Executive summary

The UK and EU are currently negotiating the terms of an implementation, or ‘transition’, period to commence after the date of withdrawal from the EU and to continue until the date that permanent arrangements for UK-EU relations begin. The Government has now set out the arrangements that it proposes should apply to EU citizens arriving in the UK during this period. The proposal states that EU citizens and their family members will be able to move to the UK during the implementation period on the same basis as they do today, although a registration period will be put in place for those who choose to stay for more than three months. The immigration system applying after the date the implementation period ends remains to be determined.

Moving to the UK during the implementation period

A policy paper, published on 28 February, sets out the UK Government’s proposals for arrangements for EU citizens arriving in the UK during the implementation, or ‘transition’, phase of Brexit. The length of the transition period is still to be agreed, with the UK seeking a period of at least two years from the date of exit (currently scheduled to be 29 March 2019), but the EU wanting the transition period to end in December 2020. Although the Government had previously planned to give fewer residency rights to citizens moving to the UK during any transition period, the EU negotiating team has thus far been clear that free movement is one of the factors that is key to securing a transition deal.

The Government proposes that, during the transition period, EU citizens and their family members will be able to move to the UK on the same basis as they do currently. This means there will be no additional constraints on working and studying in the UK in this period. They will, however, be required to register if they choose to remain in the UK for more than three months. These arrangements will be given effect through the Withdrawal Agreement.

Remaining in the UK after the implementation period

The Government confirms, in the policy paper, that it is considering a range of options for a new immigration framework that will apply after the end of the transition period and that it will set out its proposals “in due course”. HEIs will recall that the Government commissioned the Migration Advisory Committee (MAC) to advise on the economic and social impacts of Brexit and on how the UK’s immigration system should be aligned with a modern industrial strategy (UCEA submitted a response to the MAC’s call for evidence). The MAC is due to report by September 2018. In the meantime, the policy paper contains a number of proposals about what the Government will offer, post-Brexit, to EU citizens and their family members who arrive, are resident, and have registered, during the implementation phase, as follows:

a. eligibility after the accumulation of five years’ continuous and lawful residence to apply for indefinite leave to remain;

b. a temporary status in UK law that will enable them to stay after the implementation period has concluded – this means that they will be able to remain lawfully in the UK working, studying or being self-sufficient for the five years needed to obtain settlement;
c. an opportunity to secure this temporary status during the implementation period, with an additional three month window for applications after the period, ensuring that there is no cliff-edge;
d. the ability for these EU citizens to be joined by family members after the implementation period on a par with British citizens; and
e. for those EU citizens frontier working¹ in the UK during the implementation period, the opportunity to obtain permission to continue this after the period ends.

The policy paper confirms the proposal that the process for temporary status and indefinite leave to remain will be streamlined and user-friendly, with applications accepted up to three months beyond the end of the transition period.

Should there be a difference between the proposed arrangements for EU citizens and their families arriving in the UK during the transition period, and those who arrive after the transition period, the paper states that the more generous provisions will apply to those arriving during the transition period.

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¹ Migrants workers that live in one State and work in another: www.europarl.europa.eu/workingpapers/soci/w16/summary_en.htm