**The Allocation of Social Housing and Homelessness Assistance for EU Citizens in the UK after Brexit under the Withdrawal Agreement**

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**Introduction**

In order to secure a public sector tenancy (social housing) by way of an allocation or to secure homelessness assistance from a local authority under the Housing Act 1996, an EU Citizen must, among other things pass an immigration/right to reside test. That test is found in the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (the 2006 Regulations) (there are separate eligibility regimes for Wales, Scotland, and Northern Ireland).

Some EU rights to reside render a person eligible without more, for example a Spanish national employed in a supermarket is a ‘Worker’ deemed to be eligible. Once eligible, he must then go in to satisfy other tests applicable to all eligible persons including British citizens. The same is true for a self-employed Italian journalist, exercising a right of establishment through her work and residence in the UK.

Other EU rights to reside render a person eligible for housing or homelessness assistance only if she also satisfies the habitual residence test (a combination of being in the UK for an appreciable period of time and having a settled intention to reside. Thus, an EU Citizen exercising rights of residence as a Student or a Self-Sufficient basis must show also that she is habitually resident.

There are also EU rights to reside that do not render a person eligible if that is her sole right to reside. For example, an EU right of residence in the UK solely as a Jobseeker or a person with the initial right of residence (first three months after arrival in the UK) does not without more render a person eligible for social housing or homelessness assistance.

How does Brexit, the Withdrawal Agreement, the European Union (Withdrawal Agreement) Bill, and the Settled Status regime under Appendix EU of the Immigration Rules, change the picture?

**The Transition Period to 31 December 2020**

At present EU Citizens and their family members are able to secure Settled Status (indefinite leave to remain/ILR) or Pre-Settled Status (limited leave to enter or remain) under Appendix EU to the Immigration Rules.

As regards eligibility for an allocation of social housing or homelessness assistance from a local authority, an EU Citizen with Settled Status/ILR, who is *also* habitually resident (in the UK, Channel Islands, Isle of Man, or Ireland), will be eligible because she will fall within Class C of the 2006 Regulations. That she may also have a right to reside under EU law on some other basis, for example the EU Right of Permanent Residence, provides another, additional basis for a qualifying immigration status but otherwise adds nothing unless that status exempts the person from the habitual residence test in circumstances where the person is not yet judged to be habitually resident.  By way of example, the EU Right of Permanent Residence acquired by virtue of permanent incapacity due to an accident at work, exempts a person from satisfying the habitual residence test in order to be eligible for social housing or homelessness assistance.

However, Pre-Settled Status/limited leave to enter or remain is not an immigration status that by itself renders a person eligible for social housing or for homelessness assistance. In fact, as a result of amendments to the 2006 Regulations introduced by the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019 it is plain that this is a non-qualifying status. Anyone with Pre-Settled Status must prove some other status in order to eligible. In practice this means proving a qualifying right to reside under EU law, such as Worker status, Self-Employed status, being a family member, and so on. Moreover, when seeking an allocation of social housing or homelessness assistance it will not ordinarily be enough for such a person to produce an EEA Registration Certificate or an EEA Residence Card. To satisfy the local authority as to eligibility, the person is going to have to do more: she is going to have to prove the underlying entitlement. Thus, an EU Citizen working in the UK for two years, is going to have to prove that she is in genuine and effective work. That she did not have to prove she was in work when she was granted Pre-Settled Status makes no difference; if she wants social housing or social assistance, she will have to do so. Pre-Settled Status may provide an immigration status that will endure after Brexit and the end of the transition period (31 December 2020) but it does not secure access to social housing or homelessness assistance.

In the transition period after the UK leaves the EU down to 31 December 2020, EU rights to reside in the UK will continue to be available, see sections 1 and 2 of the European Union (Withdrawal Agreement) Bill amending the European Union (Withdrawal) Act 2018. Thus a person with Pre-Settled Status will be able to prove her right to reside in EU law (where she has such a right as a Worker,  Self-Employed person, family member, and so on) and thus demonstrate eligibility for social housing or homelessness assistance in this period by virtue of a qualifying right to reside (remember some EU rights to reside  such as Jobseeker do not render a person eligible, see above).

**After the end of the Transition Period (after 31 December 2020) but before the Deadline for Applying for Settled Status**

In the period after the end of the transition period (31 December 2020) but before the deadline for applying for Settled Status (currently the end of June 2021), people with Settled Status continue to be eligible for social housing or homelessness assistance but what of those with Pre-Settled Status or no status documents?

EU rights to reside under the EU Treaties will no longer be available but they may have rights arising under the UK-EU Withdrawal Agreement by virtue of having been Workers, Self-employed, family members, and so on, before the end of the transition period. Such rights are expressly provided for in the Withdrawal Agreement, see Articles 13 and 15 of the Agreement. Such persons are also entitled to residence documents in recognition of that right, see Article 18 of the Agreement. Finally, such persons must be treated equally and not discriminated against on grounds of nationality, see Article 12 and Article 23 of the Agreement. How are such persons to be protected in UK law?

By clause 14 of the European Union (Withdrawal Agreement) Bill an appropriate authority (UK Ministers; a devolved authority in Scotland, Wales, or Northern Ireland; or both) may make such regulations as are considered appropriate to implement the provisions on the prohibition on grounds of nationality and the right to equal treatment found in the Withdrawal Agreement.

Such regulations may be made not only for persons falling within the personal scope of the Withdrawal Agreement but also in respect of other persons who may be granted leave to enter or remain under the residence scheme immigration rules (for example Appendix EU of the Immigration Rules), whether or not they have been granted such leave, see my blog post Immigration Rights of Entry and Residence for EU Citizens under the UK’s European Union (Withdrawal Agreement) Bill for details for the residence scheme immigration rules.

Not only may the regulations made under clause 14 modify other regulations, they may also modify an Act of Parliament. Thus, the power to make such regulations is what is known colloquially as a Henry VIII power.

Any regulations made under the Clause 14 will need to provide a route to eligibility for persons not yet qualifying for Settled Status but who have rights that arise directly under the Withdrawal Agreement. Such persons will have rights regardless of whether they have Pre-Settled Status or no status documents at all. Such persons will be able to rely on their rights directly before local authorities, other public authorities, and before the Courts, see section 5 of the European Union (Withdrawal Agreement) Bill, amending the European Union (Withdrawal) Act 2018.

**After the Deadline for Applying for Settled Status (30 June 2021)**

In the period after the end of the deadline for applying for Settled Status (currently the end of June 2021), people with Settled Status continue to be eligible for social housing or homelessness assistance but what of those with Pre-Settled Status or no status documents?

As matters stand, persons with Pre-Settled Status who fall within the personal scope of the Withdrawal Agreement (as a Worker, Self-employed person, family member, and so on)  should be able to show they have secured  residence documentation under the Withdrawal Agreement, and therefore should be able to access the provisions in the Withdrawal Agreement that prohibit discrimination on ground of nationality and provide for equal treatment. But it will be for the regulations made under clause 14 so to provide.

Similarly, for those with Pre-Settled Status but who do not fall within the personal scope of the Withdrawal Agreement (i.e. present in the UK but without exercising an EU right of residence), it will be Ministers making regulations to provide for them. If they do not, such persons will be ineligible for social housing or for homelessness assistance.

As regards with those with no status documents in the period after the end of the deadline for applying for Settled Status (currently the end of June 2021), as  matters stand they will be ineligible for social housing or for homelessness assistance, notwithstanding that they would otherwise fall within the scope of the Withdrawal Agreement were they to possess such documentation. They will also lack any lawful basis to be in the UK and be liable to removal, a situation created by the imposition of a Settled Status deadline and which is scandalous.

For both those with Pre-Settled Status and those with no documentation, the position is highly unsatisfactory. It is to be hoped that Ministers will make regulations that are broad enough to protect and support all those EU Citizens and their family members vulnerable to the consequences of their exclusion from allocations of social housing and homelessness assistance.