



PLP RESEARCH BRIEFING

EU citizens' rights in the 'transition period': What does the law say?

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WHAT IS THE LAW THAT WILL APPLY TO EU NATIONALS DURING TRANSITION PERIOD?

The purpose of this summary is to describe the law applicable to EU nationals¹ residing in the UK, or who arrive in the UK, up until 31 December 2020. The position is stated on the basis of the law as at 10 February 2020, and is published by way of update following [our previous briefings](#) on what the position would have been if the UK had left the EU without a deal. This summary does not attempt to address every scenario and should not be taken to constitute legal advice: it is an attempt to summarise the position on the basis of the legislative provisions that have been adopted or proposed to date, and Government policy statements. If the Government does not extend the transition period post 31 December 2020, then we anticipate that there will be significant changes to the status quo for EEA nationals from 1 January 2021. We intend to prepare a further briefing later in the year when we have more clarity on the situation post the transition period.

- The main takeaway is that throughout the transition period, until 31 December 2020, almost all EU rules will continue to apply in the UK. The jurisdiction of the Court of Justice of the European Union will continue until the end of the transition period. The four freedoms: the freedoms of movement, services, capital and goods will continue until the end of the transition period. This means the UK will remain part of the customs union and free market until 31 December 2020 and British citizens will continue to be able to move freely around the EU and vice versa.
- Most importantly EU nationals and their family members in the UK throughout the transition period **should not be asked for proof** of settled or pre-settled status to access healthcare, to rent property or to gain employment until 1 January 2021.² An EU, EEA or Swiss passport or national identity card, or a residence card issued by the Home Office if someone is the family member of an EU, EEA or Swiss citizen, is sufficient to show that someone is lawfully in the UK and lawfully entitled to work and rent property until the end of the transition period.
- EU free movement rights continue in force during transition. This means that EU nationals and their family members can continue to enter and reside in the UK freely in accordance with their Treaty rights, the Citizens' Directive and the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations').
- The continuance of freedom of movement means that EU nationals and their family members can continue to move to the UK before 31 December 2020 without requiring any other visa or form of leave to remain in the UK. Non-EU nationals holding EEA state residence cards issued by EU member states under the Free Movement Directive will continue to be able to join their EEA citizen family members in the UK using these until the

¹ Save where indicated otherwise, this includes nationals of EEA states, and the family members of EU and EEA nationals, to the extent that they have or would have had a right of residence under EU law by reason of their relationship.

² See statements to this effect by the Government [here](#) and [here](#).

end of the transition period. Any EU nationals and their family members who arrive before the end of the transition period can apply for pre-settled/settled status.

- Most of the statutory instruments that were laid by the Government as “no deal” SIs under section 8 of the EU (Withdrawal) Act 2018 (EUWA) (described in our [previous briefings](#) on citizens’ rights in a ‘no deal’ scenario) are now due to come into force on 31 December 2020.³ That date is defined as “Implementation Period (‘IP’) completion day”.⁴
- The [Immigration Amendment \(EU Exit\) Regulations 2019](#) which among other things would have removed the prohibition on systematic verification of EU nationals’ right to reside in the UK have not been approved by Parliament within the 28 days required under the urgent case procedure. They have therefore fallen and are no longer law.
- EU nationals presently claiming benefits, tax credits or housing assistance in the UK will continue to be able to do so during the transition period no matter whether they have pre-settled or settled status. Where relevant, those without settled status (including those who have pre-settled status or are continuing to rely on their EU law right to reside) will need to prove a relevant ‘right to reside’ to access benefits and housing.⁵
- EU nationals will be [exempt from NHS](#) charging during the transition period no matter whether they hold pre-settled or settled status.
- EU nationals visiting the UK can continue to use their European Health Insurance Card (EHIC) until 31 December 2020.
- Any insolvency voluntary arrangements and bankruptcy arrangements in the EU remain valid and will continue to be recognised during the transition period.
- Any restraining orders or non-contact orders against an individual in the EU will continue to be recognised during transition.

³ European Union (Withdrawal Agreement) Act 2020, schedule 5, paragraph 1(1)

1(1) Any provision in subordinate legislation made before exit day under—

(a) any provision of the European Union (Withdrawal) Act 2018 (or any provision made under any such provision), or

(b) any other enactment, which provides, by reference to exit day (however expressed), for all or part of that or any other subordinate legislation to come into force immediately before exit day, on exit day or at any time after exit day is to be read instead as providing for the subordinate legislation or (as the case may be) the part to come into force immediately before IP completion day, on IP completion day or (as the case may be) at the time concerned after IP completion day.

⁴ European Union (Withdrawal Agreement) Act 2020, s 25(1)(a).

⁵ See [The Social Security \(Income-related Benefits\) \(Updating and Amendment\) \(EU Exit\) Regulations 2019](#), [The Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#) and [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) \(Amendment\) \(EU Exit\) Regulations 2019](#). Child Poverty Action group has [received permission in the High Court](#) to challenge the lawfulness of The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019. The hearing is scheduled for 18 and 19 February 2020.

- Self-employed EU nationals maintain the same rights to establish a business or undertake work in the UK during the transition period.⁶
- EU nationals can continue to claim social security, pensions and other benefit contributions accrued from living in another EU member state under the existing EU social security co-ordination rules.⁷
- Any court orders made in the court of an EU member state applying to EU nationals living in the UK in relation to child maintenance payments, divorce proceedings or child custody arrangements will continue to be recognised during the transition period.⁸
- EU and Swiss nationals continue to be eligible for home fee status and student finance support for courses starting in the 2020/21 academic year on the same basis as before exit day.⁹

⁶ [The Freedom of Establishment and Free Movement of Services \(EU Exit\) Regulations 2019](#) discussed in an [earlier briefing](#), remove the right for equal treatment for EEA, Swiss and Turkish nationals who are self-employed but do not come into force until 31 December 2020.

⁷ [The Social Security Coordination \(Regulation \(EC\) No 883/2004, EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019](#), which could affect access to benefits and pensions if there is no longer coordination between the UK and the relevant EU member state come into force on 31 December 2020.

⁸ [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) which could affect these arrangements if there is no longer coordination between the UK and the relevant EU member state come into force on 31 December 2020.

⁹ See the Government statement [here](#).



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