

Brexit Briefing: Acquired Rights

UK Law Societies

July 2017

1. The EU-UK withdrawal negotiations started on 19 June. One of the key areas that the negotiators are focusing on are the rights of EU citizens in the UK and of UK citizens in the EU (often referred to as 'acquired rights').
2. On 12 June, the Commission's Article 50 Task Force published its negotiating position on citizens' rights in which it sets out the personal and material scope of the withdrawal agreement and the enforcement mechanism.¹
3. On 26 June, the UK Government published its position on safeguarding the rights of the EU27 citizens in the UK in which it sets out the conditions to remain in the country and to have access to public services.²
4. The UK Law Societies wish to provide input to these discussions, in the same spirit of collaboration that has distinguished their work over the years, and to put their legal expertise at the service of their members and the European citizens.

Key issues to be addressed in the negotiations from the perspective of legal services

5. We are pleased to see that both the UK and EU negotiators agree that the EU citizens in the UK and the UK citizens in the EU should be able to continue to live, work, study and engage in business activities. This will increase legal certainty and protect those individuals who will be the first to feel the impact of the withdrawal process.
6. We are further pleased that both negotiating parties recognise the importance of the continued framework on mutual recognition of qualifications for those entitled to the acquired rights.³ The mutual recognition of qualifications is highly important for the professionals as it enables them to continue working in a profession for which they are qualified.
7. However, we would like to submit the further following points for the negotiators to consider:
 - individuals will need continued access to a full range of legal services, to protect their rights; and
 - the right to reside and work should also include the continued ability to engage in cross-border business.

¹ Position paper on "Essential Principles on Citizens' Rights", European Commission, Article 50 Task Force, 12 June 2017, available at: https://ec.europa.eu/commission/sites/beta-political/files/essential-principles-citizens-rights_en_0.pdf

² The United Kingdom's exit from the European Union: safeguarding the position of EU citizens living in the UK and UK nationals living in the EU, UK Government, 26 June 2017, available at: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu/the-united-kingdoms-exit-from-the-european-union-safeguarding-the-position-of-eu-citizens-living-in-the-uk-and-uk-nationals-living-in-the-eu>

³ For legal services the relevant framework being Professional Qualifications Directive 2005/36/EC (revised in 2013) (on mutual recognition of professional qualifications)

The role of legal practitioners in protecting citizens' rights and upholding the rule of law

8. It is of paramount importance in the interests of justice that in the process of the UK withdrawing from the EU, the EU and UK citizens affected by the changing legal systems have access to lawyers of their choosing, who are able to advise them on a variety of legal matters involving EU or UK law (or both) and to represent them in courts in the UK, in the EU member states, and, where needed, in the EU institutions, bodies and agencies.
9. Therefore, we argue that all professionals who are entitled to the acquired rights as set out in the negotiating positions, and those who have established cross-border practices or have clients in the EU and the UK, should be able to continue to provide legal services and represent their clients across the UK and in the EU.
10. In addition, all communications between UK lawyers and their EU clients and vice versa should continue to be covered by the legal professional privilege, i.e. they could not be disclosed without the permission of the client.
11. We believe that it is crucial that UK lawyers continue to have the right to provide legal services in the EU and vice versa, as provided for in current EU legislation.⁴ The right of lawyers to carry out their activities is essential to safeguard the effective exercise of the rights of EU citizens in the UK and UK citizens in the EU.
12. The process of disentangling the UK from a different and fast evolving legal system, after more than 40 years of EU membership and participation, will not be easy and it will have far reaching consequences on the everyday lives of EU and UK citizens.
13. The legal framework that will emerge after the withdrawal negotiations is likely to be complicated and to produce new and complex legal questions. It is also likely to apply for an extended period of time, especially as some effects of the arrangements to be made between the EU and the UK will not take full effect immediately (for example, pension entitlements or inheritance).

The importance of the continued ability to engage in cross-border business

14. We would also like to draw the attention of the negotiating parties to the fact that the withdrawal will have implications beyond EU citizens resident in the UK or UK citizens resident in the EU27. The withdrawal will also have a great impact on those citizens who are or have engaged in cross-border business activities, and who have built their livelihoods on the free movement of goods, services and capital.
15. Residence rights alone may become meaningless if not accompanied by the right to continue economic activities.
16. We therefore call on the negotiators to discuss further the position of all those who are currently engaged in cross-border activities.

Further clarity on the rights framework

17. Furthermore, we note that there are several other important points which need to be further clarified in the negotiations with respect to the citizens' rights. These are in particular:
 - the cut-off date for maintaining the rights;

⁴ Framework Services Directive 2006/123/EC, Lawyers' Services Directive 77/249/EEC (temporary provision of legal services), Lawyers Establishment Directive 98/5/EC and

- the relevant legal regimes to be applied to EU citizens in the UK and UK citizens in the EU (for example on rights to found a family and to enjoy a private family life, and protection from expulsion);
 - the clarification of the Commission's formulation 'persons who have residence in the UK / EU or have had residence in the UK / EU in the past';
 - the implications for those who have had less than five years of continuous residence in the UK, those who are not entitled to the settled status or those who, under the EU citizens' rights directive, are not entitled to permanent residence; and
 - the enforcement of these rights, in particular the involvement of the Court of Justice of the European Union (CJEU) in overseeing the enforcement of the EU citizens' rights in the UK.
18. We would welcome more detailed proposals from the negotiators on the legal regime that will apply to the situation of UK and EU citizens.
19. These proposals could include, as set out in the Commission negotiating position, an exhaustive list of the EU legal instruments that will continue to apply. The UK would need to fully convert and maintain these instruments into domestic legislation through the European Union (Withdrawal) Bill.
20. Furthermore, we would welcome a robust dispute settlement mechanism to oversee the rights of EU citizens in the UK and UK citizens in the EU, and ensure that they are respected.

About the Joint UK Law Societies' Brussels Office

21. The Joint Law Societies' Office represents the three UK Law Societies in Brussels:
- The Law Society of England and Wales is the independent professional body that works to support and represent over 170,000 members, promoting the highest professional standards and the rule of law. It was set up in 1825 and acquired the Royal Charter in 1831.
 - The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. It sets and upholds standards, promotes the provision of excellent legal services and ensures that public can have confidence in Scotland's solicitor profession. It has a statutory duty to work in public interest. It was set up in 1949.
 - The Law Society of Northern Ireland is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests. It has 2,700 practising members.
22. The Brussels Office represents the profession to the European Parliament, European Commission and representations of the EU governments as well as relevant EU agencies. It has a public interest in the reform of EU law.

For further information please contact:

Helena Raulus (Head of Office)

T: +32 (0)2 746 85 85

E: helena.raulus@lawsociety.org.uk