

Movement of People

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UK Theatre

Movement of People

Preparing for Brexit: Deal or No-Deal

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Magrath Sheldrick LLP

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Introduction

Magrath Sheldrick LLP is a specialist immigration and employment firm of solicitors based in central London focusing on supporting the needs of businesses and individuals, both nationally and internationally since 1990



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Topics

- **Brexit – where are we now?**
- **Immigration – some basics**
- **Freedom of Movement**
- **EU Settlement Scheme**
- **Brexit – Deal – Transition**
- **Brexit – No Deal – Transition**
- **UK Immigration for Performers, Shows and Entourage**
- **EU Country case studies – France, Germany, Spain, Ireland, Holland**

Brexit – where are we now ?

- **Brexit day – 31 October 2019**
- **Possible extension - 31 January 2020**
- **EU Council – 17 October 2019**
- **Deal or No-Deal?**
- **Sticking point – Irish border backstop**
- **Possible General Election - Winter 2019**

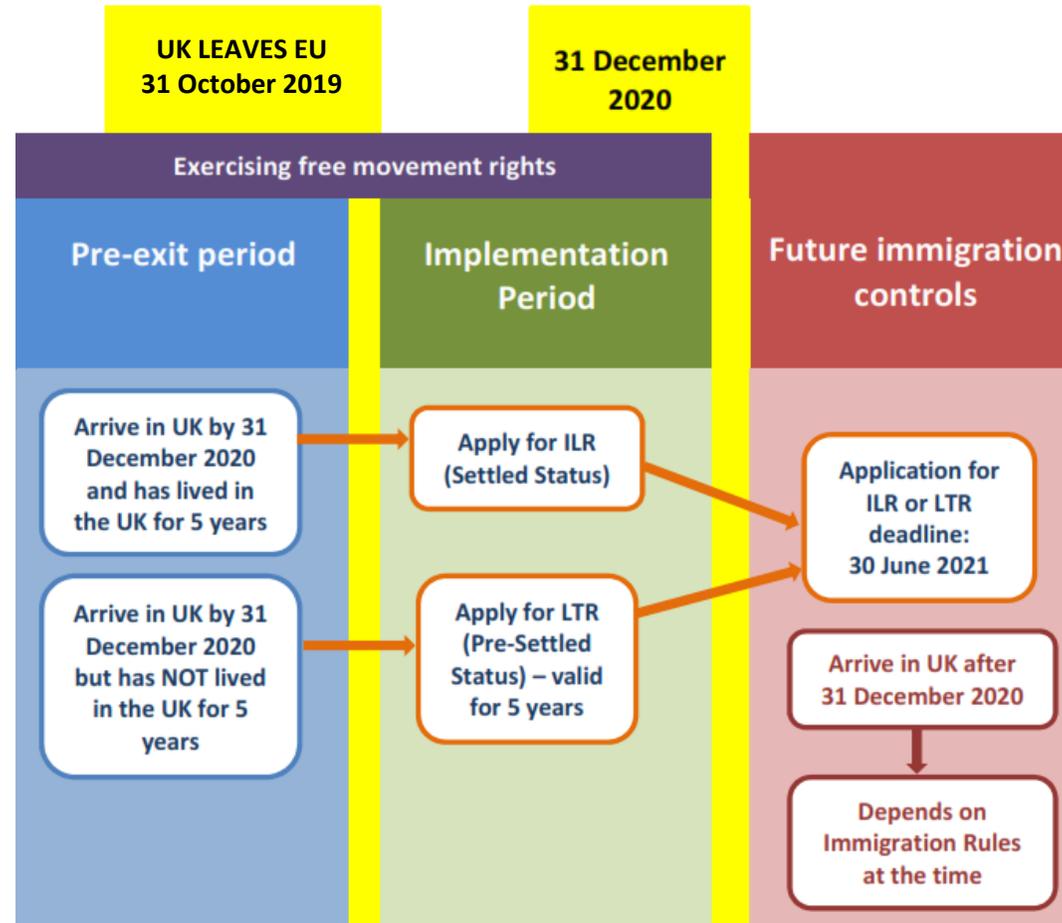
Immigration - Basics

- **British Citizens**
- **Common Travel Area**
- **EU Freedom of Movement**
- **Non- EU - Leave to Enter/ Remain**
- **Non-EU - Visas and Entry Clearance**
- **Non-EU – Visitors and Permissible Activities**
- **Residence and Work Permits**
- **Indefinite Leave to Remain**
- **Naturalisation**
- **Schengen Area**
- **Resident Labour Market Test**

Freedom of Movement

- **Freedom of Movement: Goods, Services, Capital, People**
- **Free Movement of People: Employment, Self-Employment, Self-Sufficiency and Study**
- **Minimal border control– right of admission – identity check**
- **Legal Right to Work Check – in line with all nationalities**
- **Right to Family Life/Family Reunion**
- **Permanent Residence after Five Years**

EU Settlement Scheme



EU Settlement Scheme

- **EEA citizens resident in the UK and their family members apply for UK immigration status – required to remain in the UK post 30 June 2021**
- **The application process is quick and user-friendly**
- **A new dedicated and proactive contact centre and casework team in place to support citizens.**
- **The Home Office are looking for reasons to grant, not to refuse**
- **The Home Office will not “back-date” settled status**

EU Settlement Scheme

- All EEA citizens
- Non-EEA national family members (spouses or civil partners, unmarried partner, child under 21, grandchild or great-grandchild, dependant parent, grandparent or great-grandparent – including of the spouse or civil partner)
- Arrived in the UK before the specified date (in a deal scenario: 31 December 2020; in a no-deal scenario: before we leave)
- If you already have British or Irish nationality, or Indefinite Leave to Remain, you do not need to apply

EU Settlement Scheme

- **Non-EEA family members – DEAL**
 - Relationship must have existed prior to 31 December 2020
 - Exception: children born after 31 December 2020
- **Non-EEA family members – NO-DEAL**
 - Must be resident in the UK by the specified date (i.e. the date UK leaves the EU)
 - Relationship must have existed prior to the specified date
 - EEA national must hold Settled Status
- **If not in UK – Family Permit**

EU Settlement Scheme

More than 5 years : Settled Status

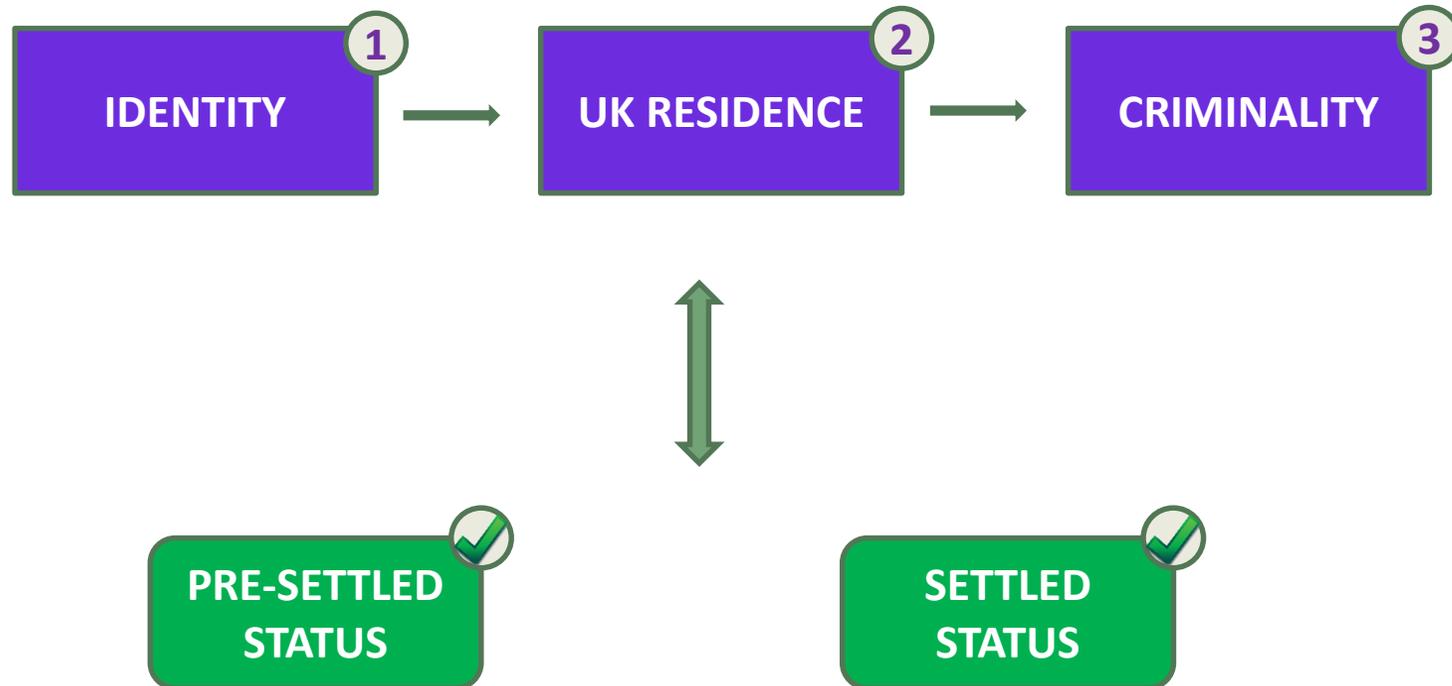
- **Continuously resident in the UK for 5 years = eligible for Settled Status (no more than 6 months absence per year).**
- **After 12 months with Settled Status may then be eligible for British Citizenship.**
- **Married to a British citizen you may be in a position to file for Citizenship on receipt of your Settled Status.**
- **Absences from the UK of 5 years or less should not impact your Settled Status.**

EU Settlement Scheme

Less than 5 years : Pre-Settled Status

- Resident in the UK for less than 5 years up to the date of application = eligible for 5 years Limited Leave to Remain.
- Apply for Settled Status once completed 5 consecutive years and not been absent for more than 6 months of each year.
- Absences from the UK of 2 years or less should not impact Pre-Settled status .

EU Settlement Scheme



Arrangements for No-Deal

- **Freedom of Movement “as it currently stands” will end on 31 October 2019**
- **No transition period**
- **Any EEA citizens and their family members resident in the UK on 31 October will still be able to apply under the EU Settlement Scheme. Applications must be filed by 31 December 2020**
- **Existing ID documents (passport/ID card) will be valid evidence of right to work in the UK until 31 December 2020 – deal or no deal**

No-Deal Euro - TLR

- **“Freedom of Movement” will end on 31 October 2019.**
- **EU nationals will continue to move freely.**
- **EU citizens will automatically be granted leave to enter on arrival after Brexit day and will be able to work and study until the end of 2020.**
- **If EU citizens want to stay longer they will need to file an application for European Temporary Leave to Remain (Euro - TLR).**
- **Euro – TLR may contribute towards ILR under new rules**
- **Euro - TLR will be granted for 36 months. This is non-extendable.**

UK Immigration - Visitors

- Currently the Immigration rules are in place for non EU nationals wishing to come to the UK
- Performers coming to the UK for less than 6 months may be able to perform in the UK under the Visitor Rules.
- Permitted Paid Engagements allow for a professional artist, entertainer, musician or sports person may carry out an activity directly relating to their profession, if they have been invited by a creative (arts or entertainment) or sports organisation, agent or broadcaster based in the UK.

UK Immigration – Exceptional Talent

- Visa category for individuals with exceptional talent or promise in their field
- Arts Council England must endorse application and will look for evidence that the applicant who is internationally recognised or demonstrates potential to become a leading expert in their field

UK Immigration – Tier 2

- A Tier 2 (General) visa would enable travel and work in the UK on a long term basis.
- The visa is sponsored by an organisation holding a Sponsor Licence and a Certificate of Sponsorship is required.
- Occupations considered ‘Shortage Occupation’ from 6 October 2019:
 - Dancers and Choreographers – Skilled classical ballet and contemporary dancers;
 - Orchestral musicians who are leaders, principals, sub principals or numbered string positions;
 - All arts officers, producers and directors.

UK Immigration – Tier 5

- Temporary workers in the UK can be sponsored under the creative category to work in the UK for up to 12 months (can extend up to 24 months - same sponsor)
- Sponsors are able to bring an entourage using a group Certificate of Sponsorship.
- Multiple engagements - If you have a single sponsor, for example, an agent, and there is no more than a maximum of 14 calendar days between each engagement, that sponsor can assign a single Certificate of Sponsorship to cover the whole period.
- Engagements for less than 3 months may not require a visa application.

UK Nationals in the EU

Case Study Assumptions

- The UK will leave the EU without a deal.
- UK nationals to be considered as “favoured” third-country nationals (as is a U.S. national).
- Subject to a stay in the Schengen area of up to a maximum of 90 days in any half year period (90/180 days rule) – no visa required.
- To work, live or study for more than 90 days a national visa for that European country is required, unless otherwise exempt.
- Hypothetical Post Brexit Policy.

UK Nationals in the EU

Appropriate Immigration Category

- In order for the production of “A Play”, to take part at “A Theatre” in an EU country, British citizens who work for the “British Theatre Company” will likely need to apply for a certain category of permit, under the national immigration laws associated to that country, in order to perform their role to ensure the production takes place, **unless otherwise exempt.**

UK Nationals in the EU

Relevant Factors

The following are likely to have influence over the appropriate immigration category that will apply to British citizens, post Brexit.

- Job role of the UK national and role to be performed.
- Length of stay in the country of destination / Length of stay in the Schengen Area.
- A one off production.
- A production that will tour the EU for a said period (I.e. France, Germany, Netherlands, Spain).
- Gross salary / Tax and social security.

UK Nationals in the EU

- Each case will need to be assessed on its own merits.
- Work permit categories and criteria differ by country.
- General criteria may include but are not limited to:
 - Documents attesting to the reality of the performance including venues, dates, length, organisers, posters, advertisements.
 - Documents attesting to the applicant's direct participation in the event.
 - Employment contract.
 - Adequate qualifications and experience.
- Country Specific Details
 - France - Germany – Ireland - Netherlands - Spain

France

Less than 90 Days in France

- **Work permit exemption applies to the following:**
"The production and publication of films, audio-visuals, plays, and audio recordings, when the exempted person is an actor, or technical personnel, attached directly to the production or direction"
- **For those UK citizens who do not qualify under the work permit exemption process, a work permit will be required.**

More than 90 Days in France

- **Work and residence permit required.**

Processing Time

- **Dependent upon the local labour administration.**
- **For example, in Paris the process may take 4 weeks.**

Germany

Theatre production activities are regulated by the German Employment Ordinance

- Work approval is required unless otherwise exempt.
- Expected exemption for Performances up to 90 days per calendar year.

Performing for more than 90 days per calendar year?

- Work permit required from the Germany Employment Agency.
- Note that visa free stay will be limited to 90 days in any 180 day period.

Processing Time

- Work approval 1 to 2 months.
- National visa and work approval 2 to 3 months.

Ireland and the CTA

The Common Travel Area (CTA)

The CTA was established before the UK joined the EU and is not reliant on membership of the EU, therefore no change is envisaged.

The CTA includes the following;

- UK
- Bailiwick of Jersey
- Bailiwick of Guernsey
- Isle of Man
- Northern Ireland
- Republic of Ireland

Netherlands

Less than 90 days in The Netherlands

A work permit exemption applies to visitors, who enter the Netherlands for a single visit, for a stay of up to a maximum of 6 weeks in a 13 week period, who are to work as:

- Artists;
- Musicians; and
- Entourage, such as a technician, hairdresser or make-up artist (typically limited to 5 people per artist) i.e. those considered as caring for and supporting an artist.

A work permit will be required for those UK nationals who do not qualify under the work permit exemption process.

Work Permit Processing Time is approximately 5 Weeks

Netherlands

More than 90 Days in the Netherlands

- **Permission to work and a residence permit required.**
- **A resident labour market test may apply, whereby the role must be advertised in the Netherlands and the EU/EEA. Conditions of which will apply, unless otherwise exempt.
Exemptions include actors, dancers, musicians, designers.**
- **Work Permit Processing Time is approximately 90 days, unless the sponsor has recognised sponsorship status, where applications can be processed in around 2 to 3 weeks.**

Spain

- A work permit exemption applies to visitors, who enter Spain to perform specific performances on a “non-continuous” basis, which includes:
 - Artists who are to perform specific performances for less than 5 consecutive days

OR

- 20 Non-consecutive days in a period of less than 6 months.
- Note Support Entourage are not included

Spain

For those UK citizens who do not qualify under the work permit exemption process, a temporary residence visa with work authorisation will be required.

More than 180 days in Spain

- **A temporary residence visa with work authorisation will be required, as well as foreigner's residence card.**

Processing Time

- **Approximately 1 to 3 months.**

Employment Law Implications

- **Much of the UK's employment law derives from the EU, but it is unlikely that the UK's withdrawal from the EU will have an immediate impact on employment law.**
 - **Approach of the courts to EU law**
 - **Discrimination law**
 - **Equality and Human Rights**
 - **Parental leave and pay**
 - **Transfer of undertakings**
 - **Holidays and working time**
 - **Collective redundancy consultation**
 - **Agency workers**

Questions?

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