

## Brexit and eYou: information for EU/EEA nationals

### EU nationals articulate concerns about their future

The Institute for Conflict Research's *Brexit and eYou* project is supporting EU/EEA nationals to engage with decision-makers and to build their capacity to advocate for protection of their rights. The project aims to articulate their concerns about Brexit's potential impact on their economic and social rights, and to highlight perspectives which could otherwise be overlooked at government and EU Commission level in the Brexit negotiations.

This briefing paper is an update on ICR's May 2018 paper. Six months before the UK leaves the EU, despite the government's assurances, there is still no information on many issues affecting the legal status of EU nationals. At a meeting between EU nationals and MLAs in Stormont on June 13th, 2018 the following topics were highlighted:

- Lack of detailed specific information or advice
- Concerns about residency
- Diminished sense of belonging
- Concerns around accessing work, healthcare and education.

### The draft Withdrawal Agreement and EU Settlement Scheme

The UK government's position is that its draft Withdrawal Agreement with the EU has delivered on its commitment to secure the rights of EU citizens in the UK. Its EU Settlement Scheme outlines how EU citizens and their families can secure their long-term status in the UK, enabling them and their families to stay with the same access to work, study, benefits and public services that they currently enjoy.<sup>1</sup> It is planned that the scheme, which is currently being piloted, will be fully operational by March 30, 2019.

However, it is still unclear to many EU/EEA citizens in Northern Ireland how the new category of 'settled status' will impact on them. It is of particular concern that the UK could leave the EU without agreement, and without the guarantees in the draft Withdrawal Agreement.

1. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718237/EU\\_Settlement\\_Scheme\\_SOI\\_June\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf)



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## LACK OF ADVICE

### ■ Knowledge of rights & increasing requests for advice

EU/EEA nationals in Northern Ireland need tailored advice and information which meets the wide range of questions which concern them.

“ I work with Polish citizens who have been recruited by an employment agency in Poland to work in Northern Ireland. Many are not aware that they have to take action to maintain their right to live and work here.

The Law Centre (NI) and NI Human Rights Commission (NIHRC) report an increase in the number of queries about EU nationals' legal status after Brexit.<sup>2</sup>

Access to free immigration legal advice is extremely limited within the voluntary and community sector. Current providers include Citizens Advice, the Migrant Centre (NI) in Derry, and the South Tyrone Empowerment Project which provides a service limited to users within a catchment area around Dungannon. Private practice solicitors can also provide immigration advice although cost can be a barrier.

The Law Centre (NI) will employ, with support from The Executive Office, a full-time immigration Legal Adviser from autumn 2018. Further support will be needed to meet the need for urgent, immediate advice as well as long-term support for the approx. 88,000 non-Irish EU citizens in NI.

### ■ Gaps being filled by unqualified providers

In the interim, concerns have been raised about instances of EU nationals paying significant amounts of money to fraudulent individuals or companies purporting to offer immigration advice.<sup>3</sup>

2. <https://www.thedetail.tv/articles/brexit-vote-sparks-immigration-advice-demand-amid-concern-over-free-specialist-support>

3. See also NISMP on immigration legal services for asylum seekers: <http://www.migrationni.org/DataEditorUploads/March%202016%20Legal%20Representation%20paper.pdf>

### ■ Accessibility of information

The House of Common's Committee on Exiting the European Union (the Select Committee) has stressed the importance of the widespread distribution of accessible information on the settled status scheme:

“ The provision of information relating to the new scheme will be of paramount importance in ensuring its success. There are two clear audiences that need to know why it is necessary and how it will work: EU citizens currently resident in the UK and those who may have reason to ask a EU citizen to demonstrate their immigration status. The three million European citizens are spread throughout the UK, including many remote and rural locations. They may not all be connected to the internet or have a good mobile telephone signal. Many do not currently understand that applying will be necessary to regularise their status in the UK. <sup>4</sup>

Advice and information services in Northern Ireland are often only available in English; there is no provision of interpreters in Citizens Advice or other council-run services. Web-based information is inadequate unless it is accompanied by expert advice. Information must be accessible to users with a range of disabilities.

4. <https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/143902.htm>; July 23, 2018

5. Murray, O'Donoghue and Warwick, Discussion Paper on Brexit, January 2017, pp.28-29. This research claims that 'there are multiple combinations of residency and citizenship entitlements in NI and Ireland that arise from the conclusions of the Phase 1 Report. Depending on which nationalities an individual has and where they are resident both before and after Brexit, there will be entitlements to different packages of rights', such as: (1) Irish citizen (no UK citizenship); (2) UK citizen (no Irish citizenship); (3) Dual Irish-UK citizen (no NI connection); (4) Dual Irish-UK citizen (part of the 'people of NI'); (5) Non-UK citizen who is entitled to Irish citizenship (e.g. USA); (6) Non-Irish EU; (7) Non-EU, Non-UK; (8) 'Worker' in Ireland with EU/UK citizenship; and (9) 'Worker' in UK with EU/UK citizenship.

6. <http://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>; April 2018

## RESIDENCY

### ■ Differences in the legal basis of rights

The right of EU/EEA nationals in Northern Ireland may be based on differing legal treaties or policies depending on when that person made Northern Ireland their home.

“ I moved to Northern Ireland before my country joined the EU. My rights to live and work here come from UK immigration law. Does this make a difference to my future right to reside in the UK after Brexit?

“ Under the Good Friday Agreement, my children are defined as 'among the people of Northern Ireland'. Yet the changes imposed by Brexit are propelling me further away into a different category of citizenship.

Independent research commissioned by the Joint Committee of the NIHRC and Irish Human Rights and Equality Commission (IHREC) found that the December 2017 joint Phase 1 report of the EU and the UK created the potential for nine different categories of citizenship which would create a burdensome and complicated system for the enforcement of rights. 'Without alteration, uncertainty as to an individual's ability to live, work, access essential services, and be joined by family members will exist. Such categorisations may also have a chilling effect on access to services and could lead to economic hardship for those uncertain of their rights.'<sup>5</sup>

### ■ Proving 'lawful residency' to obtain the new 'settled' status

“ I work in the casual job market, picking up work when I can; I don't have pay slips and receive my pay in cash. What documentation can I provide which will satisfy the Home Office that I have been permanently resident here for 5 years?

Providing evidence of settled status may be particularly problematic for certain groups. Aside from marginalised groups or those living chaotic lives, this also includes: people without bank accounts (estimated at 3.4% of 18+ year olds in the UK<sup>6</sup>), or people who may not be named on a rental agreement because they are informally subletting or who are part

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of a family where only one person's name is on the paperwork. Difficulties may also arise where an individual has held an unpaid caring role at home, or where relationships have broken down and the former partner who has the necessary documentation cannot be contacted.

## ■ 'No deal'

If there is no final agreement, and the UK leaves the EU without a deal it is unclear how EU citizens in the UK would establish a right to reside and work, to access services, or the right to return after a period of absence.

“Where do we stand if the UK exists the EU on March 29, 2019 without any deal? Will the settled status scheme apply with its envisaged 2-year transition period, or will our right to work, access health and education disappear overnight?”

The government's promise to honour its commitments to EU citizens in the UK in the event of 'no deal' should be given legal effect.

## ■ Evidence of adverse impact

“I have advised over 20 homeless EU nationals sleeping rough recently as a result of losing their right to Job Seekers Allowance and thus housing benefit. These numbers are increasing and, without housing benefit, no institution can shelter these individuals. Ethnic Minority Advisor for Newry, Mourne and Down.

“On occasion, Jobs and Benefits staff are unable to process social security entitlement for EU/EEA nationals who, although entitled to permanent residency and thus social security as EU citizens, cannot provide the required documentation to prove their residency.” Law Centre (NI).

Brexit has the potential to further divide communities, as those with fewer resources will feel its impact disproportionately. Those on low incomes, without English language skills or unable to pay for advice, or pay the settled status registration fees (£65 adults, £32.50 children) will struggle to access information and will be the least able to cope with the registration scheme.

## ■ Lack of trust in the Home Office

The experience of the 'Windrush generation' has created unease among many EU citizens and contributed to mistrust of the Home Office, its systems and processes, with some expressing no confidence that the new settlement regime will be correctly implemented.

The Select Committee has called for the government to issue a physical document – rather than a digital code to confirm settled status.

“We are concerned that the Home Office is introducing a new system on a large scale, and which relies upon employers, or landlords, understanding and embracing a new way of working. This might work well for many, but for some the risk of a civil penalty for employing or renting to someone without the correct immigration status, and a lack of understanding of the new system, may deter them from employing or renting to EU citizens...”<sup>7</sup>

## SENSE OF BELONGING

### ■ Impact of the Immigration Act 2016 provisions

The Home Office's hostile environment policy and the provisions of the immigration legislation were targeted at non-EU/EEA nationals, but these are now being extended to EU/EEA nationals. This is further contributing to the erosion of a sense of belonging.

“I was asked to provide photo identification when I was renewing my membership of my university. This has never happened in my long history of membership.

### ■ No place for difficult conversations

“I find it very frustrating that when I talk about Brexit at work or among friends, my concerns about the practicalities are too quickly dismissed.

7. Paragraphs 48 and 49, Select Committee report, footnote 3 above

8. Presentation of key findings, Brexitlawni, June 26, 2018 <https://brexitlawni.org/library/resources/brexitlawni-launch-of-key-findings/>

## ■ Heightened feeling of vulnerability

“Since the EU referendum result, I feel I have to justify myself or prove my worth. I have been asked by members of the public 'what are you doing here? Are you on benefits?' When I was on the street phoning my mother in my native language, a passer-by shouted 'Go home' at me.

“When we apply for settled status in order to have our rights protected, will we have to demonstrate that we are 'good EU citizens' as opposed to 'bad EU' citizens? What further divisions will that create between communities here?”

Reflecting on the long-term consequences if Brexit were to have an adverse impact on the economy, the Chief Commissioner, NIHR, has expressed concerns about the risk of increasing inequality and levels of discontent being exploited:

“... my terrible fear ... is that what will ferment [disgruntlement] will be around issues of race, migration and immigration. And I think if we are worse off economically as a result of leaving the EU ... it has all kinds of ramifications ... in terms of how that discontent manifests itself and that might well be around [race] issues ...”<sup>8</sup>

## ■ Experiences of an inadequate response to hate crime

“I feel there is a growing undercurrent of racism; I am worried that racial profiling would be inevitable following Brexit, particularly when crossing the border between Northern Ireland and the Republic.

A number of participants have experienced community aggression and increasing hate incidents/crimes following the EU referendum.<sup>9</sup> Some fear that the referendum has given legitimacy to xenophobic behaviour among members of the public.

9. The PSNI record a slight fall in racially motivated incidents and crimes in 2017/18 compared to 2016/17. By contrast in July 2018 an upward trend in racially and religiously aggravated offences in 2016/17 was reported in England and Wales. The data also shows sharp increases in these offences in the aftermath of several events such as the beginning of the EU referendum campaign in April 2016 and again after the result in June 2016. The Inspectorate warned that the same could happen when the UK leaves the EU in 2019. <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/understanding-the-difference-the-initial-police-response-to-hate-crime.pdf>

“ I reported my car getting damaged to the police. They took some details, but I was not satisfied that they did enough to protect me and my family. What are the politicians doing to support the police, educate the public about negative stereotyping, and to stop violence against BME communities?

The Equality Commission for Northern Ireland has highlighted ‘the need to effectively tackle prejudicial attitudes and hate crime in NI, including on the grounds of race, which may arise as a direct result of the negotiations or in the aftermath of any agreement. This includes tackling prejudicial attitudes and hate crime towards EU workers ... [as well as] highlighting and valuing the important contribution that migrant workers and workers from across the EU make to the NI economy, across all sectors, as well as to wider society.’<sup>10</sup>

## ACCESSING WORK, HEALTHCARE AND EDUCATION

Some employers are already asking their EU/EEA employees about their future plans after Brexit and whether they intend to apply for settled status. This is unsettling and intrusive.

### ■ Feared loss of existing rights and entitlements

There is anger and disbelief among some EU nationals that, despite being valued members of Northern Ireland society, paying tax and national insurance for many years, they may now have to prove their entitlement to rights, including the right to vote or stand for election, which up to now have been enjoyed without question.

### ■ Limitations of the Common Travel Area

“ The Agreement is silent about the right of frontier workers not in the UK on Brexit day to work in the UK in the future. What will be decided about the use of European Health Insurance Cards in either jurisdiction, the rights of self-employed workers, and potential increases in roaming charges and university fees for EU citizens which could have a significant practical impact on decisions to cross the border to study or access services?

Although the rights of Irish nationals in Northern Ireland are protected under the Common Travel Area regime, there is concern about how Brexit will impact on that regime and whether the Withdrawal Agreement will apply to the rights of future residents/ workers, or only those present in the UK on Brexit day. The NIHRC and IHREC discussion paper argues that in ‘a period of considerable legal change the CTA must be put on a more assured footing. At present, it is a mix of legislation, statutory instruments, limited treaties and practice. Currently, the EU provides further certainty as it guarantees many equivalent rights. Now that this will end, it will be essential to place the CTA on a treaty footing to secure family, resident, welfare, social, political and civil rights continue.’

10. <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/EU-Exit-EqualitySummary.pdf>; March 2017, page 6

11. Paragraph 77, Select Committee report, footnote 3 above

- 1 Our political representatives must take steps to guarantee that the rights of EU/EEA nationals are protected after Brexit.
- 2 MLAs should develop a cross-party action plan to engage with MPs, TEO and the Racial Equality Forum to address concerns and, among others:
  - a Ensure additional financial and other support for the Law Centre (NI) and other advice providers to deliver immigration services for EU/EEA nationals.
  - b Co-ordinate with the Home Office to develop a local outreach publicity and information campaign to ensure EU/EEA nationals receive up-to-date information as this develops, in particular by using existing BME networks to reach the grassroots; as noted by the Select Committee: ‘It will be very important to disseminate information through representatives of the various European communities established in the UK so that the message can be amplified to the people who need to apply. The Government should consider how it might provide additional resources to such community organisations that will be doing valuable work on the Government’s behalf.’<sup>11</sup>
  - c Support calls for a physical document to be issued to EU/EEA citizens on confirmation of their settled status.
  - d Work with the PSNI to improve support for victims of hate incidents/ hate crime.
  - e Ensure the legal status issues for frontier workers not present in the UK on Brexit day are clarified and their rights guaranteed in law.
  - f Lobby for the abolition of the settled status registration fee or the introduction of a waiver for those of limited means.
  - g Lobby for UK government commitments to EU citizens in the UK in the event of ‘no deal’ to be enshrined in law.

ICR has partnered with the Law Centre (NI) to create a *Brexit and eYou* section on the LCNI’s website. Here you can find more detailed information on the rights and entitlements of EU/EEA nationals along with case studies illustrating some of their concerns, plus links to other helpful resources. See: <https://www.lawcentreni.org/news/recent-news/1-news/1446-brexit-and-eyou.html>

### For further information

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