Pursuant to s.1(3) of the Immigration Act 1971, immigration control does not apply to persons arriving in the UK from the Republic of Ireland.
- Irish nationals are treated as “settled” in the UK from the date they take up ordinary residence. For this purpose, “settled” means the individual is not subject to any time limit attached to his/her stay. This is the equivalent of permanent residence.²
- Irish nationals do not need to have spent five years in the UK as a qualified person (i.e. as a worker, in self employment, as a self sufficient person, as a student or as a job seeker) before they acquire permanent residence.

² This is confirmed in Home Office guidance (see Modernised Guidance, European Economic Area (EEA) and Swiss nationals: free movement rights, 1 February 2017 which confirms at page 19 “citizens of the Irish Republic, whether

EEA Applications



- The rights of EEA nationals and their family members are automatic rights (except extended family members). In practice however, particularly for non-EEA family members, it is important to apply for a document as proof of their right to reside.

- There are different types of applications that can be made by EEA nationals and their family members:
 1. EEA(QP) - For a registration certificate – confirmation of an EEA national's right to reside

 2. EEA (FM) - For a residence card as the family member of an EEA national

 3. EEA(PR) - For a document certifying permanent residence

 4. EEA (EFM) - For a residence card as an extended family member

Application process



- Applications can either be submitted using a paper or online based application form.
- Online forms are available for:
 - Registration certificate applications
 - Permanent residence applications
- Family members applying at the same time can be included in the online applications.
- You **cannot** use an online application to make an application as a student or self-sufficient person who is financially responsible for any other family members or is reliant on a family member for financial support.

Application process



- The Home Office application fee is £65 per applicant
- EEA nationals must submit their original valid national passport or national ID card as evidence of their nationality
- Those unable to part with their original identity documents should apply using the European Passport Return Service <https://www.gov.uk/government/collections/european-passport-return-service>
- Can take the Home Office up to six months to make a decision although in recent experience the turn around is much quicker for PR applications

Right of Appeal



- EEA nationals and their direct family members will have a right of appeal against the decision to refuse to issue a document certifying permanent residence/residence.
- Appeal lies to the First Tier Tribunal (Immigration and Asylum Chamber).
- Appeal on proscribed form and pay fee (£140 oral hearing/£80 paper hearing per appellant).
- Appeal to be lodged within 14 days of the date the decision was sent.
- Fresh application may be more appropriate.

Naturalisation as a British citizen



Requirements are set out at section 6 and Schedule 1 British Nationality Act 1981 and are as follows:

1. To have been lawfully resident in the UK for 5 years prior to the date of application (and physically present on the date of application 5 years ago);
2. To have held settled status (ILR/PR) for 12 months prior to the date of application;
3. To have less than 450 days absences in the past 5 years and 90 days in the previous 12 months;
4. Be of good character and sound mind;
5. Intend to make the UK your main home;
6. Satisfy the English language and life in the UK test requirements.

Requirement to have settled status



- You can rely on any five year period in applying for permanent residence and will be given a deemed date of acquisition. Provided this date is at least a year prior to being issued a PR document, you will be able to apply to naturalise immediately subject to meeting the other requirements;
- Under the EU settlement Scheme, it is unclear whether you can rely on a historic period of residence and whether you will be given a “deemed date” for ILR.

Naturalisation as a British citizen



- Since 12 November 2015, EEA nationals and their family members must have a document certifying permanent residence before applying for naturalisation as a British citizen.
- This requirement does not apply to Irish citizens (Ireland is part of the common travel area and therefore Irish nationals are treated as settled upon entry to the UK).
- Different residence requirements apply to spouses/civil partners of British citizens – 3 years residence instead of 5; and 270 days absent in 3 year period; no need to have held permanent residence for 12 months prior to the date of application.
- Spouses/civil partners of British citizens do not need to intend to make the UK their main home.

Naturalisation process



- Naturalisations applications submitted using form AN.
- The current Home Office application fee is £1,330.
- Supported by two referees.
- Applicants required to attend a citizenship ceremony where they pledge an oath of allegiance.
- Only British after attended ceremony and awarded certificate of naturalisation.
- **N. B.** It used to be the case that all dual UK/EEA nationals could not benefit from free movement rights in UK. Following a leading case, in certain circumstances this has now changed.

Children of EEA nationals



- Children born in the UK are not automatically British – their citizenship depends on their parents' nationality/immigration status at birth

- Children born in the UK:
 1. to British citizens/individuals with permanent residence at the time of their birth are British by birth

 2. to parents who acquire permanent residence after their birth are entitled to register as British

 3. are entitled to register as British if they have lived in the UK for the first 10 years of their life

 4. to EEA nationals exercising treaty rights before 2 October 2000 are British by birth

Children of EEA nationals



- Children who are born British can apply for their first British passport – evidence of their entitlement to citizenship will need to be provided
- Children entitled to register can apply using form MN1
- Children applying on the basis of 10 years' residence can apply using form T
- Possible to apply for discretionary registration of a child as a British citizen in certain circumstances
- Current Home Office application fee for registration applications is £1012

Challenging a negative decision



- There is no right of appeal against the refusal to naturalise or register a person as a British citizen.
- Applicants can request the formal reconsideration of their application.
- Applications are submitted using form NR. A fee of £372 is payable.
- Decisions to refuse to naturalise/register are also amenable to judicial review.



ANY QUESTIONS?



THANK YOU

For additional information please contact:

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For further information on our range of Brexit related services please visit
'Brexit and You' found under our 'What we do' tab on our website.

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