



GMS Flash Alert

Immigration Edition

2017-112 | June 28, 2017



United Kingdom – Government Publishes Opening Position on Future Status of EU Migrants

On 26 June 2017, the government of the U.K. published its policy paper on the status of existing European Union (EU) migrants in the U.K. post-Brexit.¹ This follows the European Commission's publication of a working paper on the same subject on 24 May 2017.² These opening positions will form the basis of continuing negotiation between the U.K. and EU. Unless no agreement is reached, EU nationals in the U.K. and British nationals in other EU states may see their status ending up being somewhere between these two positions.

The *GMS Flash Alert* reports on the EU's and U.K.'s respective positions on how existing EU migrants will be impacted by Brexit.

WHY THIS MATTERS

Since the U.K. referendum vote on 23 June 2016³, migrants relying on the EU's principle of free movement of people within the EU have been nervous about what they will be able to do as the U.K. prepares to leave the EU and once Brexit actually occurs (presumably in March 2019). Businesses have been left to plan as best they can amidst an atmosphere of uncertainty.

The publication of approaches by both negotiating parties provides some key parameters that indicate where negotiations might end up in an agreement concluded between the U.K. and the EU. Employers and individuals may wish therefore to take further steps to plan for the future.

EU Proposal

The EU proposes life-long enforceable rights of residence and benefits for anyone (and their families) who reside or have resided in their host EU country before the U.K. withdrawal date. In order to identify those who have rights of free

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movement, EU citizens could apply for documents proving their right to be in the United Kingdom. These documents would be available free of charge or at the same cost as a similar document provided to nationals of the host country (e.g., the cost of a passport).

U.K. Proposal

The U.K. policy paper suggests that after the withdrawal date, all EU migrants will need to make applications to evidence a new right of residence. However, in order to avoid a surge of new EU migrants before the withdrawal date, it proposes a different cut-off date by which EU migrants will have had to be resident to qualify for residence in the U.K. post-Brexit. This cut-off date will be no earlier than 29 March 2017, which is when the U.K. triggered Article 50, starting the formal process of leaving the EU.

Securing Rights

After the withdrawal date, migrants will have a two-year “grace period” in which to make applications to establish their status in U.K. law. There will also be a new voluntary scheme before the withdrawal date so that these applications can be made earlier. Those who qualify for permanent residence (normally by having resided for five continuous years) will have to apply for “settled status.” There will be a simplified process for anyone who already has a document certifying permanent residence. People who do not qualify for permanent residence by the end of the grace period will need to apply for temporary residence, under rules which are not yet set out.

Migrants who came to the U.K. after the cut-off date should not assume they may ultimately qualify for permanent residence. Indeed the concept of permanent residence will no longer exist – rather, it will be “indefinite leave to remain.”

Other Details

The policy paper also proposes to relax the requirement for students and self-sufficient people to have had comprehensive sickness insurance for their time in these categories to count towards permanent residence. Non-EU national family members of EU migrants who reside in the U.K. before the withdrawal date will qualify under the existing EU rules. Those who come after the withdrawal date will need to qualify under the much stricter U.K. rules.

Anyone who qualifies under these rules will be able to live, work, and study in the U.K., and have access to public services as British nationals do.

KPMG NOTE

A number of points are not dealt with in the proposal:

- It is unclear what will happen to existing residents who will most likely not qualify for permanent residence in the future, for example due to a work-related travel pattern – i.e., “commuters.”
- People obtaining settlement in the U.K. outside of EU rules currently need to meet English Language requirements and pass the “Life in the U.K.” test. It is not stated whether EU nationals will need to meet these to get “settled status.”
- The status of people who do not have permanent residence but lived in the U.K. during a period in the past is not clear.

Future Migrants from the EU

Both the U.K. and EU proposals assume that free movement of people between the EU and U.K. will end after the U.K. leaves the EU. Neither sets out a plan for future immigration rules for new EU migrants to the U.K. or British migrants to the EU. These will form part of the wider Brexit negotiations and new bilateral arrangements if applicable.

KPMG NOTE

EU nationals in the U.K., British nationals in the EU, and their respective employers should be thinking about what their situation may be and how to prepare. The additional complexity caused by the U.K. proposal potentially makes this more difficult. Factors to consider are the period of residence, the activities being undertaken, and the family situation. There is also an emotional, as well as a practical, dimension to this. Continuing uncertainty takes its toll on people's personal lives as well as business planning.

KPMG LLP (U.K.) is working with many businesses to help them determine the impact under these two positions and plan amidst this uncertainty, as well as how to appropriately engage with individuals who are affected. Businesses that are doing so now are likely to be better prepared for potential outcomes of the Brexit negotiations, while their staff can have greater clarity and security.

FOOTNOTES:

1 See: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu/the-united-kingdoms-exit-from-the-european-union-safeguarding-the-position-of-eu-citizens-living-in-the-uk-and-uk-nationals-living-in-the-eu>.

2 See: https://ec.europa.eu/commission/sites/beta-political/files/citizens-rights-essential-principles-draft-position-paper_en.pdf.

3 For prior coverage, see the following issues of GMS *Flash Alert*: [2016-073](#) (27 June 2016) and [2016-070](#) (22 June 2016).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in the United Kingdom.

The KPMG Legal Services – Immigration Team has a wealth of experience in transactional, advisory, and compliance assurance services. We will be able to advise your business in relation to practical considerations in light of the above changes, as well as what this means for your long-term recruitment and compliance strategies.



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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom.

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