

Brexit: Further Clarity on EU Nationals' Rights to Remain in the UK?

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Global Mobility

In December 2017, the UK Government updated its proposals on the rights of European Union (“EU”) nationals and their families following the UK's exit from the EU (via a [technical note](#) setting out its proposed commitments). Along with other concessions, this helped unlock the Brexit withdrawal negotiations. On 8 December 2017, the EU and the UK Government released a [joint report](#) on the progress made during ‘Phase One’ of the Brexit negotiations - an agreement in principle which enables the parties to move on to the all-important discussions regarding a future trading relationship.

The joint report was accompanied by a [joint technical note](#) setting out in more detail the parties' consensus on the rights of EU and UK citizens. Broadly, the agreed position confirms that EU nationals in the UK exercising EU Treaty Rights before the UK ultimately “leaves” the EU (and UK nationals doing the same in the EU) will be eligible to apply for “settled” or “temporary” status, depending on the length of time spent in the UK.

More specifically, the main terms in principle are:

- EU nationals who have been continuously living in the UK for five years as at the date the UK withdraws will be able to apply to stay indefinitely by obtaining settled status, and those who arrive before this date, but do not have five years' residency at the date of the UK's withdrawal, will be able to apply for temporary status to cover the period until they reach the five-year threshold, at which point they will be able to apply for settled status.
- Family dependents who are living with or who join EU nationals in the UK before the date of the UK's withdrawal will also be able to apply for settled status after five years in the UK.
- EU nationals with settled or temporary status will continue to have the same access to healthcare, education, benefits and pensions as they currently do.
- The application process for settled and temporary status will be as streamlined, quick and user-friendly as possible. The UK Government intends to develop a system that draws on existing data (e.g. employment records held by HM Revenue & Customs) so as to reduce the amount of evidence to be submitted. Further, the Home Office will work with applicants so as to reduce the number of applications that are turned down for administrative reasons such as errors on the form or where additional evidence could resolve an issue.

- EU nationals will not be required to provide biometric information as part of the application process for settled status and the fee will be no more than the cost of applying for a British passport (currently £72).
- EU nationals will be able to apply for settled and temporary status before the UK leaves the EU and the scheme will be open for two years following the UK's withdrawal. The purpose of the new online application, which is expected to go live in 2018, is effectively to avoid a surge in applications on or around the withdrawal date.
- There will be a simple process for those who already have permanent residence (the current iteration of settled status founded on EU Treaty Rights) to exchange this right for settled status, as well as a reduced fee.

Notwithstanding the clarity provided in certain respects, there remain a number of unanswered questions which, particularly from a Global Mobility perspective, will continue to represent a challenge for both UK employers employing EU nationals in the UK and European employers employing UK nationals on the continent. These include:

- The status and recognition of both professional qualifications and licenses/certificates, and the application of equal treatment principles in this respect.
- The status of workers who are sent by their employer to work temporarily in another country to provide a cross-border service (so-called "posted workers") - the future of such individuals will likely be determined by the eventual trade deal made between the UK and the EU.
- Future healthcare arrangements.
- The territorial scope of certain "economic" rights, such as secondary establishment and the cross-border provision of services.

Furthermore, so often the devil is in the detail; whilst it is clear that "agreements in principle" have been reached in many respects, inevitable points of uncertainty and the risk of administrative burdens remain. The agreement in principle says nothing regarding how the new immigration categories will actually impact right to work checks. The UK government and the EU have not provided any information on the new regime that would apply to individuals moving between the UK and the EU after the eventual withdrawal date, making workforce planning far from easy. Also, the extent to which any "transitional" period subsequently agreed (for trade reasons) will affect the date of the UK's withdrawal for these purposes is still unclear presently.

Employers should continue to carefully document the residency status and working permissions of their employees in order to be best prepared for the undoubted challenges that lie ahead when it comes to employees actually formalizing immigration status. Please refer to our [earlier alert](#) for more information on this issue.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Global Mobility practice:

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