

EUROCHILDREN RESEARCH BRIEF SERIES, NO.1

THE IMPACT OF THE UK-EU AGREEMENT ON RESIDENCE RIGHTS FOR EU FAMILIES

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BREXIT | CITIZENSHIP | BELONGING

Table of Contents

Executive Summary	3
Acknowledgements	4
Introduction	5
1. What does the current EU-UK agreement say?	6
1.1 Content of the agreement	6
1.2 Additional UK commitments	7
1.3 Transitional arrangements	7
1.4 What does it mean to fall outside the agreement?	7
2. How will applications work in practice?	8
2.1 Permanent residence document already held	8
2.2 New application for documentation	8
2.3 What evidence will be accepted?	9
3. What gaps are there in the current agreement?	9
3.1 Problem of lawful residence	9
3.3 Failure to apply	11
3.4 Criminal convictions, past or future	12
3.5 Family members	12
Conclusion	12

Executive Summary

EU citizens and their family members living in the UK under EU law have been very concerned about the nature and quality of their rights of future residence in the UK following Brexit. Despite blithe assurances from some quarters these concerns are both understandable and well founded.

There are a number of serious problems facing EU families in the UK after Brexit. Prior to Brexit these problems already existed but were largely hidden. Problems with and gaps in EU law and UK interpretation of EU law could be fudged or overlooked because these cracks were smoothed over by ongoing rights of free movement. After Brexit, the cracks will be exposed, some EU citizens and family members will fall through those cracks and others will be forced to make uncomfortable binary choices.

The EU law rights of residence and permanent residence are to be replaced with domestic UK versions, referred to by the UK authorities as "temporary status" and "settled status". EU citizens or family members living in the UK for less than five years will generally be entitled to temporary status. EU citizens and family members living in the UK for five years or more will generally be entitled to settled status. Those eligible will need to make an application for the new forms of status and will have to submit evidence of entitlement.

The UK's commitments to waive gaps in employment, low earnings and the absence of comprehensive sickness insurance will all help many affected EU citizens qualify for the new statuses on offer after Brexit. This is to be welcomed.

The majority of EU citizens and family members currently resident in the UK will probably thus retain ongoing lawful residence. This will not be the case for all those affected by Brexit, however, and some additional questions remain.

What will happen to an EU citizen who cannot produce evidence of past residence? What happens to those who miss the deadline for applying? Should a child whose future lies in the UK be registered as British if that means losing the citizenship of the country of origin of one or both parents? What will happen to the children of EU citizens living in the UK who are entitled to British citizenship but cannot prove it because their parents either never had or did not keep the paperwork to prove it? What does it mean to belong to a family where one parent has one nationality, another has a second and the children have a third? What is the impact on such a family and where should they go if one of its members is deported?

It is likely that substantial numbers of EU citizens do not acquire the new statuses. Where this happens, they and potentially their families will become unlawfully resident. They will face hostile environment measures, exploitation in the labour and housing markets and, ultimately, removal from the UK. Still more will face obstacles acquiring British citizenship.

The consequences for children are severe. Children will be wholly dependent on their parents to apply for the new types of status. Where parents fail to do so, or for some reason do not qualify, children will lose their lawful status under EU law and drift unknowingly into illegality.

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Introduction

EU citizens and their family members living in the UK under EU law have been very concerned about the nature and quality of their rights of future residence in the UK following Brexit. Despite blithe assurances from some quarters these concerns are both understandable and well founded.

If the UK leaves the EU on 29 March 2019, the default legal position — meaning if no new laws are passed — would be that all the people living in the UK under EU law would suddenly become unlawfully resident. This would expose affected individuals to the “hostile environment”, meaning it would immediately become a criminal offence to work in the UK and access to services including healthcare, bank accounts, rented accommodation and more would be restricted.

This is one of the many disastrous potential effects of a “no deal” scenario.

It is the doomsday scenario but is very unlikely to occur for two reasons:

- (i) No matter how strained the negotiations between the EU and the UK, both sides want at least a basic deal covering citizens’ rights.
- (ii) Even if there were no deal at all, the UK would almost certainly act unilaterally to grant some sort of status to the affected people.

Many of the assurances directed to EU citizens have focussed on a future right of lawful presence in the UK. While it is clearly the most important right and is the primary focus of anxiety for EU citizens in the UK, the right to be physically present in the UK is by no means the only right conferred by EU law on EU citizens and their families.

EU law has evolved also to confer a secure *quality* of residence and promote integration of EU citizens residing outside their Member State of origin. EU law confers ancillary rights of access to welfare benefits, equal treatment in the employment market, mutual recognition of professional qualifications, rights of entry for family members and more.

Both of these sets of rights are at risk for some often overlapping groups of EU citizens: the right to be

lawfully present in the UK and the ancillary rights of quality of residence.

These issues are not widely understood because the issue of rights of residence has been confused by assurances given by the Leave campaign which had no legal basis, the fact that rights of residence go beyond lawful presence and because some pre-existing issues which were concealed to some extent by ongoing EU membership can no longer be ignored.

This legal brief examines the underlying legal issues and the current proposals on how to address post-Brexit rights of residence.

For the purposes of this project, an EU family has been defined as a nuclear family with at least one partner born in an EU country and holding an EU passport. Families come in all shapes and sizes and the five variations covered by the project are:

Partner 1	Partner 2	Example
One EU27 partner	One UK partner	One French, one British
Same EU27 partner	Same EU27 partner	Both French or both Polish
Different EU27 partner	Different EU27 partner	One French, one Polish
One EU27 partner	One non EU partner	One French, one Indian
One EU27 partner		French lone parent

There are many other families also affected by Brexit for all sorts of reasons, including:

- (i) British citizens are in EU law “Citizens of the Union” with residence rights of their own elsewhere in the EU until Brexit occurs.
- (ii) An unknown number of British children cared for by a non EU parent in the UK under rulings made by the Court of Justice of the European Union in cases such as *Chen C-200/02*, *Ibrahim C-310/08*, *Teixeira C-480/08* and *Zambrano C-34/09* may lose the effective right to live in the UK when Brexit occurs.¹

¹ These cases are sometimes referred to as “derivative rights” cases. The Court of Justice has held that in certain circumstances a third country national from outside the EU must be permitted to remain within the EU to care for an EU citizen if the EU citizen would otherwise be forced to leave the EU or otherwise be deprived of the genuine enjoyment of the substance of the rights attaching to the status of a European Union citizen.

- (iii) Couples where one partner is British and the other partner is a non EU national who have a right of residence under the *Surinder Singh* ruling who will also potentially lose their rights when Brexit occurs.²
- (iv) This project focusses on nuclear or immediate family (parent(s) and child(ren)) but EU law free movement laws also apply to some other family members, referred to in the UK as "extended family members". These include (a) durable partners, (b) family members who, in the country from which they have come, were members of household or were dependent and (c) family members where serious health grounds strictly require the personal care of the family member by the Union citizen.

These families fall outside the scope of this project, however.

1. What does the current EU-UK agreement say?

On 8 December 2017, 18 months after the referendum for the UK to leave the EU, UK and EU negotiators reached an agreement on a proposed way forward on citizens' rights. The agreement is not a legally binding one but it is expected to be implemented.³ The deal applies both to EU citizens in the UK and to UK citizens in the remainder of the EU. It is only the situation of EU citizens in the UK with which this paper is concerned.

1.1 Content of the agreement

Essentially, the UK and EU have agreed that:

(i) Rights will not be automatic

² In *Surinder Singh* and subsequent cases the Court of Justice has held that an EU citizen returning to his or her home Member State after a period of genuine residence in another Member State has the right to be accompanied by third country national family members under EU law. On a practical level, this has meant that the family members of a British citizen returning to the UK from residence in another EU country can enter under simple EU family migration rules rather than complex and stringent UK family migration rules.

³ The text of the agreement is available here: <http://tinyurl.com/y9uywy2s>

Unlike rights of residence under EU law, future rights of residence will not be automatically conferred on those who meet the relevant criteria.

EU citizens in the UK will have to apply for a new immigration status under the withdrawal agreement by a cut off point currently expected to be March 2021.

(ii) Permanent status if resident five years or more

A status referred to by the UK as "settled status" but in the actual agreement text as "permanent residence" must be granted to EU citizens who:

- (a) Are resident in the UK before Brexit occurs, expected to be 29 March 2019; AND
- (b) Make an application and pay a fee expected not to be higher than £72.50; AND
- (c) Can prove they have been resident for five continuous years under EU law at the date of application AND
- (d) Pass a criminal records check equivalent to existing EU law on public good deportations AND
- (e) Can show they are still resident in the UK at the date of application.

Permanent status will include some corollary integration rights, including the same entitlement to public funds and NHS healthcare as British citizens, preservation of EU rules on transfer and aggregation of social security, equal treatment of EU and UK citizens and mutual recognition of professional qualifications.

Some existing rights in EU law will not continue, such as the right to vote in local elections.

(iii) Temporary status if resident but not yet for five years

A temporary form of status will be granted to EU citizens who:

- (a) Make an application and pay a fee expected to be not more than £72.50; AND
- (b) Have been resident under EU law in the UK before Brexit occurs but not yet for five continuous years; AND
- (c) Pass a criminal records check equivalent to existing EU law on public good deportations
- (d) Can show they are still resident in the UK at the date of application.

Once an EU citizen has acquired five years of residence, initially under EU law and then extended by this temporary status, he or she can then apply for settled status.

(iv) Resident family members qualify in line with principal applicant

Non EU family members of EU citizens will be eligible to apply in line with the EU citizen either for settled or temporary status. This applies both to immediate family members and to extended family members. Where the family member qualifies only for temporary status he or she will be eligible to apply for settled status after five years of residence.

(v) Non resident and future family members

Existing immediate family members (spouses, partners, children under 21 or dependent or dependant relatives in the ascending line) who were not resident in the UK and children born outside the UK after Brexit will be eligible to apply to enter the UK with temporary status and apply for settled status after five years.

This does not apply to non-resident extended family members (see above), who fall outside the agreement and would have to qualify under normal UK immigration rules.

Future family members other than children, in essence meaning future spouses or civil partners, also fall outside the agreement and would have to qualify under normal UK immigration rules.

1.2 Additional UK commitments

The UK has also stated that it will go beyond the requirements of the agreement. Certain provisions of EU law, as the UK interprets EU law at least, will not be applied. This falls outside the scope of the EU-UK agreement because the EU is, unsurprisingly, asking only that EU law should be applied. The key points are that

- (i) The UK will grant all EU citizens a form of temporary status lasting two years after Brexit in order to allow a "grace period" for applications to be made.
- (ii) Proof of comprehensive sickness insurance for self sufficient EU nationals or students is not required.
- (iii) The normal EU law requirement that earnings be "genuine and effective" will not be applied.

In effect, this means that any EU citizen who can prove physical residence in the UK for five years will potentially qualify for settled status and any EU citizen who can prove physical residence in the UK at the time of Brexit will qualify for temporary status and then settled status in due course.⁴

1.3 Transitional arrangements

The EU-UK have agreed in principle that there will be a transitional arrangement in place after the UK formally leaves the EU on 29 March 2019. At the time of writing this is subject to a final agreement being reached. The current agreement is for the transitional arrangement to last until 31 December 2020. The transitional arrangement would involve certain provisions of EU law continuing to apply to the UK, including EU free movement laws.

If, as seems likely, EU rights of residence continue during a transitional arrangement, there will be no immediate legal imperative during that period for relevant EU citizens to make an application for settled or temporary status because they would continue to be lawfully resident in the meantime.

At the time of writing information from the Home Office directed to EU citizens in the UK stated that there would be a two year period after exit in which to apply for the new settled status. This appears to include a short additional "grace period" after the end of the transitional arrangements on 31 December 2020 until 29 March 2021. Whether this grace period may be extended is currently unknown.

1.4 What does it mean to fall outside the agreement?

As identified above, there are some present or future family members to whom the EU-UK agreement does not apply. Where the agreement does not apply, normal UK immigration rules will apply.

The UK immigration rules on family members were found to be the least family friendly of 38 developed countries, according to the [Migrant Integration Policy Index](#). The barriers to family applications include:

⁴ See Home Office [Factsheet on EU citizens' rights agreement](#) (updated 19 March 2018).

- Very high application fees which increase by as much as 20% per year. The cost of applying as a spouse through to settlement is currently £5,754.
- Progressively harder English language requirements have to be satisfied at every stage, including pre-entry.
- The “minimum income rule” must be satisfied in spouse and partner applications and for non-British children. This starts at earnings of £18,600. Only the income of the UK-based sponsor can normally be taken into account and the earnings must be established for a period of six months for employees but up to two years for the self employed.
- It is virtually impossible for adult dependent relatives, including children over the age of 18, to enter the UK as family members.
- Foreign national children can only usually join a lone parent in the UK if that parent can establish “sole responsibility” for the child in question.
- The family immigration rules are complex and hard for a member of the public to understand.

There are therefore significant barriers to the entry of family members who cannot rely on EU law. This underlines the importance of issues beyond the mere right to be lawfully present in the UK for EU citizens in the UK.

Example

Arnold is an EU citizen in the UK. His brother is disabled and needs care. At the moment, *Arnold's* parents in Austria provide that care, but they are getting older. *Arnold* has always planned and expected to provide care for his brother in future, when his parents are too elderly.

Arnold's brother does not fall within the EU-UK agreement because he is an extended family member and is not resident in the UK. Unless *Arnold's* brother moves to the UK before Brexit, *Arnold's* brother would in effect be barred from future entry because UK immigration rules for adult dependent relatives are so difficult to satisfy.

If *Arnold* is unaware of the implications of the EU-UK agreement for his personal situation, *Arnold* will find in future that his brother will have to remain outside the UK. *Arnold* will either have to provide care remotely as best as he is able or leave the UK to

provide care in person. To put it another way, *Arnold* will have to choose between care in person for his brother and his own life in the UK, which may include his partner, children, friends and employment.

2. How will applications work in practice?

The problems experienced by EU citizens in the UK attempting to navigate notoriously long, intrusive and complex UK application forms for EU residence documents have been well publicised. The EU has as a result been anxious to do what it can to ensure that the future application process is as streamlined and simple as possible.

In addition, it seems to have dawned on Home Office officials that the massive task of registering 3 million or more people in a short space of time requires a fundamental change of approach.

2.1 Permanent residence document already held

Where an EU citizen or family member has already managed to navigate the notorious current process for applying for a permanent residence document, the EU-UK agreement provides that the old document can be converted into the new form of document free of charge “subject only to verification of identity, a criminality and security check and confirmation of ongoing residence.”

2.2 New application for documentation

Where an eligible person does not hold an existing permanent resident document, the agreement specifies that procedures for applications will be “transparent, smooth and streamlined” and that in particular:

- The authorities cannot require anything more than is strictly necessary and proportionate to determine whether the criteria have been met.
- Unnecessary administrative burdens will be avoided.
- Application forms will be short, simple, user friendly and tailor made for the criteria being applied.

The UK has indicated that considerable emphasis will be placed on an online application process and it is

known that this system has been under active development for several months. At present, supposedly "online" immigration applications in the UK actually involve printing and sending a form along with accompanying evidence. The UK has indicated it is aiming to introduce a genuinely online system including document upload.

A "technical note" published by the UK Government on the administrative procedures for applying for the new status states:

Our intention is to develop a system which draws on existing government data, for example, employment records held by HMRC will be checked, which will, for the majority, verify residence as a worker. Our priority is to minimise the burden of documentary evidence required to prove eligibility under the Withdrawal Agreement.

In giving evidence to the House of Lords Justice Sub Committee of the Select Committee on the European Union the then Immigration Minister Brandon Lewis repeatedly said that EU nationals will only need to evidence that they have been and are living in the UK in order to qualify for settled status:

All we will need to confirm is that there is no criminal record issue and that the person applying really has been, and is, living in the UK.

In the settled status system, somebody simply needs to show that they are an EU citizen living in the UK before the date. That is it. There are no issues around their relationships or their income.

He went on

the only circumstances in which I can foresee someone not being granted settled status is either if the criminal records check clearly shows that they are a criminal, or if someone claims to be an EU citizen in the UK but is not, which would be a fraudulent application.

If this system is implemented as described, it will be genuinely simple and straightforward and it will go beyond the requirements of the EU-UK agreement by waiving requirements for certain forms of evidence, such as evidence of work or evidence of holding comprehensive sickness insurance.

Whether the system will be as described remains to be seen at the time of writing.

2.3 What evidence will be accepted?

It is unclear at the time of writing what evidence will be acceptable to the UK authorities for proving past residence. The standard of proof required is not going to increase from the current requirements, meaning that official documentation such as pay slips, P60s, utility bills, school records, doctor records and tax documents will certainly be sufficient. Not all EU citizens in the UK have access to such documents, however.

It is unknown whether signed statements or letters of support from friends, neighbours or community leaders will be sufficient.

It seems unlikely that self certification by means of a declaration would be sufficient evidence.

See further below.

3. What gaps are there in the current agreement?

There are undoubtedly gaps in the agreement between the EU and UK. If these were allowed to persist, considerable numbers of EU citizens currently resident in the UK will find themselves unlawfully resident when the various deadlines finally expire. To some extent, however, the UK has taken steps to remedy deficiencies in EU law, or at least in UK interpretation of EU law.

3.1 Problem of lawful residence

The text of the EU-UK agreement adheres to EU law. That law features a number of problems to do with acquisition of rights of residence and permanent residence. For example:

- (i) Permanent residence is acquired after five years of continuous lawful residence, but gaps in employment because of caring responsibilities, unemployment or for other reasons or gaps caused by time spent outside the UK, for example as a seaman or aircrew, can mean that some individuals never acquire permanent residence.
- (ii) In order to acquire rights of residence in EU law, a self sufficient person or a student needs to show he or she has comprehensive sickness insurance. The UK has interpreted the sickness insurance requirement as something over and

above access to the NHS, usually meaning the person will need to hold a European Health Insurance Card or private health insurance.

- (iii) A worker or self employed person must in EU law demonstrate a "genuine and effective" level of earnings to have a right of residence and acquire permanent residence. The UK has interpreted "genuine and effective" to mean in excess of £8,000 per year by applying what is called the Minimum Earnings Threshold.
- (iv) Children do not themselves possess rights of residence under EU law. Their rights depend upon the status of their parents. This will cause serious problems for children who are abandoned or taken into care or where their parents neglect their own immigration status or those of their children.

These issues in combination mean that potentially hundreds of thousands of EU citizens in the UK will not possess a right of residence. Further, many who have at times did have a right of residence will not have held it continuously for the five years necessary to have acquired permanent residence.

Examples

Marie is an EU citizen who has been living in the UK for 30 years. She has a British husband and two British children, who are now adults. She has never worked for five years continuously and she does not have private health insurance or a European Health Insurance Card because she was entitled to use the NHS. Marie has therefore never acquired permanent residence and does not currently have a right of residence in EU law, according to the UK authorities.

Nancy is an EU citizen who has been living in the UK for 10 years. She is married to a British citizen. She worked on and off for the first six years but always part time and her earnings have never exceeded £8,000 per year. She stopped working to have children. Nancy has therefore never acquired permanent residence and does not currently have a right of residence in EU law, according to the UK authorities.

Odette is an EU citizen who is seven years old. Her father is an EU citizen and her mother is a citizen of a non EU country. Odette was born outside the UK. Odette can have an EU law right of residence as the child of her father, but only as long as her father himself has a right of residence. If Odette's father loses his job or leaves the workforce to care for

Odette or leaves the UK then Odette will lose her right of residence, as will Odette's mother.

The problems caused by the interpretation of the UK authorities of the comprehensive sickness insurance and genuine and effective earnings issues are addressed to some extent by the unilateral (and non binding) UK statement that certain requirements of EU law will be waived.

The fact that children do not themselves possess rights of residence is not addressed, and as is discussed in a separate legal briefing this issue is exacerbated by the way in which British nationality law interacts with EU law.

The problem of continuous residence being broken is not addressed by additional UK commitments, meaning that EU citizens who have spent more than six months outside the UK in a 12 month period will not be eligible for the new permanent status.

3.2 Problem of proof

In order to prove eligibility for temporary or permanent status under the agreement, an applicant will need to present proof of residence. For permanent status this will need to be five years' of proof of residence in the UK. For temporary status this will need to be proof of residence in the UK before Brexit.

It is not clear what proof of residence will be accepted for these purposes by the UK authorities.

At present, the burden rests entirely with an applicant for a permanent residence document to prove that he or she is entitled to the document. It is for the applicant to present the evidence and the Home Office will only in very limited circumstances assist an applicant with obtaining the records of another government department.

The UK has signalled an intention to change this approach for applications for settled status by itself accessing and checking existing government records, such as the database showing national insurance contributions, or HMRC records in order to verify applications. The consent of the applicant would presumably be sought before any such checks were made, although the UK legal framework probably allows the UK authorities to conduct such checks without consent.

The vast majority of applicants would no doubt be very happy not to have to furnish documentary proof and to let the authorities do it for them.

Some will understandably be concerned about privacy issues that arise from their government records being cross checked and/or will be concerned about losing control of the process or the evidence which is relied upon in order to make a judgment about their status.

Irrespective of what system is employed, it is likely there will be substantial numbers of EU citizens in the UK who cannot produce proof of their residence. Those most likely to be at risk include:

- Children
- Elderly dependent citizens
- Other dependent citizens, such as dependent spouses or partners whose names do not appear on utility bills or similar
- Economically inactive citizens and those who have at some point been economically inactive
- Unemployed citizens, particularly the young
- Carers
- Self employed workers without a permanent or formal address
- Citizens economically active but in undocumented sectors, such as cash in hand jobs
- Agricultural or other seasonal or occasional labourers, particularly if employed by gangmasters
- Individuals in abusive relationships
- Victims of trafficking

Those who move home frequently or who do not have a permanent home may well have lost documents they might at one point have possessed. Some will not have retained paperwork for various reasons. Almost no EU citizens arriving before February 2016, when the June date for the referendum was first announced, would have expected that such records would be needed, after all. All of these citizens are at serious risk of being excluded from future status and thereby rendered unlawfully resident when the applicable deadline is reached.

3.3 Failure to apply

It is highly likely that some EU citizens who are eligible for temporary or permanent status will not make applications.

If an EU citizen fails to make an application, he or she will become unlawfully resident once the relevant deadline passes and will experience hostile environment measures such as forced eviction, loss of driving licence and closure of bank account as well as becoming subject to administrative removal from the UK.

Those most at risk of simply not applying include:

- Those who do not follow the news at all or read the gov.uk website, which is likely to amount to a very substantial number of people
- People who miss deadlines, even important ones, of whom there is a substantial number
- Very long term residents who do not realise they need to make an application. Recent examples of Commonwealth citizens detained for removal or denied services after living in the UK since early childhood illustrate this issue.⁵
- EU citizens who have already received a "permanent" residence document may not realise that it is in fact "impermanent"
- Children of EU citizens where there is no British citizen or settled parent
- EU citizens who do not speak, read or write English and/or with poor literacy in their own language
- EU citizens with learning difficulties or mental health issues
- Elderly EU citizens who do not know about the need to apply, assume it does not apply to them or who feel unable to apply because it seems too complex
- EU citizens who think they are ineligible, for example because of minor criminal convictions which would probably not in fact be a barrier to obtaining status

⁵ 'I've been here for 50 years': the scandal of the former Commonwealth citizens threatened with deportation, *The Guardian* (21/2/18); Londoner denied NHS cancer care: 'It's like I'm being left to die', *The Guardian* (10/3/18)

The UK's approach of requiring EU citizens to make an application or face criminalisation gives the registration process the flavours of a regularisation scheme, although it is an important point of difference that the eligible applicants are already lawfully resident. The DACA (Deferred Action for Childhood Arrivals) regularisation programme in the United States is an imperfect analogy for many reasons but it is instructive that it was estimated by the Migration Policy Institute in November 2017 to have a take up rate of 68% of eligible migrants.

3.4 Criminal convictions, past or future

The existing EU public good tests will apply for past conduct by EU citizens seeking temporary or permanent status. These thresholds are higher than the normal UK approach, in particular requiring that the authorities prove that "the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."

However, the normal UK rules on deportation will apply for any conduct after Brexit. This means that any conviction attracting a sentence of 12 months or more will lead to "automatic" deportation, subject to a human rights appeal. It has been estimated that around 26,000 EU citizens in the UK receive such a sentence every year and would therefore face automatic deportation.

It is not necessary for a person to have committed a criminal offence or for the sentence to be 12 months or more for a migrant, even one with permanent status, to face deportation under UK rules. Persistent low level offending can be considered sufficient by the Home Office as can "serious harm" caused by a low level offence.

3.5 Family members

As mentioned above, immediate and extended family members resident in the UK at Brexit will be eligible for temporary or permanent status. Immediate family members such as children, spouses or parents who are not resident in the UK at Brexit will be allowed to come to the UK in future under existing EU free movement rules.

Non-British children born abroad in future to EU citizens who are currently resident in the UK will also be allowed to enter the UK under existing EU rules. For example, if an EU citizen travels to his or her country of origin in order to give birth or gives birth

on holiday, that child will be allowed to enter the UK under existing EU rules.

These elements of the EU-UK agreement are very important in practical terms for some EU citizens. This is because UK immigration rules are very restrictive and UK immigration applications are very expensive. It is virtually impossible for a settled foreign national or British citizen to bring a foreign national parent to the UK under current UK immigration rules, for example.

Extended family members who are not resident at Brexit will not be allowed to enter under EU rules in future. This will in effect bar them from future residence, although they will be able to enter the UK for visits without a visa, unless visa restrictions are imposed (which seems very unlikely).

Future spouses or civil partners of EU citizens currently resident in the UK also fall outside the terms of the agreement. Where an EU citizen in the UK with temporary status marries a spouse after Brexit, the spouse will not be eligible to enter. Where an EU citizen with permanent status marries a spouse after Brexit the full force of UK immigration law will be felt. The EU citizen will need to show earnings of at least £18,600 for a period of six months and the spouse will have to pass an English test in order to enter, amongst other requirements.

Conclusion

There are a number of serious problems facing EU families in the UK after Brexit. Prior to Brexit these problems already existed but were largely hidden. Difficulties in acquiring permanent residence affected benefits, not usually the right to be physically present in the UK, and "work arounds" existed because the person concerned would sometimes still have a right of residence in the meantime.

The UK's commitments to waive gaps in employment, low earnings and the absence of comprehensive sickness insurance will all help many affected EU citizens qualify for the new temporary or permanent status on offer after Brexit. This is to be welcomed.

The UK commitments do not address all of the problems faced by families, however. The requirement that EU citizens must present some proof of residence and must proactively make an application is likely to mean that substantial

numbers of EU citizens do not acquire the new statuses. Where this happens, they and potentially their children will become unlawfully resident. They will face hostile environment measures, exploitation in the labour and housing markets and, ultimately, removal from the UK.

In addition, policy makers and campaigners have focussed on rights of residence and some ancillary rights but have largely overlooked the rights of children.

The commitments offered by the UK are not retrospective and will not affect past status in the UK. For affected adults such as stay at home parents or carers, this will have the effect of delaying when they will qualify for naturalisation as British. This issue is discussed in more depth in a separate briefing paper.

The legacy of the problems in acquiring permanent residence are likely to result in significant problems for the children of many EU families many years, sometimes decades, down the line.

ABOUT THE PROJECT

EU families and 'Eurochildren' in Brexiting Britain is funded by the Economic and Social Research Council (ESRC) as part of *The UK in a Changing Europe* initiative. The study is carried out by a team at the Institute for Research into Superdiversity at the University of Birmingham in partnership with The 3 Million and Migrant Voice. Its aim is to investigate the impact of the EU referendum on EU families and their children living in the UK.

ABOUT IRIS

Established in 2012, the Institute for Research into Superdiversity at the University of Birmingham has rapidly become one of the world's leading research institutes dedicated to advancing knowledge and expertise in the field of superdiversity

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