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EU citizens' rights during transition

Written by Jonathan Chaimovic and Tim Richards



Our [last article](#) before Christmas highlighted the EU/UK's 8 December 2017 Joint Report on the UK's "orderly withdrawal from the European Union". That Joint Report laid out various points of agreement on Citizens' Rights, including the need for EU nationals in the UK and British citizens in EU27 member states before 29 March 2019 to register for a temporary or, subject to eligibility, settled status after that date. Freedom of movement for those arriving before the cut off date would be protected.

Whilst the Joint Report includes the caveat that "nothing is agreed until everything is agreed", it does provide a degree of certainty for UK employers in terms of EU nationals arriving in the UK before Brexit day next March.

However, the status of those EU nationals arriving during the Transition Period after March 2019, remains controversial.

The UK Home Office's leaked paper on the future of its UK immigration policies of September 2017 (the official version was due in Autumn 2017 but is yet to be released) floated the idea of registration for around only 2 years

for those EU nationals filling lower skilled roles and those filling higher skilled being able to stay longer for say up to 5 years. This would be a stark change from the current largely unrestricted freedom of movement. The UK was adamant that there has to be a different expectation for those arriving before and after the UK's exit from the EU. As recently as Theresa May's trip to China at the start of February, she was very clear on this point.

However, on 7 February 2018 the EU released its latest negotiation position paper "Transitional arrangements in the withdrawal agreement". This paper included reference to the EU's wish for 31 December 2020 to be the end date of the implementation period to coincide with the end of the EU budget year and so falling short of the UK's plans for a two year transition/implementation period.

Importantly, the EU's paper also demanded that the status quo should be maintained during the implementation period including full freedom of movement, no new trade agreements with non EU 27 and continued submission to the jurisdiction of the European Court of Justice without the UK having any legislative input in this period, in Jacob Rees Mogg's words, making the UK "a vassal state". The EU makes clear that Citizens' Rights are "not negotiable" and that there cannot be "two sets of rights for EU citizens", one for those arriving before and another after 29 March 2019.

Despite the UK's strong previous position that it would set its own agenda, the UK's own negotiation position paper (proposing amendments for discussion to the EU's own paper) of 21 February 2018 was conspicuous by the absence of any meaningful 'pushback' on the EU's demands for freedom of movement of EU nationals to continue unabated during the implementation period.

In fact, the only noticeable retort in the UK's paper was a meek request for the December 2020 implementation period end date to be discussed in view of whether it is long enough - given the UK has always been planning for two years from March 2019. These are only draft papers and the game is a long way from finishing, but it is hard to ignore a potential softening of the UK's position on free movement for those EU nationals arriving in the UK after March 2019 next year. For those employers relying heavily on European nationals, this would be a welcome development.

Poured on top of the UK's apparent poor negotiating position is, according to some news outlets, the government's own analysis that the cost of cutting EU migration would exceed any gains from, for example, any new UK/US trade agreement.

Complete capitulation to the EU 27 bloc on all issues would not sit easily with the Brexiteers within the Conservative party. This raises the prospect of an unholy alliance between Conservative Brexiteers and elements of the Labour party to vote down any Agreement ultimately brought to Parliament. This in turn raises the possibility of the dreaded scenario of the UK leaving the EU without Agreement. A recipe for complete chaos.

As the negotiations progress and we near the UK's exit in just 12 months time, we will continue to provide you with updates

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