



Brexit: Equality and Human Rights

What is the likely impact for the groups protected under the Equality Act?



EQUALITY BRIEFING

Hard/Soft Brexit: What Impact for the groups protected under the Equality Act?

Re: Brexit

Equality Act 2010

Protected groups

EEA+ Nationals

*EEA+ countries include:

- **EU:** Austria, Belgium, Bulgaria, Croatia², Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK
- **EEA:** Iceland, Liechtenstein, and Norway
- **Switzerland** - Swiss nationals have the same rights as EU/EEA/UK nationals
- **Croatia** - Croatian nationals currently need to apply for a registration certificate in order to work in the UK



Background

- On 28 March 2017, the triggering of Article 50 gave the UK a 2 year period to negotiate the terms of leaving the EU
- The UK will therefore be a member of the EU until at least March 2019
- Up to and until then, legislation and court decisions have to comply with [EU discrimination law](#)
- As the [Equality Act 2010](#) is an Act of UK Parliament it will continue after the UK leaves the EU, unless if the UK Government votes to amend it
- By extension, Brexit will also have an impact on the families and relatives of EEA+ nationals, their employers and education providers

Brexit: What it is and what's aheadⁱ

Brexit is shorthand for **Britain's exit** from the EU. The Brexit referendum took place on 23 June 2016 and the Leave vote won by 51.9% to 48.1%. The turnout was 71.8%, with more than 30 million people voting.

Scotland backed Remain by 62% to 38%, while 55.8% in Northern Ireland voted Remain and 44.2%ⁱⁱ. England voted for Brexit, by 53.4% to 46.6%. Wales also voted for Brexit, with Leave getting 52.5% of the vote and Remain 47.5%. Below is a timeline for the key dates for the next 2 years.

JUNE 2017

Following the General Election on 8 June 2017, a new UK government has been voted in with no clear majority. A [hung parliament](#) will have to consider a cross-party approach to Brexit negotiationsⁱⁱⁱ. At this stage¹, the key positions of the elected parties on Brexit are:

<i>Conservative</i>	<i>Labour</i>	<i>SNP</i>	<i>Lib Dems</i>	<i>Democratic Unionist Party</i>
Leave the single market and customs union	Scrap the Brexit white paper	Demand Scottish government seat in Brexit negotiations	Hold a referendum on the final Brexit deal, with the option to remain in the EU	Get the best possible Brexit deal for NI
Pass a Great Repeal Bill to convert EU law into UK law	Keep single market and customs union	Keep Scotland's	Unilaterally guarantee the	Strengthen relations with rest of UK and ensure there
	Immediately guarantee			

¹ *information valid as of 14/06/2017



	<p>rights of EU citizens living in Britain</p> <p>Replace the "Great Repeal Bill" with an EU rights and protections bill</p> <p>No change to workers' rights or environmental protections</p> <p>Reject "no deal" with the European Union as a viable option</p>	<p>access to EU single market</p> <p>Ensure that the rights and protections currently safeguarded by EU membership are not diminished after the UK leaves</p>	<p>rights of EU nationals in the UK</p> <p>Stay in the single market and customs union</p> <p>Support the principle of freedom of movement between the UK and EU - the right to work, travel, study and retire abroad</p>	<p>are no internal borders</p> <p>Ensure there is a "frictionless" border between NI and the Republic of Ireland</p> <p>Ensure NI has ability to opt in to EU funding when it is proven to add value</p> <p>End jurisdiction of European Court of Justice and increase control over UK laws</p>
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JULY 2017

Start of Brexit negotiations for final outcome between UK Secretary of State for Exiting the EU and the European Commission's Chief Negotiator. Negotiations are for a range of options between **Hard Brexit** and **Soft Brexit**.

<p><u>Hard Brexit</u></p>	<p><u>Soft Brexit</u></p>
<ul style="list-style-type: none"> • UK laws, i.e. ability to repeal Human Rights Act, and leave the European convention on human rights for the duration of the next parliament • Full control over its borders, making new trade deals based on World Trade Organisation (WTO) rules for trade with the EU 	<ul style="list-style-type: none"> • EU laws through EFTA Court (similar to Norway, Iceland and Liechtenstein) • Accept the "four freedoms" of movement of goods, services, capital and people (similar to Norway, Iceland and Liechtenstein)



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|--|---|
| <ul style="list-style-type: none"> • Lose full access to the single market and customs union • Tariff increases, e.g. +10% to car exports or range of tariffs in agriculture | <ul style="list-style-type: none"> • Keep full access to the European single market, exports not subject to border checks • Lose seat on the European Council, MEPs and European Commissioner |
|--|---|

JULY 2017 TO OCTOBER 2018

Deadline for an Article 50 agreement reached by October 2018.
 Agreements to be voted in European Parliament and UK Parliament

29 MARCH 2019

Expected date for UK exit from EU to be completed; implementation of measures start.

APRIL 2019 ONWARDS

UK Parliament can amend the Equality Act without adhering to EU law directives

EEA+ nationals resident in the UK will no longer have any status under EU law, i.e. EEA+ nationals and their dependent family members will lose their right to reside in the UK under EU law.

Key areas of concern for equality

- Rights to remain, Impact on families and relatives (Age: **Children and Young People**)
- Employment and economy (TBD)
- Benefits / Welfare (TBD)
- Hate crime (Race)

Rights to remain^{iv}:

The rights of residence in EU law is governed by the Citizens Directive 2004 as follows.

1. Initial right of residence for up to **three months**, subject to possession of a passport or identity card, without substantive qualifying conditions.
2. Right to remain as a job-seeker with a “genuine chance of being engaged” in economic activity.^v
3. Extended right of residence obtained through economic activity as a **worker** or as a **self-employed** person.
4. Extended right of residence for **self-sufficient** persons (including students). This means sufficient resources not to rely on welfare provision and medical expenses via the NHS.
5. Right of permanent residence arises after **five years’ extended residence**.

Also, **family members** of EU citizens are covered by these rights and have parallel rights of residence. These rights may be retained in the event of the EU citizen’s



death, departure, or the termination of a marriage or civil partnership. The definition of family members include:

- *the spouse or civil partner of the EU citizen*
- *the descendants of the qualifying EU citizen or the spouse/ civil partner, if they are under 21 or dependent on them*
- *dependent relatives in the ascending line of the qualifying EU citizen or their spouse/ civil partner.*

There are also two more rights of residence that are recognised:

- Right of residence for a child of a migrant worker, and their primary carer, so that the child may complete their education (EU Regulation 492/2011)
- Right of residence for the primary carer of an EU citizen child, if that is necessary to prevent the child being forced to leave the European Union. (Article 21 of the Treaty on the Functioning of the European Union)

Employment and Economy

At the moment UK and EU employment law are closely linked and overlap. Some rights given by the EU, e.g. agency worker rights or limitations on working time^{vi} (see full policy papers the Reference section). This is expected to include removing the rights of EU migrants to claim child benefit for children who are not living in Britain, and removing the automatic right of EU migrants to bring non-EU spouses into Britain.

Migrant Status and Welfare

As detailed by the [JCWI](#), this is one of core areas for negotiation between the UK government and the EU. As entitlement to welfare is closely linked to free movement rights, Brexit will have significant implications in the access to welfare both for EU/EEA nationals living in or wishing to move to the UK, and for UK expatriates elsewhere in the EU/EEA. This is even more prominent for UK nationals who have retired abroad.

As it stands (July 2017), UK restrictions on access on social security benefits via immigration law can only happen through the end of free movement rights. Entitlement to contributory social security benefits could also be limited by limiting access to employment, and could be extended to access to social housing².

Hate crime

The UK has seen a rise of Hate Crime during and following the Brexit campaign and referendum. Some key news items to note in that period were:

² House of Commons Library. Published Friday, August 26, 2016
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213>



- Racist incidents feared to be linked to Brexit result:
The Guardian/Observer: <https://www.theguardian.com/politics/2016/jun/26/racist-incidents-feared-to-be-linked-to-brexit-result-reported-in-england-and-wales>
- Brexit: Wave of hate crime and racial abuse reported following EU referendum
The Independent: <http://www.independent.co.uk/news/uk/home-news/brexit-eu-referendum-racial-racism-abuse-hate-crime-reported-latest-leave-immigration-a7104191.html>
- Police on alert as reports of hate crimes increase following EU referendum
ITV News: <http://www.itv.com/news/2016-06-27/reports-of-hate-crimes-increase-by-54-in-four-days/>
- Police on hate crime alert over post-Brexit vote racist incidents
MailOnline: <http://www.dailymail.co.uk/wires/pa/article-3662038/Sadiq-Khan-asks-police-alert-rise-post-referendum-hate-crimes.html>
- Hate crime surge as racist abuse of foreigners in UK condemned
Financial Times: <http://www.ft.com/cms/s/0/d6c3c43e-3c66-11e6-8716-a4a71e8140b0.html#axzz4LeLt3C2C>
- Police call emergency meetings to deal with post-Brexit vote explosion of racist hate crime
Daily Mirror: <http://www.mirror.co.uk/news/uk-news/police-call-emergency-meetings-deal-8296935>

It is of note that the same patterns were not followed in Scotland:

- Hate Crimes Fell After Brexit Votes:
The Scotsman: <https://www.scotsman.com/news/hate-crimes-in-scotland-fell-after-brexit-vote-1-4237818>
- English post Brexit race Crime Increased not replicated in Scotland:
Fifetoday: <https://www.fifetoday.co.uk/news/english-post-brexit-race-crime-increase-not-replicated-in-scotland-say-police-1-4170031>
- Scotland bucks UK trend with no rise in reported hate crime in wake of Brexit vote
Dailyrecord: <https://www.dailyrecord.co.uk/news/scottish-news/scotland-bucks-uk-trend-no-8568429>

At Fife Centre for Equalities, we would like to hear if you have any concern about hate crime, if this might apply to you or your family and relatives and you live, work or study in Fife, please do not hesitate to [contact us](#).



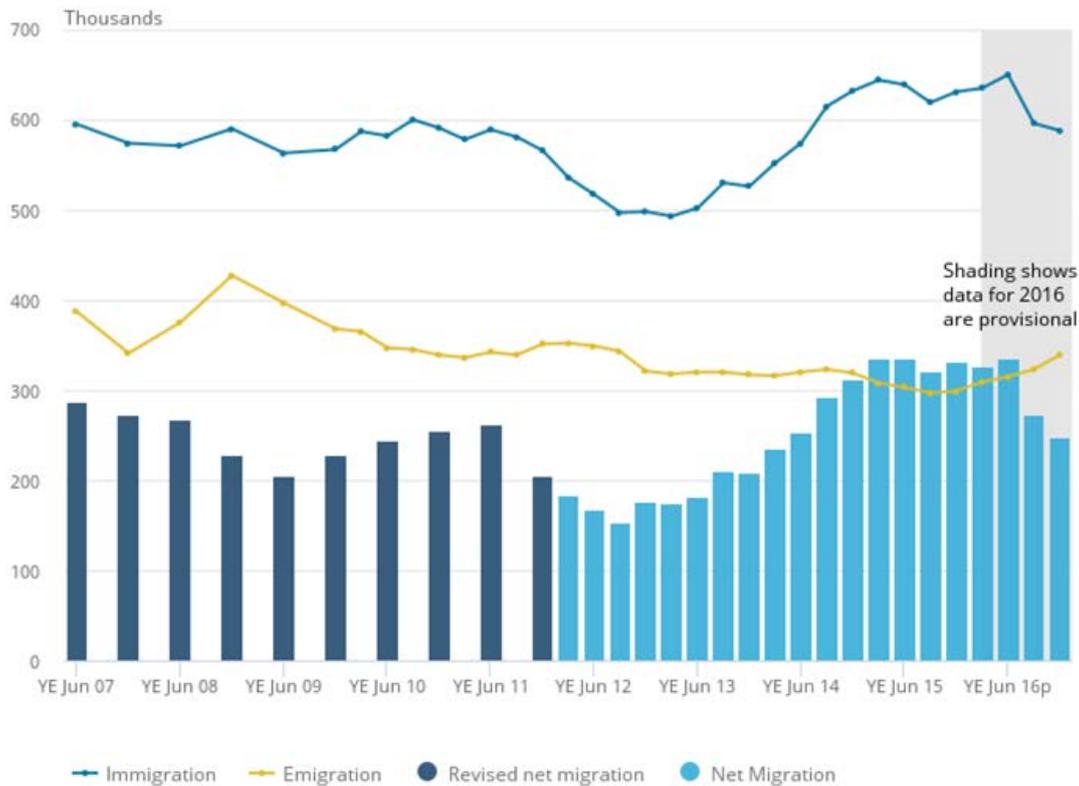
APPENDIX: MIGRATION STATISTICS

From [Migration Statistics Quarterly Report: May 2017](#)

1. UK net migration is dropping

There is currently a clear drop in net migration, i.e. increase in people emigrating (leaving the UK) and a drop in people immigrating (coming to the UK). There still is a net migration of +248 000.

(measured in thousands)	YE Dec 2015	YE Dec 2016	Difference
Net migration	+332	+248	- 84*
Immigration	631	588	-43
Emigration	299	339	40*



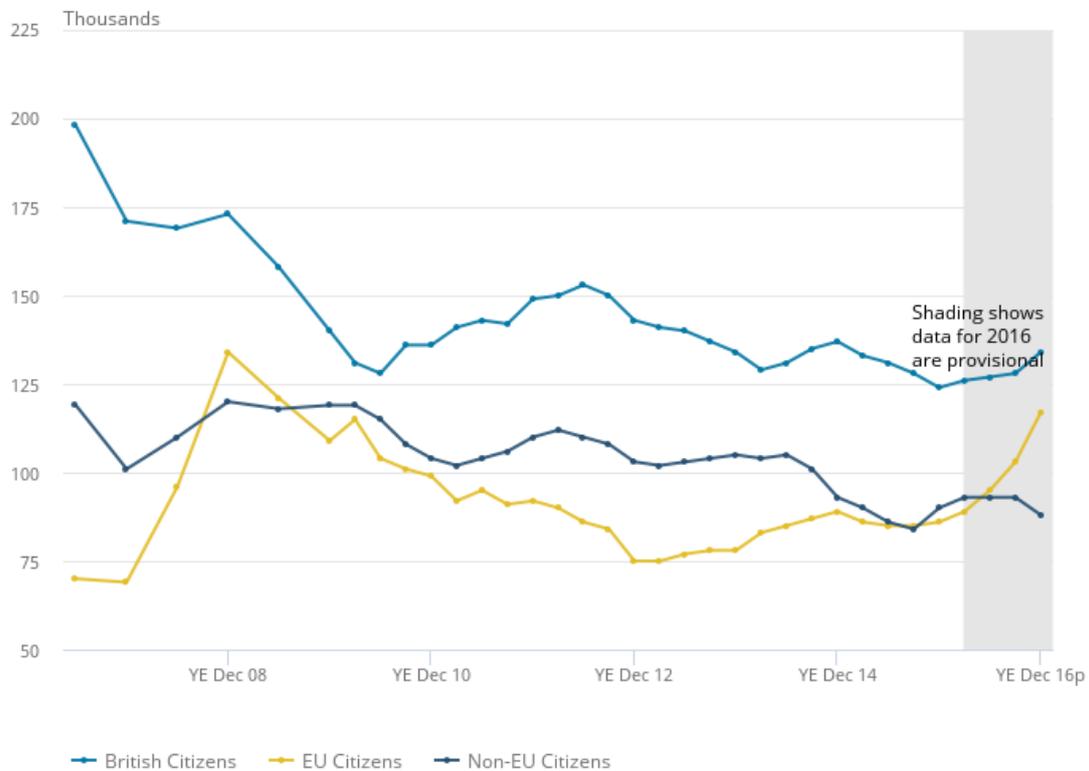
Source: ONS, May 2017- Long-Term International Migration

- Net long-term international migration was estimated to be +248,000 in 2016, down 84,000 from 2015 (statistically significant); immigration was estimated to be 588,000 and emigration 339,000.
- The net migration change was driven by a statistically significant increase in emigration up 40,000 from 2015, mainly EU citizens (117,000, up 31,000 from 2015) and a decrease of 43,000 in immigration (not statistically significant).



2. EU Nationals emigration is increasing

There is currently a statistically relevant increase in emigration, across both British citizens and EU nationals.



Source: ONS, May 2017- Emigration from the UK by citizenship, 2007 to 2016 (YE Dec 2016)

Provisional figures for 2016-2017:

- 134,000 British citizens emigrated – 40% of all emigrants and the highest recorded estimate since YE December 2014
- 117,000 EU citizens emigrated – significant increase of 31,000 and the highest recorded estimate since YE June 2009
- 88,000 non-EU citizens emigrated – steady rate over the last 2 years



3. Rights: UK and EU Laws

[NOTE: This table is not legible in print. Please refer to Pg- 10-12 of Brexit: employment law. House of Commons Library]. Accessible online at: [Brexit: employment law](#) ( PDF, 666.84 KB)



4. Detailed guidance for Workers, Students, Self-Employed and Self-Sufficient EU nationals



The **Joint Council for the Welfare of Immigrants** (<https://www.jcwi.org.uk/>) have a selection of dedicated guides on the rights of residence, the application procedures and what to do in case of refusal:

- [Guide for Workers](#)
- [Guide for Self-Employed people](#)
- [Guide for Self-Sufficient people](#)
- [Guide for Students](#)



Fife Centre for Equalities aims to build a collective voice to champion equality, diversity, inclusion and social justice across Fife and beyond.

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- ⁱⁱ Brexit: All you need to know about the UK leaving the EU. <http://www.bbc.co.uk/news/uk-politics-32810887>
- ⁱⁱⁱ General election 2017: Manifesto guide on where the parties stand: <http://www.bbc.co.uk/news/election-2017-39955886>
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- ^v Regulation 492/2011 on freedom of movement for workers within the Union, [2011] OJ L 141/1, Art. 10.
- ^{vi} Brexit: employment law. House of Commons Library
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