

Brexit: ‘Nothing is agreed until everything is agreed’

Charities may not have been among the sectors consulted on Brexit but the changes will hit them all the same.



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Philip Trott advises charities and social enterprises to be mindful of the latest negotiations when considering their EU employees’ future in the UK

Almost two years after the UK voted to leave the EU, negotiators from the two sides published a joint report setting out, among other areas, the agreement reached on the controversial issue of protecting the rights of EU nationals in the UK post-Brexit. On 19 March 2018, UK and EU negotiators agreed terms for the Brexit transitional period, set to last from 29 March 2019 until 31 December 2020.

What has been ‘agreed’ so far?

Firstly, it is important to note the caveat in the report: that ‘nothing is agreed until everything is agreed’. Although the report reflects agreement ‘in principle’ on key issues of citizens’ rights following Brexit, nothing is set in stone until final agreement is reached in all matters pertaining to the UK’s withdrawal and those agreements are enshrined in law.

Keeping that in mind, what does the post-Brexit landscape look like for EU nationals hoping to come and live in the UK?

The Prime Minister Theresa May has guaranteed on 19 October 2017 that EU nationals currently living ‘lawfully’ in the UK would be able to stay here. The joint report builds on this and separates EU nationals into categories depending on when they arrive(d) in the UK. The determinative date will be 29 March 2019, the date of the UK’s formal withdrawal from the EU.

Currently, EU nationals who have been living in the UK for five continuous years (as workers, self-employed, students, job-seekers or self-sufficient) automatically acquire ‘permanent residence’ status which allows them to remain in the UK indefinitely and apply for British citizenship after one year of further lawful residence. A new ‘settled status’ will be introduced to replace permanent residence. This is intended to involve a streamlined, low-cost and user-friendly application process.

Those who have been continuously and lawfully living in the UK for five years by 29 March 2019 will be able

to obtain settled status and stay in the UK indefinitely. Those arriving in the UK by 29 March 2019, but who have not been here for five continuous years, can apply to stay in the UK until five years have elapsed and then apply for settled status.

Family members who live with or join EU nationals in the UK by 29 March 2019 will also be able to apply for settled status after five years here.

The latest development has been that EU citizens arriving in the UK during the Brexit transitional period will have ‘the same rights and guarantees’ as those who arrive before 29 March next year.

Questions left unanswered

EU negotiator Michel Barnier referred to the transitional compromise agreement as a ‘decisive step’ towards an overall deal but noted that it remained only a step in an on-going process. Further negotiations will focus on the nature of the permanent future relationship between the EU and UK.

EU nationals concerned about their status in the UK post-Brexit should take advice before the new settled status system is introduced. In particular, those who have already acquired permanent residence should obtain a permanent residence card to prove that they are entitled to apply for the new settled status immediately.

Remember, nothing is agreed until everything is agreed!

Find out more

The joint report setting out the agreement reached on protecting the rights of EU nationals in the UK post-Brexit can be found here:

https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdoms-orderly-withdrawal-european-union_en

Theresa May’s open letter on EU nationals can be found here: <https://www.gov.uk/government/news/pms-open-letter-to-eu-citizens-in-the-uk>