

Subject: The Future Status of EU Nationals; Deal or No-Deal

Report to: EU Exit Working Group

Report of: Executive Director of Secretariat

Date: 28 November 2018

This report will be considered in public

1. Summary

- 1.1 This report provides background information for the EU Exit Working Group's meeting to discuss the future status of EU nationals post-Brexit; deal or no-deal.

2. Recommendation

2.1 That the Working Group:

- (a) Notes the report as background to putting questions to invited guests;
- (b) Notes the subsequent discussion; and
- (c) Delegates authority to the Chair, in consultation with party Group Lead Members, to agree an output from the discussion and the previous meetings of the Working Group in October 2018.

3. Background

- 3.1 Article 50 of the Treaty on European Union provides for an EU Member State to leave the EU with or without a withdrawal agreement or 'deal'.
- 3.2 The EU and the UK have reached agreement on the UK's terms for withdrawal (the Draft Withdrawal Agreement (DWA)) and the framework for future relations, as set out in the Outline Political Declaration. If there is no Parliamentary approval of the DWA and/or no formal approval at a special European Council meeting on 25 November 2018, and the UK does not request to, or there is no EU agreement to, extend the negotiations, or ratification is not achieved, then there will be no deal and the EU Treaties will no longer apply to the UK from 29 March 2019.

3.3 The Government has stated that preparations for a “no-deal” scenario are part of its overall Brexit preparation strategy. Secondary legislation is being laid under the European Union (Withdrawal) Act 2018 that will preserve EU law in domestic law or convert it into UK law on exit day, 29 March 2019. If the UK leaves the EU without a deal, most EU law will still apply in the UK as domestic law (i.e. retained EU law or EU-based UK law) but there will be no reciprocity with EU Member States.

The status of EU nationals in London

- 3.4 There are around one million EU nationals who live, study and work in London. Of the 5.7 million jobs in the London labour market, around 13% of these are held by people born in the EU. Some sectors rely heavily on workers from the EU, for example around one in four construction workers in London are from the EU. In comparison, around 5% of jobs in the UK (excluding London) are held by EU workers.¹ Free movement from the EU has helped businesses overcome skills and labour shortages and brought valuable talent to London workforces. London businesses are adamant that any future immigration system will need to remain open and outward looking to attract the best of the talent available across Europe at all levels of employment.
- 3.5 A significant number of so-called ‘citizens’ rights will be affected by Brexit. The primary one is freedom of movement, whereby currently any EU national can work, live or provide services in any EU Member State, providing they meet certain conditions as set out in various EU Directives. These primary ‘residency’ rights are complemented by a variety of further rights, co-ordinating social security coverage for mobile EU nationals and enabling them to access healthcare, education and other welfare benefits.
- 3.6 Under the terms of the DWA, EU citizens and their families will continue to have the right to move, live and work in the UK (and vice versa) until the end of the transition period in December 2020.
- 3.7 Those who take up residence before the end of the transition period will be allowed to remain beyond transition and, if they stay for five years, will be allowed to remain permanently.
- 3.8 However, once the transition period is over, the draft agreement does allow the UK to require EU citizens who stay on to apply for a new residence document. The agreement says application forms for this residence status “shall be short, simple, user-friendly”.
- 3.9 The Home Office is proposing to introduce a constitutive registration system to distinguish between current and future EU citizens. This is what is known as the EU Settlement Scheme/Settled Status Scheme. This will establish two statuses:
- Settled status is for those EU citizens and their family members who have lived in the UK for five years when they apply (with some limited exceptions to the five-year rule); and
 - Pre-settled status is for those who have not lived in the UK for five years by 30 June 2021 and to allow them to accrue the five years needed to apply for settled status (they *must* apply for settled status before their pre-settled status expires).

¹ Annual Population Survey 2015, ONS

- 3.10 Most EU citizens cannot apply at the moment as the Government is running test groups. The application process is due to be fully open by 29 March 2019 and EU Nationals will have until June 2021 to apply.
- 3.11 The Home Secretary has stated that “[to repeat the words of the PM] EU citizens living lawfully in the UK will be able to stay. No matter what happens, if you are living lawfully in the UK you will be able to stay”. The assumption is that unless the Government’s position changes significantly, all rights described as ‘primary’ – e.g. the ability to live in, work in, study in and access public services in the UK – will be retained, at least in the short run, by EU nationals living in the UK even in the event of a “no-deal”.
- 3.12 However, there is less clarity in other areas, such as whether EU nationals living here would be able to bring family members to the UK (spouses, parents/grandparents) to live with them.
- 3.13 In the event of a “no-deal” Brexit, the existing reciprocal healthcare arrangements for UK citizens in the EU and EU citizens in the UK would probably end, and while the Government is developing contingency plans for this eventuality there are as, yet, no further details.

4. Issues for Consideration

- 4.1 Members will put questions to invited guests across a number of areas including:
- The likely status of EU nationals living in London post Brexit; deal or no-deal; and
 - The advice and support they need from local and regional government.
- 4.2 The following guests have been invited to the meeting and participate in the discussion:
- Professor Charlotte O’Brien, York Law School;
 - Christopher Desira, Director, Seraphus, solicitors specialising in EU law; and
 - Sunder Katwala, Director, British Future.

5. Legal Implications

- 5.1 The Assembly has the power to do what is recommended in this report.

6. Financial Implications

- 6.1 There are no financial implications to the Greater London Authority arising from this report

List of appendices to this report: None.

Local Government (Access to Information) Act 1985

List of Background Papers: None.

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