

Explainer for the agreement on citizens' rights arrangements between Iceland, the Principality of Liechtenstein and the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, following the withdrawal of the United Kingdom from the European Union in the event of a no deal scenario

8 February 2019

EEA EFTA CITIZENS' RIGHTS AGREEMENT FOR A NO DEAL SCENARIO

Summary

1. The United Kingdom has now reached an agreement on citizens' rights with Norway, Iceland and Liechtenstein ('the EEA EFTA states'), which would apply in a scenario where the UK leaves the EU without a deal. This agreement ('the EEA EFTA citizens' rights agreement') would protect the rights of EEA EFTA nationals in the UK and UK nationals in the EEA EFTA states before exit day, ensuring that they can continue to contribute to their communities and live their lives broadly as they do now.
2. The arrangements in the agreement closely mirror the arrangements for citizens in the EEA EFTA separation agreement, published on 20 December 2018. The EEA EFTA separation agreement relies on some of the provisions of the Withdrawal Agreement which would not apply in a no deal scenario. In such a scenario, therefore, we would instead bring this no deal citizens' rights agreement into force. Together, these agreements ensure that the rights of around 17,000 UK nationals living in the EEA EFTA states and 15,000 EEA EFTA nationals in the UK will be protected in any scenario.
3. This document is intended as a guide to support understanding of the legal drafting of the EEA EFTA citizens' rights agreement as published on 8 February and which follows a format of: a. Preamble b. Part One: Common provisions c. Part Two: citizens' rights d. Part Three: Institutional and final provisions e. Annex to the citizens' rights agreement.

Implementing the EEA EFTA citizens' rights agreement

4. This agreement would require domestic legislation to implement it in the UK. The agreement would be implemented through a combination of existing and planned primary and secondary legislation and would be subject to necessary ratification procedures.
5. In line with established constitutional arrangements, the UK Government has negotiated this agreement on behalf of the whole of the UK including the devolved administrations, as well as Gibraltar. The Government of Gibraltar would need to introduce its own legislation in order to implement domestically those elements of the agreement that apply to its jurisdiction.

PREAMBLE TO THE EEA EFTA CITIZENS' RIGHTS AGREEMENT

6. The recitals in this section would be used to support legal interpretation of the agreement, describing some of the key points for consideration in the text.

PART ONE: COMMON PROVISIONS (*Articles 1-7*)

7. Part one of the agreement establishes definitions and the framework provisions for the entire agreement.

What is covered in part one:

8. The purpose of the agreement is to lay out the arrangements regarding citizens' rights in the event that the UK withdraws from the EU and the EEA Agreement without a deal being agreed with the EU. The UK is a party to the EEA Agreement by virtue of its membership of the EU. This agreement will cease to apply on exit day in a no deal scenario.
9. Part one sets out the obligation on all parties to implement the agreement in domestic legislation. It also sets out how the agreement should be interpreted. This would ensure that individuals are able to make use of the rights they have under the agreement.
10. Part one binds the UK and the EEA EFTA states to a duty of good faith, meaning that neither side should act in a way to undermine the agreement, and the UK and the EEA EFTA states should work to support each other in carrying out the tasks set out and flowing from the agreement.
11. All references in the agreement to the EEA Agreement refer to the EEA Agreement (and EU law incorporated into the EEA Agreement) as applicable until exit day. The exception to this is for certain legislation relating to social security coordination. Should the EEA Agreement change after exit day, those amendments would not apply to the UK, except in the area of social security coordination subject to agreement by the Joint Committee.

PART TWO: CITIZENS' RIGHTS (*Articles 8-36*)

Summary

12. The Government has been clear that its first priority as part of securing a smooth and orderly exit from the EU was to provide certainty for citizens. EEA EFTA nationals are valued members of their communities and play an integral part in the economic, cultural and social fabric of the UK, as do UK nationals living in the EEA EFTA states, who are equally valued by their host countries and communities.
13. This agreement provides certainty to EEA EFTA nationals living in the UK and UK nationals in the EEA EFTA states that their rights will be protected even if we leave the EU without a deal. Those falling within scope of the EEA EFTA citizens' rights agreement would have broadly the same entitlements to work, study and access public services and benefits as now, in as far as these entitlements have derived from UK participation in the EEA Agreement.

What is covered in part two:

Eligibility and scope of citizens' rights

14. Part two provides that all UK nationals lawfully residing in an EEA EFTA state on exit day would be able to stay, as would all EEA EFTA nationals lawfully residing in the UK. Their family members resident in the host state by exit day (29 March 2019) would also be covered by the rights set out in the EEA EFTA citizens' rights agreement. Individuals in scope of the agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) who live in a different country at any point in the future, if the relationship existed on exit day and still exists when the person wishes to come to the UK/EEA EFTA state. Any child born to an individual in scope is also protected by the agreement if the individual has custody of the child. The agreement also protects the rights of those citizens who reside in one state and work in another ('frontier workers').

Rights related to residence

15. UK nationals who have been living in an EEA EFTA state continuously and lawfully for five years on exit day would have the right to reside permanently in that state. Equally, EEA EFTA nationals who have been living in the UK continuously and lawfully for five years on exit day would have the right to reside permanently in the UK.
16. Those who have not yet resided continuously and lawfully for five years in their host state by exit day would also be able to stay until they have reached the five year threshold, at which point they would have the right to reside permanently. The EEA EFTA citizens' rights agreement enables the host state to restrict these rights if the individual is a serious or persistent criminal, or if they seek to abuse or defraud the system. The right to reside permanently in the host state can only be lost through an absence from the country of more than five years unless it is restricted due to a person's conduct.
17. In the UK, EEA EFTA nationals and their family members will be able to apply for a residence status through the EU Settlement Scheme. EEA EFTA nationals, like EU citizens, would have until 31 December 2020 to apply for status under the scheme in a no deal scenario. The Prime Minister confirmed in January that the Government will waive the application fee for the EU Settlement Scheme. This will apply to all applicants to the scheme, including EEA EFTA nationals and their families. Further information on the EU Settlement Scheme can be found on [gov.uk](https://www.gov.uk).
18. The EEA EFTA states have a choice whether to require UK nationals and their family members to apply for a residence status or not. As set out in the EEA EFTA citizens' rights agreement and in line with the EU Settlement Scheme, any application process adopted by EEA EFTA states for UK nationals must be short, simple and user-friendly.

Rights of workers and the self-employed

19. Workers and self-employed persons, including frontier workers, would be guaranteed broadly the same rights as they currently enjoy. They have a right to not be discriminated against due to nationality, and the right to equal treatment with host state nationals. For example, equal treatment in respect of the right to pursue economic activity, the right to employment assistance, conditions of employment, the right to tax and social advantages, collective rights, access to housing and the right for their children to receive an education.

Equal treatment

20. The EEA EFTA citizens' rights agreement protects the existing rights to equal treatment and non-discrimination. EEA EFTA nationals residing or working in the UK, UK nationals residing or working in the EEA EFTA states, and their family members would have broadly the same entitlements to work, study and access public services and benefits as now where these entitlements have derived from UK participation in the EEA Agreement. These entitlements for EEA EFTA nationals would be subject to any future domestic policy changes which apply to UK nationals.

Mutual recognition of professional qualifications

21. The UK and the EEA EFTA states have agreed that EEA EFTA professionals resident or frontier working in the UK, or vice versa, would continue to have their professional qualifications recognised, where they obtained or applied for a recognition decision before exit day.
22. This would cover the European Professional Card, qualifications recognised under the Professional Qualifications directive for the purpose of establishment (but not for the temporary and occasional provision of services), lawyers practising under host state title, approved statutory auditors, and persons engaged in the trade and distribution of toxic products.

Coordination of social security systems

23. EU Regulations on social security coordination would continue to apply across the whole of the UK after exit day for individuals in scope of the EEA EFTA citizens' rights agreement. This would ensure that citizens who have moved between the UK and the EEA EFTA states before exit day are not disadvantaged in their access to pensions, benefits and other forms of social security, including healthcare cover. The EEA EFTA citizens' rights agreement would also provide protections in a number of other circumstances, such as where a UK national, although not living in an EEA EFTA state after exit day, has paid social security contributions in an EEA EFTA state in the past. The rights that flow from those contributions such as benefits, pension and reciprocal healthcare rights would also be protected.

24. EEA EFTA states would be required to take into account contributions paid into their respective social security systems by individuals within scope of the EEA EFTA citizens' rights agreement. As now, the amount of State Pension to which those individuals would be entitled as a result of the contributions would be determined according to each state's social security legislation.
25. Persons who are in scope of the EEA EFTA citizens' rights agreement for full social security coordination purposes would also continue to benefit from the coordination rules, for as long as they remain within the scope of that section. This would ensure that the worker (and their employer) only pays into one social security system at a time, and that the right to aggregate both contributions paid, and periods of insured residence completed, for the purposes of meeting different states' benefit entitlement conditions would continue. This would include all contributions made both in the UK and the EEA EFTA states before and after exit day, and the rules would also protect the rights that flow from such contributions.
26. Where the UK, or an EEA EFTA state, is responsible for the healthcare of those within scope of the social security coordination part of the EEA EFTA citizens' rights agreement, such individuals would be entitled to reciprocal healthcare cover from their competent country.
27. The EEA EFTA citizens' rights agreement would also protect the rights of individuals who are in a cross-border situation on exit day (for example a UK national who is in an EEA EFTA state for a holiday or for the duration of a course of study), and who are entitled to a European Health Insurance Card (EHIC), to continue to benefit from that scheme for as long as that cross-border situation in the state they are in continues.
28. The EEA EFTA citizens' rights agreement would also protect the rights of people visiting the UK or the EEA EFTA states for planned medical treatment, where authorisation was requested before exit day, so they would be able to commence or complete their treatment. This guarantees that patients would be able to complete a course of treatment and provides the certainty that patients need during a vulnerable time in their lives.
29. An annual review clause applies, which would allow the EEA EFTA states and the UK to mutually agree to amend the social security coordination arrangements set out in the agreement in future, for example once we have more clarity on the future regime for other cohorts. This means those within scope of the agreement would continue to be covered by the most appropriate social security coordination arrangements.

Other provisions

30. This agreement would be faithfully implemented in both the UK and the EEA EFTA states, providing additional assurance for EEA EFTA nationals living in the UK and UK nationals living in EEA EFTA states.

PART THREE: INSTITUTIONAL AND FINAL PROVISIONS (*Articles 37-43*)

Summary

31. The UK and the EEA EFTA states agree that the EEA EFTA citizens' rights agreement should provide legal certainty and clarity to citizens, businesses and organisations. It is therefore important that there is a shared understanding between the UK and the EEA EFTA states on what the agreement means, how it would be upheld and how disputes would be handled.

What is covered in part three:

32. Part three sets out the procedures to provide for the institutional framework for the agreement and the procedure for settling disputes after exit day.

Institutional provisions:

33. Title I sets out arrangements for the institutional architecture for the EEA EFTA citizens' rights agreement, through the creation and functioning of the Joint Committee, which would be responsible for the implementation and application of the agreement. The Joint Committee would be co-chaired by the UK and one of the EEA EFTA states. The UK or the EEA EFTA states would be able to refer to the Joint Committee any issue relating to the functioning of the agreement. The Joint Committee would then be empowered to make decisions and recommendations by mutual consent. To assist it in its functioning, the Joint Committee could decide to establish specialised committees to carry out certain functions.
34. The Joint Committee would meet at the request of either party and in any case at least once a year. To ensure transparency, the Joint Committee would issue an annual report on the functioning of the agreement.

Dispute settlement:

35. Title II sets out arrangements for resolving disputes regarding the interpretation and application of the agreement after exit day. Any party to the agreement would be able to bring any dispute which concerns the interpretation or application of this agreement before the Joint Committee. The Joint Committee would then consult over the dispute, making use of all information that is relevant to the dispute, with the aim of settling the dispute by way of a binding decision.

Final provisions

36. The final provisions to the EEA EFTA citizens' rights agreement state that this agreement would enter into force on exit, provided that it has been ratified by at least one party to the agreement by that point. Parties would be able to provisionally apply the agreement while they are in the process of completing their entry into force processes.