



An update on the movement of
EU Nationals into the UK pre and
post 29th March 2019
15th February 2019

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An update on the movement of
EU Nationals into the UK pre and
post 29th March 2019

The law as stated during this webinar is
up to date as of **8th February 2019**



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3

Who are we?

Five Paper

- Barristers at Five Paper offer clients an in-depth knowledge in several specialist practice areas.
- Satinder Gill and Ian Wright head the Business Immigration and Regulatory Team which advises international and UK businesses in commercial immigration matters in the education, professional sports and technology sectors, and investors and entrepreneurs moving to the UK.
- Both Satinder Gill and Ian Wright are recognised in the Legal 500 for their business immigration and regulatory work.

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Movement of EU Nationals into the UK

Introduction

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Introduction

- Webinar in 4 parts on the Movement of EU Nationals into the UK
 - Overview of current rules for EU Nationals.
 - EU Settlement Scheme.
 - Appendix EU of the Immigration Rules.
 - Recent publication in the event of 'no deal.'

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The Current System

An Overview

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EU citizens

- EU rights are important in Business immigration cases because they allow employers to avoid the PBS system and migrant workers to avoid having to find a sponsor.
- Article 45 TFEU and Directive 2004/38 were transposed into UK law and are now found in the Immigration (EEA) Regulations 2016. In summary:
 - A right of admission (reg 11).
 - An initial right of residence for 3 months (reg 13).
 - An extended right of residence for as long as qualified (eg. jobseeker) (reg 14).
 - A permanent right of residence after 5 years continuous residence (reg 15).

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EU Law & Third Country Nationals

- TCNs are persons who are not nationals of any of the EEA countries or Switzerland.
- EEA comprises the EU members states plus three. Switzerland is a member of EFTA but not the EU or the EEA.
- An EU citizen may bring 'family members' or 'extended family members' with him into the UK including TCN's. Such family members also have the right to work.
- TCNs may have derivative rights from their children who are EU citizens.
- Such rights derive from the right of the child in question to be resident in the country and include a right to reside and to work.
- However residence as result of a derivative right does not lead to PRR.
- Rights of EEA and Swiss companies to post TCNs.

Since the Referendum (23.6.16)

- There have been various government publications:
 - 'Safeguarding the position of EU Citizens living in the UK and UK Nationals living in the EU' (26.6.17).
 - 'Message to EU Citizens living in the UK' (19.10.17).
 - 'Technical Note: Citizens' Rights- Administrative Procedures in the UK' (7.11.17).
 - 'Status of EU Citizens in the UK: what you need to know' (29.3.18).
 - EU Settlement Scheme: Statement of Intent (21.6.18).

EU Settlement Scheme: Statement of Intent (21.6.18)

- Foreword:
 - Securing the rights of citizens has always been our priority in negotiations with the EU.
 - An agreement (in line with the draft withdrawal agreement) guaranteeing the rights of EU citizens living in the UK and vice versa.
 - Existing close family members living overseas will be able to join EU nationals here in the future.
 - The statement is a consultation paper seeking comments from user groups and was to be introduced in phases in late 2018 and early 2019.
 - Phases were rolled out during late 2018 and most recently a public test phase was introduced on 21.1.19.

EU Settlement Scheme (public phase)

- Those currently able to apply for status under the Scheme are:
 - A resident EU citizen with a valid EU passport.
 - A non EU citizen who is a family member of a EU citizen who has a biometric residence card.
 - British citizens cannot apply.
 - Irish citizens may apply but do not have to do so.
 - Citizens of Iceland, Norway, Liechtenstein and Switzerland may not apply at the moment but may do so from 30.3.19.
 - Need access to an Android Device to access the Home Office app.
 - The fee of £65 initially introduced has now been withdrawn and is refundable if already paid.
 - The Scheme includes a draft of Appendix EU which was introduced on 28.8.18 in line with the roll out of the pilots.

Appendix EU to the Immigration rules

Appendix EU: EU citizens and family members

Purpose

- EU1. This Appendix sets out the basis on which an EU citizen and their family members will, if they apply under it, be granted indefinite leave to remain or limited leave to remain.
- (The following provisions of the Appendix assumes the Draft Withdrawal Agreement is enacted by Westminster or that the UK leaves the EU on an alternative agreed basis)

Appendix EU

Requirements and procedure

- EU2. The applicant will be granted indefinite leave to remain where:
 - A valid application is made in accordance with paragraph EU9;
 - The application meets the eligibility requirements for indefinite leave to remain in accordance with paragraph EU11 or EU12; and
 - The applicant is not to be refused on grounds of suitability in accordance with paragraph EU15 or EU 16.
- 'Indefinite leave to remain' is referred to in the Settlement Scheme as 'settled status.'

Appendix EU

Valid application

- EU9. A valid application has been made....where:
 - (a) It has been made in the UK using the required application process;
 - (b) Any required fee has been paid (requirement now waived);
 - (c) The required proof of identity and nationality has been provided;
 - (d) The required biometrics have been provided

Appendix EU (Para 11)

Persons eligible for indefinite leave to remain as a relevant EU citizen or their family member:

- EU 11. Eligibility is met where the decision maker is satisfied one of conditions 1 to 7 set out in the following table is met:
 - EU citizen, family member or family member who has retained right of residence (1);
 - As above where individual has a documented right of permanent residence (2);
 - As above where there is valid evidence of their indefinite leave to enter or remain (3);
 - As above where applicant has completed a continuous qualifying period of five years and no supervening event has occurred (4);

Appendix EU (Para 12)

Persons eligible for indefinite leave to remain as a family member of a qualifying British citizen

- EU12. The applicant meets the eligibility requirements for indefinite leave to remain as a family member of a qualifying British Citizen or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British Citizen where one of conditions 1-4 is met:
 - The applicant has a documented right of permanent residence;
 - There is valid evidence of their indefinite leave to enter or remain;
 - The Applicant is a child under the age of 21 of spouse or civil partner of qualifying British Citizen.

Appendix EU (Paras 15 & 16)

Suitability

- EU15. An applicant will be refused on grounds of suitability where any of the following apply at the date of the decision:
 - subject to a deportation order
 - subject to an exclusion order or decision.
- EU16. An application may be refused on grounds of suitability:
 - false or misleading information, representations or documents have been submitted;
 - the applicant is subject to a removal decision.

Appendix EU

Requirements and procedure

- EU3. The applicant will be granted five years' limited leave to remain where:
 - A valid application has been made
 - The applicant meets the eligibility requirements for limited leave to remain in accordance with EU14; and
 - The applicant is not to be refused on grounds of suitability.

Appendix EU (Para 14)

- EU14. The applicant meets the eligibility requirements for limited leave to remain where the decision maker is satisfied that at the date of the application, condition 1 or 2 of the following table is met:
 - The applicant is a relevant EU citizen, (ii) a family member of a relevant EU citizen or (iii) a family member who has retained the right of residence by virtue of a relationship with a relevant EU citizen; and
 - The applicant is not eligible for indefinite leave to remain solely because they have completed a continuous qualifying period of less than five years.

Appendix EU (Summary)

- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for 'settled status' enabling them to stay indefinitely.
- EU citizens and their family members who arrive by 31 December 2020, but will not yet have been continuously resident here for five years, will be eligible for 'pre-settled status' enabling them to stay until they have reached the five year threshold. They can then apply for settled status.
- EU citizens and their family members with either status will have the same access to healthcare, pensions and other benefits.
- Close family member living overseas will still be able to join an EU citizen resident here after the end of the implementation period, where the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK.
- Deadline for those resident here by end of 2020 is 30.6.21

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Appendix EU (Summary)

- Any applicant must meet the three core criteria:
 - Identity (and nationality).
 - Eligibility (resident in the UK and, if appropriate, family member).
 - Suitability (criminality).
 - Case workers will work with applicants to help them avoid any errors or omissions that may impact on the application decision.
 - Applications will be delivered through a streamlined, digital application process with a speedy decision in straightforward cases.

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Third Country Nationals

- Those who have a right of residence under wider EU law will have their residence rights protected by the Withdrawal Agreement in line with their current rights.
- Provision will be made in the IR for them to apply for leave to remain, consistent with the Withdrawal Agreement.
- Their current rights do not lead to a right of permanent residence 'but further details will be provided in due course on the new status open to them.'
- As a matter of policy a non EU citizen family member of a British citizen who is lawfully resident by the end of the implementation period on 31 December 2020 ('Surinder Singh route') will be eligible to apply for status under the scheme.

In the event of no Withdrawal Agreement ('no deal')

- On 28.1.19 the Home Secretary (Sajid Javid) published summary provisions for EU citizens coming to the UK to visit, work or study after the 29.3.19.
- The Government will seek to end free movement as soon as possible and has introduced an Immigration Bill to achieve this (Immigration and Social Security Co-Ordination (EU Withdrawal) Bill).
- For a transitional period such citizens will still be able to enter the UK as they do now.
- However to stay longer they will need to make a further application under the new 'skills-based future immigration system' which will begin from 2021.

No deal (details)

- All EU citizens who enter after 29.3.19 will be permitted to stay for an initial period of 3 months.
- This permission also applies to EEA citizens and Swiss citizens.
- EU citizens arriving who wish to stay longer will need to apply for and receive 'European Temporary Leave to Remain' which is valid for a further 3 years.
- Non-EU family members who wish to accompany an EU citizen under these arrangements will need to apply in advance for a family permit.
- EU citizens will be able to enter using e-gates when travelling on a biometric passport.
- The initial three months leave to enter will be free of charge but applications for ETLR will be paid for.
- Irish citizens need not apply.

No deal (details)

- For those EU citizens here by 29 March 2019 the EU Settlement Scheme will apply but with amendments.
- Individuals will have until 31.12.20 to apply and not 30.6.21 as proposed under the Withdrawal Agreement.
- Until 31.12.20, EU nationals in the UK by 29.3.19 will be able to rely on passport or national identity card to demonstrate a right to work.
- EU nationals with settled status may be joined in the UK by 29.3.22 by existing close family members where relationship existed by 29.3.19 and the relationship continued.

More questions than answers....

- ETLR does not lead to ILR, settled status or permanent residence so are EU nationals treated unfairly compared with non-EU nationals?...
- What is the position for employers regarding right to work checks?...
- Can an EU migrant just leave and re-enter to start a further three month period?...
- What happens if an application is not made after three months?...

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Upcoming Brexit webinars

- The European Union (Withdrawal Agreement) Act 2018 (2019) – **11th February 2019**
- Brexit – Spring 2019 Update – **13th May 2019**
- The Brexit Transition Period (2019) – **14th June 2019**
- The rights of EU citizens after the transition period (2019) – **8th July 2019**
- Brexit – Summer 2019 Update – **24th July 2019**
- Brexit – Autumn 2019 Update – **14th October 2019**
- Police and Judicial cooperation in criminal and civil matters (2019) – **11th November 2019**
- The latest on data protection post Brexit (2019) – **2nd December 2019**
- Brexit – Winter 2019 Update – **18th December 2019**

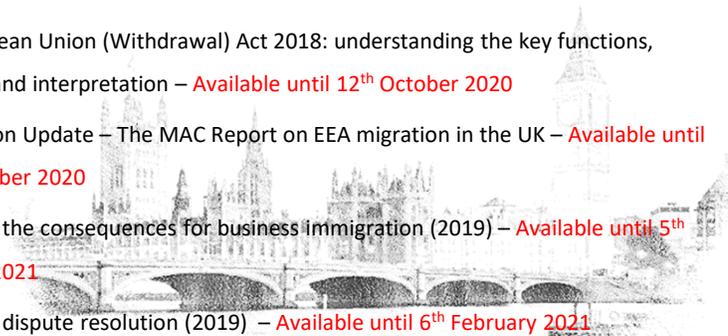


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On Demand Brexit webinars

- UK immigration after Brexit: an intermediate solution – **Available until 30th April 2020**
- Brexit and the legislative process – **Available until 21st September 2020**
- Brexit: Risk analysis and contingency planning – **Available until 28th September 2020**
- Movement of EU National in the UK: pre and post Brexit – **Available until 2nd October 2020**
- The European Union (Withdrawal) Act 2018: understanding the key functions, concepts and interpretation – **Available until 12th October 2020**
- Immigration Update – The MAC Report on EEA migration in the UK – **Available until 6th November 2020**
- Brexit and the consequences for business immigration (2019) – **Available until 5th February 2021**
- Brexit and dispute resolution (2019) – **Available until 6th February 2021**



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31

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