



## **Brexit Update for Congregations and Presbyteries**

This update provides a snapshot of the current Brexit position as at Exit Day, 31 January 2020, and what the future is likely to hold for the rights of EU citizens to live and work in the UK and the rights of UK citizens to live and work in the EU.

### **January 2020 – January 2021**

On 22 January 2020 the Withdrawal Agreement (Brexit Bill) was passed by the House of Lords and signed into law in the UK. It was ratified by the European Parliament on 29 January. Accordingly, the UK has a “deal” to leave the EU on 31 January 2020 at which time the post-Brexit transition period will begin, lasting until the end of December 2020. During this time the UK will remain in the single market and customs union and will follow all of the EU’s rules and regulations and the free movement of people will continue. The UK Government will put in place mechanisms and agreements for fully withdrawing from the EU in January 2021.

From 1 January 2021 the current EU rules around free movement of workers will no longer apply to the UK.

### **January 2021 onwards**

EU, EEA or Swiss nationals living in the UK before 31 December 2020 will have the right to apply, on their own behalf and on behalf of their children under the age of 21, for the right to continue living lawfully in the UK.

Broadly, if an applicant (or their child) has lived in the UK for five years at the time of the application then they may be granted settled status or, if they have not lived in the UK for five years, they may be granted pre-settled status. Applications must be made through the EU Settlement Scheme managed by the Home Office. Greater detail about the Scheme and settlement status can be found on the Home Office website (<https://www.gov.uk/settled-status-eu-citizens-families>).

It is important to bear in mind that the rights of Irish citizens to live and work in the UK will not be affected by Brexit as the UK and Ireland are part of the Common Travel Area, which pre-dates the UK’s membership of the EU. Accordingly, Irish citizens will not need to apply to the Scheme.

## What does this mean for you?

If your congregation or Presbytery wishes to assist anyone who might be affected by Brexit the most helpful resource is likely to be the Home Office website (<https://www.gov.uk/government/organisations/home-office>). That website is likely to be updated over the transition period and as immigration remains a devolved matter, the Home Office will be able to provide definitive information.

### Employees

Employees who are EU (or EEA) nationals who do not already have resident status in the UK, and who intend to maintain their employment with you after December 2020, should apply to the EU Settlement Scheme as soon as possible and no later than the end of December 2020. Employers may wish to provide assistance to employees in completing application forms.

Employers will not however, under the current Home Office guidance, have the right to ask employees to show that they have gained settled status and there will be no requirement to undertake retrospective checks on existing EU, EEA or Swiss employees. What that means is that it is the responsibility for existing employees to ensure that they will have the right to work in the UK from January 2021. Employers can offer assistance to employees to achieve that right but cannot insist that employees show that they have gained that right. Employees may however volunteer that information should they wish to do so.

It is important to bear in mind that irrespective of Brexit, employers need to ensure that prospective employees have the right to work in the UK. In order to achieve that, employers should ask applicants to provide evidence of their eligibility to work. For UK citizens that will be a UK passport and for Irish citizens, an Irish passport. For non-UK citizens that will be documentation from the Home Office confirming that they are eligible to work in the UK. That might include a visa and/or evidence of residency status.

A guide on checking whether an employee has the right to work in the UK, produced by the Home Office, is available from this link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/773780/An\\_employer\\_s\\_guide\\_to\\_right\\_to\\_work\\_checks\\_-\\_January\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773780/An_employer_s_guide_to_right_to_work_checks_-_January_2019.pdf)

### Work in the EU

UK citizens who will be working in the EU from January 2021 should take steps now to ensure that they will have the right to work in the non-UK jurisdiction. Information on what may be required should be sought from resources produced by the relevant country and from the Home Office.

## Summary

The status quo, so far as the free movement of people is concerned, will remain in place until the end of December 2020.

EU, EEA or Swiss nationals who wish to have the right to live and work in the UK from January 2021 should take steps now to apply to the EU Settlement Scheme. Information on the Scheme is available from the Home Office website and given that immigration is a matter within the exclusive jurisdiction of the UK Parliament that is likely to remain the best resource for up to date information. The current rules for Irish citizens will remain in place, meaning that Irish citizens will not need to apply to the Settlement Scheme.

There is nothing preventing employers from offering assistance to employees to apply for settlement in the UK and the current advice from the Home Office is that there will be no obligation for employers to retrospectively check that any current employees have the right to work in the UK. However, from January 2021 employers must ensure that any prospective employees have the right to work in the UK.

For employment advice and contracts of employment, please refer to the Law Department circulars: [https://www.churchofscotland.org.uk/resources/law-circulars#employment\\_law](https://www.churchofscotland.org.uk/resources/law-circulars#employment_law) and for guidance on safe recruitment, please refer to the Safeguarding Service website: <https://www.churchofscotland.org.uk/about-us/safeguarding-service>.