

The Civil Society Brexit Project: Information

BREXIT AND THE IMMIGRATION BILL

About the Civil Society Brexit Project

The Civil Society Brexit Project is a collaboration between the **Scottish Universities Legal Network on Europe (SULNE)** and the **Human Rights Consortium Scotland**, funded by the **Legal Education Foundation**. We give information, insight and independent advice to make sure that organisations in Scotland are able to influence Brexit as much as possible. The Project will also help organisations to prepare for Brexit consequences for themselves or their beneficiaries.

www.hrcscotland.org/brexit

Who is this Civil Society Brexit Project: Information for?

This briefing is written for civil society organisations working in Scotland. For more information, contact civilsocietybrexitscot@gmail.com

Brexit and the Immigration Bill

This briefing summarises the Immigration Bill which was introduced to Parliament in December 2018. This Bill makes provision for immigration rules for EU nationals in the UK in the event of 'no deal' between the UK and the EU, and enables immigration rules to be made that will include EU nationals in the UK after Brexit and any agreed transition period (see briefing on the transition period here: <https://hrcscotland.files.wordpress.com/2018/04/csbp-briefing-apr-18-transition.pdf>).

On 27 February 2019, MPs voted unanimously for the 'Costa amendment' which requires the UK Government to seek the adoption of those parts of the draft Withdrawal Agreement which deal with EU citizens' rights regardless of the fate of the rest of the Agreement. On 25 November 2018, there was a draft Withdrawal Agreement drawn up between the UK Government and the EU but this draft Withdrawal Agreement has not yet been agreed to by MPs. If it is not passed, then that may result in a 'no deal' Brexit. In that case, EU citizens in the UK could lose their

rights overnight: they are only guaranteed if the parts of the draft Withdrawal Agreement that relate to them are approved.

How will Brexit, with a 'deal' in place, affect EU citizens' rights?

The UK Government has stated repeatedly that Brexit will lead to the end of free movement for EU citizens and their families to the UK.

The draft Withdrawal Agreement preserves the rights of EU citizens and their family members following Brexit and introduces a transition period between 29 March 2019 and 31 December 2020 (although this may be extended). **If the whole of this draft Withdrawal Agreement is passed in its current form, or if the parts of this Withdrawal Agreement relating specifically to EU citizens are passed as noted above, then those already here by the end of the transition period will have to apply for a new immigration 'settled status' by June 2021 so that they can continue to live and work here.**

The EU Settlement Scheme (the Scheme) is currently going through a public test phase and will be open to

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all EU citizens and their family members from the end of March 2019.

The Scheme offers two application types:

- Pre-settled status

Applicants who have been living in the UK for less than five years by December 2020 will be eligible to apply for pre-settled status. Successful applicants will be granted limited leave to remain in the UK for up to 5 years, after which time they will be eligible to apply for settled status.

- Settled status

Applicants who have been living in the UK continuously for five years or more by December 2020, and who can demonstrate 'continuous residence' will be eligible to apply for settled status. Successful applicants will be able to stay in the UK indefinitely and will be eligible to apply for British Citizenship (provided the requirements are met).

Applicants under the Scheme need to do three things:

1. Prove their identity through their passport or ID card
2. Prove 'continuous residence'.
3. Declare that they have no serious criminal convictions.

Those who already have valid permanent residence or indefinite leave to remain documentation can exchange it for settled status.

During the test phase, applications cost £65 for adults and £32.50 for children under 16. The Prime Minister has announced that when the system fully opens on 30 March 2019 there will be no fee. Anyone who has already applied, or who applies and pays a fee during the test phase, will have their fee refunded.

For more details on the rights of EU citizens after Brexit, see our Guide here

(<https://hrcscotland.files.wordpress.com/2018/10/guide-to-eu-citizen-rights-full-web-ready.pdf>)

What if there is a 'no deal' Brexit?

In the event the UK leaves the EU in a 'no deal' scenario, the UK will not be bound by the arrangements set out in the draft Withdrawal

Agreement. As noted above however, the UK Government intend to negotiate a separate agreement about EU citizens' residence rights. In the unlikely event that this separate EU citizens' agreement can also not be agreed, then the fallback position was clarified by the Government in a policy paper published on 6 December 2018. The paper states that those EU citizens and their family members who are in the UK before Brexit day on 29 March 2019 will not be subject to the new immigration rules but will still need to apply for settled or pre-settled status under the Settlement Scheme (see above). EU citizens would have to apply by 31 December 2020 (note, this is earlier than the June 2021 deadline in the draft Withdrawal Agreement).

What about EU citizens' immigration status after Brexit and any transition period?

The Immigration Bill deals with EU citizens' immigration status after Brexit and any transition period.

Any EU citizens coming to the UK after Brexit day on 29 March 2019 or after any transition period that is agreed (possibly until end December 2020), will be subject to the new rules contained in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

This Bill is currently being considered by a Public Bill Committee which will scrutinise the Bill line by line and is expected to report to the House of Commons by Thursday 7 March 2019. The Bill, once enacted, will repeal the Immigration (European Economic Area) Regulations 2016 and end free movement in UK law.

The Bill makes provision for a post-Brexit immigration system.

- The Bill protects the status of Irish citizens; confirming their right to enter and remain without permission post-Brexit, irrespective of where they have entered the UK from, unless they are subject to a deportation order, exclusion order or an international travel ban.

- For all other EU citizens, the Bill ends free movement of persons into the UK and makes EU, European Economic Area (EEA) and Swiss nationals and their family members subject to UK immigration controls. **This means that they will be required to have leave to enter and remain under the Immigration Act 1971.**
- EU citizens coming for short visits will be able to enter the UK as they can now, and stay for up to three months from each entry. They will be permitted to work and study from arrival. Until 31 December 2020, EU citizens will be able to enter the UK by showing either a valid national identity card or a passport.
- EU citizens who wish to stay longer than three months will need to apply to the Home Office for leave to remain within three months of arrival. Subject to identity, criminality and security checks, leave to remain will be granted for 36 months which will include permission to work and study. **This will be non-extendable, temporary leave so those who wish to stay longer-term will need to apply in due course under the future border and immigration system arrangements.** The initial 3 months' leave to enter for EU citizens will be free of charge, but otherwise application fees will be payable. The precise amounts will be set out in fees regulations in due course.

The Bill gives the Government the power to set out rules for future immigration arrangements for EU/EEA nationals (i.e. the requirements to be met to come to the UK as a worker, student, family member etc.) through regulations subject to affirmative procedure. These Rules have not yet been published but the Government has indicated that they will take account of evidence, including from the Migration Advisory Committee which published its report on the economic and social impacts of the UK's exit from the EU on 18 September 2018¹.

Until all resident EU citizens and their family members who are eligible for the EU Settlement

Scheme have had a reasonable opportunity to apply for and be granted status, (ie by the end of December 2020) employers or other third parties, such as landlords, will not need to distinguish between EU citizens who were resident before or after Brexit. Once the new border and immigration system is introduced **from 2021**, employers and others will need to check EU citizens' status using the Home Office's Digital Status Checker, but not retrospectively. Until 2021, EU citizens can continue to be able to evidence their rights to work and to rent property using a passport or national identity card, and non-EU family members can use a biometric residence document.

The Bill can be tracked here:

<https://services.parliament.uk/Bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal/documents.html>

Concerns

Organisations have raised a number of concerns about the Immigration Bill. Some of these are around:

- The basic premise to end free movement and bring EU and EEA citizens into the restrictions of the immigration system, with the consequent impact on Scottish business and sectors such as health and social care. For example, organisations mentioned in this Scottish Parliament session: <https://www.theyworkforyou.com/sp/?id=2019-01-10.26.0> You can also see the Scottish Affairs Committee evidence session here, including input from Scottish Care: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/immigration-and-scotland-followup/oral/96538.html>
- The Bill gives broad powers to the Government to make changes to the immigration system via regulations, rather than by primary legislation, sometimes called Henry VIII powers. Organisations are concerned that this lack of parliamentary scrutiny will lead to a worsening

1. The UK's future skills-based immigration system: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

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immigration system that infringes people's human rights. See for example, Liberty's briefing on the Bill:

<https://www.libertyhumanrights.org.uk/sites/default/files/LIBERTYS%20BRIEFING%20ON%20THE%20IMMIGRATION%20BILL%20-%20SECOND%20READING%20-%20HOC%20-%20Jan%202019.pdf>

- Some organisations are very concerned that this Bill will draw 3 million more people who are EU citizens into an immigration system which is hostile, dysfunctional and regularly ignores people's fundamental rights. See for example, the Joint Council for the Welfare of Immigrants briefing here: <https://www.jcwi.org.uk/immigration-bill-2019-2nd-reading-briefing>
- Many people are concerned that the proposed EU Settlement Scheme could negatively impact many people. EU or EEA citizens without the necessary paperwork will fall through the gaps, there will be insufficient legal advice, and the methods of applying via a mobile phone app excludes many vulnerable people. Furthermore, this Bill restricts the deadlines for applying to the Scheme, where instead of June 2021 under the draft Withdrawal Agreement, the deadline will be December 2020 – this risks more people not applying in time and being at risk of deportation or unlawful residence. See for example, information from The3Million: <https://www.the3million.org.uk/> The absence of an appeal right to a tribunal for EU citizens is raised by the Public Law Project: <https://publiclawproject.org.uk/wp-content/uploads/2019/01/PLP-Briefing-on-Immigration-and-Social-Security-Co-ordination-Bill-2019.pdf>

- Organisations highlight that this Bill is a missed opportunity to address many of the human rights issues within the immigration system. In particular, they highlight that indefinite immigration detention should be stopped – see an open letter from religious leaders here:

<https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/time-act-now-religious-leaders-call-home-secretary-put-time-limit>

Organisations also call for an end to the hostile environment policies, for family reunion rights, and for fairer data protection and sharing policies in the immigration system.

Rebecca Zahn

Mhairi Snowden

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WHERE CAN I GET MORE INFORMATION?

If there is any aspect of the briefing or a particular issue around Brexit where you would like more detailed advice or information, we are happy to help! Please get in touch with us at hrcscotland@gmail.com

There is also information available online at civilsocietybrexitscot@gmail.com