



Brexit and research: **Immigration Update**

This Note is part of a series of Brexit notes for research practitioners on the implications of the EU withdrawal from the EU on 29 March 2019. Despite the uncertainty surrounding Brexit, there are some steps that research employers should be considering in order to retain their existing workforce in the UK. This note sets out some of the immigration policy issues for researchers to consider in managing and supporting EU nationals.

MRS is providing this guidance as general information for research practitioners. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.

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Overview

One of the main consequences of Brexit is the end of the free movement of people as regulated by EU law. Regardless as to whether a deal is adopted or there is a “no-deal” Brexit, the rules and procedures will change for all non-UK citizens that wish to live and work in the UK.

In this new environment, the UK government has reached agreement with:

- European Union;
- Norway, Iceland and Liechtenstein; and
- Switzerland.

In light of this, by the end of 2020 (at the latest), all European Economic Area (EEA)¹ and Swiss nationals working in the UK will need to have obtained permission to remain in the UK from the Home Office (unless they are Irish or a British dual national).

- Under the draft Withdrawal Agreement currently being debated, a transitional period will run until 31 December 2020.² This means that free movement for EEA workers in the UK and British workers in the EEA would continue after Brexit day until the end of that transitional period.
- If there is a “no-deal” Brexit there will be no agreement between the UK and the EU. This means that immigration control could be brought in for EEA nationals sooner than 31 December 2020.

The **EU Settlement Scheme** (“the scheme”) has been introduced for EEA and Swiss nationals and their family members currently living in the UK. A pilot scheme is currently underway and the application process is intended to open fully on 30 March 2019.

As the UK and Ireland are part of the Common Travel Area, which pre-dates the UK’s membership of the EU, the rights of Irish citizens to live and work in the UK are not affected by Brexit in this regard. Irish citizens do not need to apply for immigration status in the UK. However, any family members who are not British or Irish citizens will need to do so.

¹ The countries in the EEA include EU countries and also Iceland, Liechtenstein and Norway. Switzerland is not part of the EU or EEA but is part of the EU single market.

² Withdrawal Agreement (November 2018) available here

<https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>



EU Settlement Scheme

Summary

The EU Settlement Scheme for EEA and Swiss nationals who are currently resident in the UK will enable them and their family members to obtain immigration status under the UK's domestic immigration rules. In the event of a "no-deal" scenario, the UK Government has confirmed that nationals who are resident in the UK before 29 March 2019 will still be able to apply for status under the scheme, as will their family members.

The scheme covers EU nationals and all EEA and Swiss nationals (Norway, Iceland, Lichtenstein and Switzerland) will be able to participate in the scheme when it is fully operational.

EEA and Swiss employees who have been in the UK for five years can be granted settled status. Those who have not accumulated five years continuous residence in the UK before 30 June 2021, but entered the UK before 31 December 2020, will be granted 'pre-settled status'. If there is "no-deal" Brexit then only those EEA/Swiss nationals in the UK by 29 March 2019 will be eligible to apply under it. Additionally, the deadline for applications will be 31 December 2020 and not 30 June 2021.

Application Process

For online applications the applicants will be required to confirm:

- identity and nationality: Applicants with a 'biometric' passport or ID card can use an app on an Android phone. Alternatively the identity check can be done at a participating location or by sending the passport or ID card to the Home Office.
- residence in the UK: Applicants need to provide their national insurance number. This will be used for automated residence checks to be conducted with HMRC and DWP. The applicant will be granted settled status if the checks show that the applicant has been continuously resident in the UK for a five-year period. If there is insufficient data held by the authorities then they can digitally upload additional evidence of their continuous residence.
- no serious criminal convictions: Checks will be made as part of the application process to ensure that applicants do not have any serious criminal convictions.

No fees will be payable when the scheme opens fully on 30 March 2019. Anyone who has applied already, or who applies and pays a £65 fee during the test phases, will have their fee refunded.

Note: *More details on applications under the EU Settlement scheme are available here:* <https://www.gov.uk/government/publications/eu-settlement-scheme-community-leaders-toolkit/factsheet-eu-settlement-scheme-application>



Action points

Very important

- ✓ Employers need to consider how they plan to retain EEA staff or prepare contingency plans. Free movement is most likely to end when the UK leaves the EU and there will be greater uncertainty on recruiting EEA nationals with a “no-deal” scenario.
- ✓ Employers should consider supporting employees making applications for permanent residence given that it remains unclear what will happen to their status in a “no-deal” situation. Consult the [UK Government Employer Toolkit](#) that provides information about the scheme and the requirement to apply under it and continue to provide general information to staff. Remember however that immigration advice can only be provided by authorised advisers.
- ✓ EEA employees should ensure that they and their family members have valid passports and also start thinking about any additional documents they have to evidence their residence in the UK, such as council tax bills and or letters from schools/universities confirming dates of study.
- ✓ EEA employees should consider applying for permanent residence if they have lived and worked lawfully in the UK for a continuous period of 5 years (it may also be possible to apply if they have lived in the UK for 5 years but not worked for the full period). Permanent residence is confirmation that the EEA national has indefinite leave to remain in the UK and they are a permanent resident of the UK. If they already have a document confirming their permanent residence they will still need to apply to swap their permanent residence card to this settled status before the deadline.

Important

- ✓ Employees can also apply under the EU Settlement Scheme which is being rolled out by the UK government for EEA nationals living in the UK prior to Brexit
Note: Making these applications is important as it will confirm the employees’ status under EU law and that they have a right to reside and work without immigration control. When the UK exits the EU this will make it easier to show that they were exercising rights under EU law pre-exit and therefore would benefit from any transitional arrangements in place to enable those living in the UK before a certain date to continue without being subject to immigration control. Also, if the UK implements a cut off for when transitional arrangements will end which might happen in a no-deal scenario this will help show which group they are in.

Optional

- ✓ EEA nationals may also acquire British citizenship through residence. After they have held permanent resident status in the UK for a period of 5 years, they may apply to become a British citizen. The process is called ‘naturalisation’ and requires applicants to meet residency requirements.