

BREXIT BRIEFING : THE CLOCK TICKS EVER LOUDER

THE EU SETTLEMENT SCHEME
Public testing begins

AN END TO FREE MOVEMENT
Immigration & Social Security Co-Ordination (EU Withdrawal) Bill

NO-DEAL BREXIT PLANNING
Immigration from the EU from 30 March 2019

BRITISH CITIZENS ACROSS EU 27
Preparing for a no-deal Brexit



IN THIS ISSUE

	PAGE
Brexit Deal	3
Public testing of the EU Settlement Scheme	
No-Deal Brexit	7
Immigration from the EU from 30 March 2019	
Implementing Brexit : An end to free movement	9
Immigration & Social Security Co-Ordination (EU Withdrawal) Bill	
British Citizens & EU Member State Immigration Policy	11
Preparing for a no-deal Brexit	

BREXIT DEAL:

PUBLIC TESTING OF THE EU SETTLEMENT SCHEME

The public test phase of the EU Settlement Scheme (“the scheme”) opened on 21 January 2019, following two previous test phases. The scheme is the method which EU nationals, resident in the UK, together with their qualifying family members, may use to apply to remain in the UK post June 2021.

The law which underpins the scheme is found in the Immigration Rules, Appendix EU, effective from 28 August 2018, pursuant to the draft Withdrawal Agreement published on 14 November 2018. In line with the Withdrawal Agreement, the scheme has been designed to be streamlined and applications are based solely on residence (as opposed to qualifying activities, as currently under the EEA Regulations 2016). All EU nationals and their qualifying family members, who do not already have Indefinite Leave to Remain or dual British nationality, will be required to apply under the scheme before 30 June 2021 if they wish to remain in the UK beyond the end of the planned implementation period.

The first private test (28 August 2018 – 17 October 2018) was available to employees of selected universities and hospitals in the north of England. There were 1,053 applicants. The second private test (1 November 2018 – 21 December 2018) was open to employees within the higher education and healthcare sectors, as well as children looked after by specified authorities and organisations. In this phase there were 29,987 applicants. This public test phase is significantly bigger, with potentially hundreds of thousands eligible to apply. Certainly, this phase is intended to stress-test the application software.

SETTLED/PRE-SETTLED STATUS

Individuals will be able to apply for either “Pre-Settled” (i.e. Limited Leave to Remain) or “Settled” (i.e. Indefinite Leave to Remain) status depending on how long they have resided in the UK for.

Applicants will be given ‘Settled’ status if:

- They have lived in the UK for a continuous 5 year period (“continuous residence”);
- They started living in the UK by 31 December 2020; and
- They have no more than 180 days’ absence from the UK in any rolling 12 month period (unless for an important reason such as pregnancy, childbirth, serious illness, study, vocational training, military service, etc.).



It is notable that Settled status can be based on a historical 5 years’ residence, provided the individual has not lived outside of the UK for more than 5 years since completing that residence.

Once an applicant has been granted Settled status, s/he can remain in the UK permanently or even live outside of the UK (for no more than 5 years at any one time) and retain the status. Of course, many individuals may wish to apply for British citizenship which is possible after holding Settled status for one year.

If an applicant has not lived in the UK for 5 years continuously, they will be granted Pre-Settled status. This will be valid for 5 years, and they can then apply for Settled status as soon as they reach 5 years’ total residence. Pre-Settled status can be lost through 2 years’ absence from the UK and applicants should bear in mind the maximum 180 days’ absence requirement for a Settled status application.

WHO CAN APPLY?

The EU Settlement Scheme is now open to applications from the public, based in the UK, who meet the following criteria:

- EU citizens who hold a valid biometric passport; OR
- Non-EU family members of European citizens if they have a residence card with a biometric chip and 'EU right to reside' on the back; AND
- Applicants must use the Home Office's "EU Exit: ID Document Check" Android app to confirm their identity (it is still not available on Apple devices).



WHO CANNOT APPLY?

The pilot scheme is not open to:

- EU citizens who do not hold a valid biometric passport (i.e only an ID card);
- Non-EU family members of European citizens who do not hold a residence card;
- Anyone who is unable to use the Home Office Android app;
- Individuals outside of the UK; or
- EEA/Swiss nationals – separate agreements are in place with Switzerland, Norway, Liechtenstein and Iceland.

It is important to note that Irish citizens do not need to apply under the EU settlement scheme, nor do individuals who have dual British nationality. Those EU nationals (or family members) who already have Indefinite Leave to Remain do not need to apply, unless they wish to do so.

The scheme will be fully open to all European citizens and their family members by 30 March 2019.

FAMILY MEMBERS

Non-EU national family members of EU nationals are able to apply under the scheme to remain in the UK. The relationship must have existed before the "Specified Date" (currently, 31 December 2020) and must continue after it.

Qualifying family relationships include spouse, civil partner, unmarried partner, children aged under 21 and direct relatives (parents, grandparents and great-grandparents – for whom no evidence of dependency is required). Children aged 21 and over must prove their dependence on their EU national spouse or parent (as is the case under the EEA Regulations).



Other dependent relatives (not children or direct relatives) must either be the relative of an EU national or, if they are the relative of a non-EU national who is the spouse of an EU national, they must hold a "relevant document" (i.e. a document issued under the EEA Regulations prior to Appendix EU) which was applied for prior to 1 February 2017.

HOW DOES THE APPLICATION WORK?

Applicants must first download the “EU Exit: ID Document Check” app for Android devices. As previously noted, this app is not available on Apple devices. Via the app, applicants must then conduct the identity check as follows:

1. Provide some personal details (email address and telephone number) which are then verified.
2. Scan the photograph page of the passport.
3. Place the phone on the passport.
4. Scan face (the screen will flash as the app scans the applicant’s face).
5. Take a selfie (passport photograph style).



After the ID check is complete via the app, applicants can then continue their application via the Gov.uk website:

6. Log in using the same personal information as at 1. above.
7. The “identity” and “digital photo” sections will appear as “completed” if the ID check has been successful via the app.
8. The applicant completes the rest of the form, providing their National Insurance (“NiNo”) number (if they have one). Automated checks will take place immediately upon online submission.
9. Complete self-declarations relating to UK absences and criminal history. These declarations will be checked during the caseworking process.
10. Following submission, and completion of any automated checks, one of three responses will appear on screen:
 - a. “You’ll be considered for Settled status” (this will only be if the NiNo provided shows 5 continuous years’ data); or
 - b. “You’ll be considered for Pre-Settled status” (for example, if the NiNo provided shows 5 continuous years’ of data). The applicant will be given the option to accept the decision or reject it, for example if they believe they have been resident in the UK for the full 5 years and should be entitled to settled status; or
 - c. “We need more evidence of your residence” (if no NiNo was provided, or less than 5 years’ data is found). Applicants can then upload their documents to evidence 5 years’ residence (which should be documentation covering at least 6 months out of every 12 months).
11. Applicants are then sent a Certificate of Application electronically. This confirms the application has been submitted and their entitlement to work, which may be useful to present to employers.
12. The decision to grant Settled or Pre-Settled status is emailed to the applicant, with a link to an online status service where the outcome appears.

So far, there have been no refusals reported in either of the two private test phases. However, as at 14 January 2019 there were 2,776 undecided cases. In the guidance documents, caseworkers are permitted discretion to work with applicants to help achieve approvals. Administrative review rights are present in Appendix AR(EU) but, of course, this is as yet untested.



Additionally, as part of the Prime Minister's Brexit statement in the House of Commons on 21 January 2019, the proposed application £65 fee has been scrapped. Mrs May said anyone "who has, or will, apply during the pilot phase" will have their fee reimbursed, with further details to be announced shortly.

EVIDENCE OF RESIDENCE

The grant of Settled or Pre-Settled status under the scheme is based on residence (or relationship to an EU national, if a non-EU family member). Residence will be assessed in one of three ways:

1. NiNo. Applicants will insert their NiNo and automated checks will be carried out online. The data obtained is not intended to check how much an individual has earned, but simply to confirm dates of residence.
2. Department of Work & Pensions ("DWP"). This is still in the planning stages but the Home Office intends for automated checks to be available from DWP records for, i.e. non-workers.
3. Documentary evidence. For any gaps of 6 months or more in NiNo data, applicants will be required to submit documentary evidence.

In line with the Withdrawal Agreement, documentary evidence can be uploaded electronically although caseworkers can request originals if they have any doubts on veracity. The range of documents that can be submitted is wide, and the caseworker guidance confirms discretion can be applied in accepting variable evidence. Examples of evidence can be P60s/P45s, council tax bills, bank statements, employers' letters, school invoices/letters, care-home letters/invoices, University letters, mortgage statements, tenancy agreements etc.

Applicants who already hold a Permanent Residence document or a Biometrics Residence Permit will not be required to submit further evidence of residence.

As the applications are based on residence alone, there is no requirement for students or self-sufficient people to have comprehensive sickness insurance, or to show they had sufficient resources to support themselves.

For those individuals who do not need to submit additional evidence of residence (84% of applications from the second test phase), the processing should be fairly quick (81% of applications during the second test phase were decided within one week). For those applications where additional evidence of residence is required, or some other complication with the application arises, processing is likely to take several weeks.

For applicants who already have a Permanent Residence document, decisions are reported to have taken just a few hours.

CONCLUSION

There is, as yet, no published end date on the public test phase. With the huge numbers expected to be eligible in this round of applications, and already numerous reports of technical problems, this test phase is likely to reveal a more accurate picture of how the process will be for the rest of the 3 million (plus!) EU nationals and their family members needing to apply to remain in the UK.



Brexit Deal

Immigration and the Transition

In a Nutshell

UK leaves the EU on 29 March 2019

Free Movement continues to 31 December 2020 under transitional arrangements

EU nationals arriving on or before 31 December 2020 apply for:
Settled or Pre-Settled Status before 30 June 2021

EU nationals arrivals on or before 31 December 2020 may apply for permanent residence after five years

EU arrivals after 31 December 2020 apply under new immigration rules

NO-DEAL BREXIT:

IMMIGRATION FROM THE EU FROM 30 MARCH 2019

The Government has now published a policy paper setting out the position in respect of immigration into the UK after 29 March 2019 in the event that no deal is agreed with the European Union and, consequently, that the transitional arrangements contained within the Withdrawal Agreement do not take effect.



In summary the position is as follows:

1. Freedom of Movement will end on 30 March 2019.
2. EU citizens and their family members arriving in the UK will be admitted under UK immigration rules and will require permission (leave to enter or remain).
3. Those who do not hold valid immigration permission to be in the UK will be here unlawfully and may be liable to enforcement action.
4. EU citizens and their family members already residing in the UK on 29 March 2019 will continue to be eligible for the EU Settlement and Pre-Settlement Scheme. Qualifying EU nationals will be eligible to apply under this scheme until 31 December 2020 under temporary transitional arrangements.
5. Transitional arrangements will also apply to EU citizens entering the UK to work or study from 30 March 2019 to 31 December 2020.

VISITING THE UK

EU citizens will be eligible to visit the UK for up to 3 months from the date of entry without requiring a visa.

ENTERING THE UK

EU citizens will continue to be able to enter the UK as now, using e-gates when travelling on a biometric passport.

EU citizens will automatically be granted leave to enter for 3 months on arrival and they will be able work and study. This means they will be able to start these activities immediately on arrival.

Until 31 December 2020, EU citizens will be able to enter by showing either a valid national identity card or a passport.



APPLYING TO STAY LONGER

EU citizens wishing to stay longer than three months will be required to apply to the Home Office for leave to remain within 3 months of arrival. Subject to security checks, permission to stay will be granted for 36 months. This will be non-extendable temporary leave, so those who wish to stay longer-term will have to apply in due course under new immigration arrangements.

These new arrangements are likely to come into force on 1 January 2021, although EU citizens who have been granted permission to stay under the transitional arrangements will continue to benefit from permission to work until the conclusion of the 36 month grant.

COMPLIANCE

Employers and landlords will not be required to distinguish between EU citizens who were resident before or after exit until new immigration arrangements are introduced in 2021.

FAMILY MEMBERS

EU citizens who arrive on or after 30 March 2019 may be accompanied by their EU citizen family members. They may also be accompanied or joined by close family members (spouse, partner, dependent child under 18) who are third country nationals; however these non-EU national family members will need to apply in advance for a family permit.



FEES

The initial 3 months' leave to enter will be free of charge, but fees will be payable for longer periods of stay.

IRISH CITIZENS

Irish citizens will continue to have the right to enter and live in the UK under the Common Travel Area ("CTA") arrangements.

Brexit No-Deal Immigration Policy

In a Nutshell

UK leaves the EU on 29 March 2019

Free Movement ends immediately

EU nationals may continue to arrive until 31 December 2020 and be granted 3 months leave to enter and work

EU nationals wishing to stay longer than 3 months may apply European Temporary Leave to Remain (ETLR) for a 36 month extension of stay with work permission

ETLR application will be made online with proof of ID and declaration of no criminal convictions

ETLR does not lead to permanent residence

EU nationals after 31 December 2020 apply under new immigration rules

IMPLEMENTING BREXIT: AN END TO FREE MOVEMENT

IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL

Amongst all of the Brexit uncertainty over the last 2¹/₂ years, Theresa May, the architect of UK immigration policy since she became Home Secretary in 2010 and subsequently Prime Minister in 2016, has been clear about one thing: the free movement of people will come to an end when the UK leaves the EU.



With this aim in mind, the government introduced the Immigration and Social Security Co-ordination (EU Withdrawal) Bill in the House of Commons in December.

The aim of the Bill is to end the EU's rules on free movement of persons into the UK and make EEA and Swiss nationals and their family members subject to UK immigration controls.

The Bill also protects the special status of Irish citizens in the UK when free movement ends by ensuring that Irish citizens will not require permission to enter or remain in the UK after Brexit, unless they are subject to a deportation order, exclusion or an international travel ban.

In order to ensure that UK legislation is coherent once the UK has exited the EU, the Bill gives Ministers powers to modify primary or secondary legislation as appropriate in consequence of the Bill.

Finally, the Bill makes changes to social security arrangements by allowing the government and devolved authorities to implement new benefit rules for EEA and Swiss nationals.

ENDING FREE MOVEMENT

There are currently two immigration systems in the UK: one that governs the position of EEA nationals exercising “treaty rights”; and one that governs the arrangements for nationals from outside the EEA. The key difference between the two immigration systems is that EEA nationals and their family members enjoy a right to enter and reside in the UK, whereas non-EEA nationals require permission to enter and remain under the Immigration Act 1971.

In June 2018 the EU (Withdrawal) Act 2018 was enacted. This Act repeals the European Communities Act 1972 and converts current EU law into UK law (“retained EU law”) and preserves existing UK law that implements EU law, to ensure continuity of law until Parliament changes it over time.

The Bill will repeal EU retained law relating to free movement of persons (including the implementing EEA regulations) and make EEA and Swiss nationals and their family members subject to UK immigration controls. This means they will require permission to enter and remain in the UK under the Immigration Act 1971.

The Bill will also remove or amend other EU-based law which is not compatible with the UK’s future UK immigration regime, subject to ongoing negotiations with the EU about the future relationship.

The legislation will create the framework for the future UK immigration system. It does not set out the details of the future system because those details will have to be set out in the Immigration Rules as they are now for non-EEA nationals.

PROTECTING IRISH CITIZENS

The Bill includes a provision to ensure that when free movement ends, the long-standing status of Irish citizens in the UK to enter and remain freely will be preserved. This means that, unlike all other EEA nationals, Irish citizens will continue to be free to enter and remain in the UK without restriction unless they are subject to a deportation order, exclusion order or international travel ban.



The Bill preserves the CTA between Ireland and the UK and the Crown dependencies. Under reciprocal arrangements since Ireland’s independence, British and Irish citizens have enjoyed associated rights in each other’s state. These include the right to work and study, access to healthcare and social and welfare benefits, and voting rights. This status also supports the birth right of the people of Northern Ireland to identify themselves and be accepted as Irish, British or both, and have the right to hold both British and Irish citizenship.

CONSEQUENTIAL POWERS

The Bill confers on Ministers the power to make regulations to modify primary or secondary legislation in consequence of, or connected to, the measures in the Bill that repeal free movement law.

There are references to free movement and related matters across the statute book in both primary and secondary legislation, which will no longer be appropriate once the UK has left the EU. It is therefore necessary for the Bill to contain a power to make consequential amendments by secondary legislation.

The Bill will give a power to repeal, revoke, amend or otherwise modify any domestic primary or secondary legislation as appropriate, in consequence of, or in connection with, the Bill. The amendments will be delivered by regulations, which are a statutory instrument, which will be subject to parliamentary scrutiny.

SOCIAL SECURITY CO-ORDINATION

The government is bringing forward social security powers within the Bill to make suitable legislative provision for a range of post EU exit day scenarios that may arise. Policy changes may be needed to the retained social security co-ordination rules. For example the government may wish to consider:

- What access EU nationals have in future to certain UK benefits and pensions;
- The extent to which UK nationals can export certain benefits and pensions; and
- The administration and rules which govern entitlement and obligations when people live and work in more than one country.

TIMING

The government aims to secure Royal Assent to the Bill before the UK is due to leave the EU on 29 March 2019.

Immigration and Social Security Co-Ordination (EU Withdrawal) Bill

In a Nutshell

Legislation aims to ensure free movement ends when UK leaves the EU

EEA nationals and Swiss nationals will become subject to UK immigration control

The Bill will repeal EU retained law relating to the free movement of people

Creates the framework for future UK immigration system

Preserves the special status of Irish citizens within Common Travel Area

BRITISH CITIZENS AND EU MEMBER STATE IMMIGRATION POLICY

PREPARING FOR A “NO-DEAL” BREXIT

On Tuesday 15 January 2019, Members of Parliament (“MPs”) rejected the Withdrawal Agreement negotiated between the British government and the European Union.

British nationals and their family members who are currently working and living in EU member states face immigration uncertainty if the UK leaves the EU on 29 March 2019 without a deal in place.

EU member states are still assuming an orderly withdrawal of the UK from the EU. However, with no deal in sight, what are the possible consequences for British citizens abroad? Will the legal status of the affected British citizens change, and will those changes be permanent?

In the absence of a binding Withdrawal Agreement including a chapter on Citizen’s Rights, each individual member state will apply its own laws. Listed below is a brief introduction to the policies and processes that a range of EU countries are likely to put in place in the event of “no-deal”.

AUSTRIA

The Austrian authorities have identified various areas that shall be affected in the event of a no deal Brexit; in particular residence, social security, transport and customs.

As a result, the competent authorities have begun to review proposed adjustments to what they consider to be ambiguous legalities that could arise as a result of a disorderly withdrawal of the UK from the EU. The first review procedures were initiated on 16 January 2019.

The UK has pledged that Austrian nationals present in the UK at the time of departure from the EU can continue to live and work in the UK. The Federal Government of Austria will propose a corresponding solution of reciprocity for British nationals living in Austria.



BELGIUM

Belgium has prepared “emergency legislation” in relation to the no deal possibility.

On 18 January 2019 the Belgian Federal Council of Ministers approved a preliminary draft “no deal Brexit” bill.

Based on reciprocity, the right of UK citizens and their families to remain in Belgium will be regulated.



BULGARIA

Although the Bulgarian Government has not released details of their proposed immigration strategies, Ekaterina Zaharieva, the Foreign Minister of Bulgaria, advised journalists in Parliament on 18 January 2019 that regardless of the outcome, the Bulgarian government is “prepared for all possible options”.



CROATIA

The Croatian Ministry of Interior (“MUP”) is aware that steps need to be taken to address the possibility of the UK leaving the EU with no agreed immigration procedures in place. The MUP aims to develop an immigration model that will protect those British citizens already in Croatia.

The MUP is proposing to apply “special rules” to British citizens, who, on 29 March 2019 have registered and hold a valid temporary residence permit which will allow them to maintain the right of residence in Croatia after the UK leaves the EU.

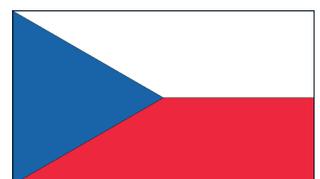


CZECH REPUBLIC

The Czech Ministry of Interior produced a draft Act in preparation of a no-deal Brexit, which was approved by the government on 7 January 2019.

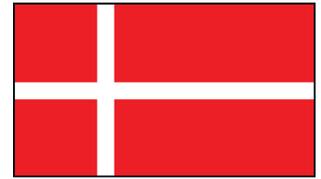
Should the UK withdraw from the EU without an agreement in place, those affected citizens already residing in the Czech Republic will be exempt from the current rules associated to third-country nationals until 31 December 2020, allowing for a 21 month exemption period. The Czech Republic is, however, looking to secure a reciprocal agreement.

Should an agreement on the UK’s withdrawal from the EU under Article 50 (2) of the Treaty on European Union be concluded before 31 December 2020, the law will cease to apply.



DENMARK

To effectively and efficiently manage a no deal scenario, various measures have been initiated by the Danish government.



Regardless, in case of a no deal, British citizens will be considered third-country nationals, and Danish national rules applicable to third country nations will apply. However, the Danish government is conscious that British citizens who chose to live and work in Denmark prior to 29 March 2019, did so under their capacity as EU citizens, and as such, wishes to provide certainty to those Brits already present.

To secure proof of residence in Denmark, the Danish government is encouraging British citizens to ensure they hold an EU registration certificate or an EU residence card. Those who have not yet secured either should submit their applications for such documents before 29 March 2019.

It has been proposed that from 29 March 2019, a temporary transitional scheme will apply, until a permanent solution has been agreed upon. Under the scheme, British citizens residing in Denmark will be able to continue living and working in Denmark as per current legislation.

Should it be necessary to implement such a scheme, the legislative proposal is scheduled to be presented to the necessary parties towards the end of February 2019.

FINLAND

Ilkka Salmi, Finland's Interior Ministry Permanent Secretary has advised that the Finnish government is currently investigating the possibility of introducing "special arrangements", which will enable British citizens to travel and return to Finland should the UK leave the EU with no-deal in place.



As Finland is to conduct a general election on 14 April 2019, the Government is proposing "fast-track new legislation", relating to securing the residency rights of British citizens currently in Finland.

FRANCE

France has announced it will activate its draft bill which outlines the position of British nationals in the event of no deal. However, much of the bill relies on how French citizens in the UK will be treated so that reciprocal arrangements can be made.



The draft bill currently states that British citizens will become third-country nationals and will therefore require a residence permit to enter the French territory and evidence their right to stay there. As such, the Europe Minister in France has advocated the government's intention to pass a decree that will ensure that British citizens can remain in France without incurring an irregular immigration status. In any event, all British citizens in France are encouraged to apply for the Carte de Séjour and it seems likely that this will be converted into the appropriate permit post-Brexit. This will also be a requirement in the event of no deal, should an individual wish to stay in France for more than 3 months.

British citizens employed in France may be required to obtain a work permit in order to avoid their employers becoming criminally liable for employing foreign nationals.

GERMANY

British citizens will be considered third-country nationals, although resident British citizens will not be required to leave Germany.



A transitional approach is to be adopted which would allow British citizens to submit an immigration application to the competent foreigner's office in Germany (the type and category of which is to be decided). The period will initially run for 3 months from 29 March 2019 until 29 June 2019, which is likely to be extendable.

During this transitional period, and while an immigration application is decided upon, British citizens and their family members, who have been entitled to the freedom of movement under the EU Freedom of Movement Act, will be able to continue to live and work in Germany without a residence or work permit.

To remain and reside in Germany after the 3 month transitional period, British citizens will need a residence permit. To work, approval from the German employment agency is likely to be required.

In December 2018, the head of the Foreigner's Registration Office in Berlin, Engelhard Mazanke, announced that it was not yet clear what kind of residence status British citizens would receive or what documents would be required, but was confident that the office in Berlin could offer a good and flexible service and process applications in around 8 weeks.

It is already possible for British citizens in Berlin to register their details online ahead of 29 March. Other foreigner's offices in Germany are already preparing for application procedures and may well be in a position to offer assistance before the date of departure from the EU.

HUNGARY

There is currently no agreement in place, however the relevant authorities are scheduled to pass legislation in February 2019, which may result in the implementation of a unique agreement that would highlight the importance of British citizens in Hungary to the Hungarian government, which would largely preserve the rights of UK citizens in Hungary in the event of a no-deal Brexit.



IRELAND AND THE CTA

British citizens who currently reside in the CTA will not be affected by the UK's exit from the EU.



The ability to travel freely and reside in the CTA after 29 March 2019 will remain unchanged.

The CTA provides for the free movement of British and Irish citizens between the UK, Ireland, the Channel Islands and the Isle of Man.



As the CTA was formed before the UK and Ireland became members of the EU, reciprocal rights for Irish and UK citizens apply.

Therefore, British and Irish nationals will not be required to apply for any form of settled status, work or residence permit, post Brexit, as the rights to work, to study and to access social security and public services will be preserved on a reciprocal basis for UK and Irish nationals.

Travel between the UK and Ireland will also not be affected. This includes movement across the land border between Northern Ireland.

ITALY

Italy has confirmed it is working on legislation to take effect by 29 March 2019 which will allow legal residence status to continue for those British citizens living in Italy on a regular basis.

Provided that British citizens are registered with their local registry office at their town hall, they will be granted rights and sufficient time to apply for long term residence status. Registration with the town hall is encouraged prior to 29 March 2019.



LITHUANIA

The Migration Department of Lithuania announced on 21 January 2019 that “all UK citizens will be able to stay in Lithuania in case of a no-deal Brexit”.

However, post 29 March 2019, those British citizens currently residing in Lithuania, who have not completed the already established residence registration process, will likely face difficulties. British citizens who wish to reside in Lithuania after 29 March 2019 and whose current residency documents will expire before 2020, are “invited” to apply under the EU citizens and their family member’s scheme for temporary or permanent residence. Applications for those who have not already registered or applied for residence should do so before 29 March 2019.



LUXEMBOURG

There are currently no laws or regulations in place, however, on 16 January 2019, the commission of foreign affairs of the Luxembourg parliament held a meeting with the Luxembourg Minister of Foreign Affairs, Mr Jean Asselborn.

Mr Asselborn assured members of the commission that the Luxembourg government is currently working to identify solutions, with the aim of minimising any detrimental impact the no deal scenario may have on UK residents in Luxembourg.



MALTA

In the event of a no-deal Brexit, the Maltese Government recently announced that all British citizens working and residing in Malta up until 29 March 2019 will need to apply for a Residence Permit, which will be free of charge, valid for 10 years and renewable.

A permit will also be available to British citizens who wish to enter for work and residence purposes after 29 March, although a residence fee will apply.

The Maltese Prime Minister, Joseph Muscat, said recently that “The new residence document will reflect the fact that UK nationals are no longer EU citizens, but a new ‘special’ category of EU nationals who have moved to Malta and have acquired rights which will not change”.



NETHERLANDS

The Netherlands has confirmed a transitional period from 29 March 2019 to 1 July 2020 will be applied and it is stated that British citizens will keep their rights of residence and employment, even in the case of a no deal.



To assist British citizens in evidencing their legal residence in the Netherlands until 1 July 2020, the Immigration and Naturalisation Service (“IND”) will issue temporary residence permits in the form of a letter. The letter will indicate that even in the event of a no deal, UK citizens will be able to continue residing in the Netherlands and will receive a residence permit.

During the transitional period, the IND will issue a further letter inviting British citizens to apply for a residence permit. Details of the application process and document requirements will be included. The IND will endeavor to send the letters by 1 April 2020.

If the British citizen has not previously registered with the Personal Records Database (“PRD”) in their municipality, they are not likely to receive the invitation letter. However, in order to apply for the permit, the individual must prove that they were resident in the Netherlands prior to 29 March 2019 and therefore they must be registered with the PRD.

Should a British citizen already hold permanent residence status, the IND will automatically change their status to issue them a national permanent residence permit. This does not require an application to be filed or any fees to be paid.

POLAND

On 11 January 2019, the Polish government published a draft bill which outlined the legal framework for regularising the residence of British citizens in Poland.



Should a no deal situation occur, Poland proposes a 12 month grace period, during which time British citizens will be able to apply for a temporary residence permit, confirming their right to remain, or a permanent residence permit if they have been resident for 5 years. Should the bill be passed, the process and document requirements will be regulated by the Ministry of Internal Affairs and Administration.

PORTUGAL

There is currently no agreement in place, however it is proposed for the Portuguese government to adopt a favourable approach based on the strength of the British - Portuguese alliance, and thus British citizens living and working in Portugal should be given access to suitable resources as and when any negotiations are initiated.



The Serviço de Estrangeiros e Fronteiras (“SEF”), the (police service integrated into the Ministry of Internal Affairs, whose mission is to enforce immigration and asylum regulations in Portugal) has provided on its website a document concerning a series of preparatory and contingency measures that were proposed by the Portuguese government on 11 January 2019.

It is proposed that should no agreed implementation period be decided upon, British citizens who are resident in Portugal by 29 March 2019 would have until 31 December 2020 to apply for a registration certificate.

Only those eligible British citizens who are resident in Portugal by 29 March 2019 will be able to acquire the right of permanent residence.

As part of the British government’s “outreach programme”, the British Embassy in Lisbon and the British Vice Consulate in Portimão have and will continue to hold meetings across Portugal and assist British citizens with their concerns.

SLOVENIA

Whilst the British government continues to negotiate Brexit, and particularly as there is a possibility of Parliament not passing a Withdrawal Agreement, the Slovenian government will constructively seek to identify areas of concern, with the aim of reducing any negative impact associated with a potential no-deal scenario, by adopting and introducing “urgent legislation”.



Providing a reciprocal agreement is in place, Slovenia will look favourably to regularising the stay of those already established British citizens in Slovenia.

SPAIN

On Friday 11 January 2019, the Spanish Council of Ministers approved a “Report on the Contingency Plan in the event of a Brexit without a UK-EU Deal”.



The contingency plan includes, but is not restricted, to the following areas:

Legislation

The government intends to utilise Law from the Royal Decree, whereby amending current legislation and adopting new regulations in order to address the situation.

Logistics

Ensure the relevant immigration authorities and the Spanish Administration has adequate materials to facilitate immigration related matters in view of a “hard” Brexit.

Communication

Ensure immigration regulations and procedures are readily available to all concerned parties, via the Presidency’s web page <http://www.lamoncloa.gob.es/Paginas/index.aspx>

Although there is currently no agreement in place, the Spanish authorities propose to allow British citizens to change their immigration status in country, from that of an EU immigration category to that of a national Immigration scheme, which would likely be that which currently applies to third-country nationals.

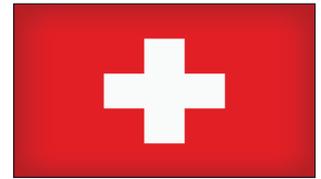
SWEDEN

There is currently no agreement in place however there is speculation that UK nationals will be granted 1 year’s grace to regularise their status in Sweden.



SWITZERLAND

Although Switzerland is not a member of the EU, the right of EU citizens to reside and work in Switzerland is governed by the EU, under an agreement known as the bilateral Agreement on the Free Movement of Persons (“AFMP”).



Once the UK leaves the EU, the AFMP will cease to apply between Switzerland and the UK.

However, in December 2018, the Swiss Federal Council approved a draft bilateral agreement with the UK, on the condition that the existing rights of Swiss and British nationals already residing in each other’s countries will be guaranteed when the UK leaves the EU.

The bilateral agreement has not yet been approved by the Swiss parliament. However, on 16 January 2019, the Committee on Foreign Affairs agreed that the bilateral agreement be applied provisionally.

It is expected that the Committee on Foreign Affairs will also shortly approve the bilateral agreement and thereafter the Swiss Federal Council (government) will sign the bilateral agreement. The next step is for the agreement to be approved by the Swiss parliament.

In the event of a “no deal” Brexit, the bilateral agreement will provisionally apply from 30 March 2019.

Under the bilateral agreement, the residence rights that British citizens acquired under the AFMP (i.e. up until 29 March 2019) will be protected and will be valid indefinitely.

Until 29 March 2019, those UK nationals in Switzerland already holding a short or long-stay residence permit, who will have therefore registered in a commune, will not need to take any action.

The same applies to persons with an EU/European Free Trade Agreement (“EFTA”) cross-border commuter permit.

CONCLUSION

Whilst the British government continues to negotiate Brexit, and with the possibility of Parliament not ratifying a Withdrawal Agreement, the Foreign and Commonwealth office advises British citizens to:

- Ensure they are correctly registered in their residential EU member state;
- Read the document “UK nationals in the EU: essential information guide” <https://www.gov.uk/guidance/advice-for-british-nationals-travelling-and-living-in-europe>;
- Follow their local British Embassy on Facebook or Twitter; in more than one country;
- Sign up for email alerts on living in the EU member state;
- Attend outreach meetings, available across many of the EU countries, arranged by the British Embassy.

A number of EU Member States have already given political assurances to UK nationals about their residency rights, yet ultimately the ability to continue living and working in an EU country after Brexit depends on the EU and its individual Member States, and whether they reciprocate any agreement the UK has to offer.

For further information on any of the topics discussed in this briefing or wider immigration issues please contact the head of the relevant practice group:

Chris Magrath (Senior Partner - UK/US) - chris.magrath@magrath.co.uk

Ben Sheldrick (Managing Partner - UK/Asia Pacific) - ben.sheldrick@magrath.co.uk

Zulaykha Bhajjee (Partner UK) - zulaykha.bhajjee@magrath.co.uk

Alfreda Joubert (Partner - UK) - alfreda.joubert@magrath.co.uk

Joanne Taylor (Partner - UK) - joanne.taylor@magrath.co.uk

Mairin Hoban (Practice Head - US) - mairin.hoban@magrath.co.uk

Kerry Hough (Practice Head - Global) - kerry.hough@magrath.co.uk

The contents of this briefing are for information purposes only. The information and opinions expressed in this document do not constitute legal advice and should not be regarded as a substitute for legal advice. No liability is accepted for the opinions contained or for any errors or omissions.

SOLICITORS

Magrath Sheldrick

Magrath Sheldrick LLP

Magrath Sheldrick LLP is one of the UK's most successful immigration practices, providing UK, US and global immigration solutions to some of the world's leading business organisations and private individuals.

Recognised as a top-tier law firm by the principal legal directories, the firm specialises in all aspects of global mobility and investor migration.

Write to immigration@magrath.co.uk for further information or phone us on 020 7317 6723.