

FRAGOMEN



BritishAmericanBusiness

Moving My Workers Post-Brexit:

A short guide for international
companies doing business
in the UK

February 2020



BritishAmericanBusiness

BritishAmerican Business is the leading transatlantic trade association created as a result of the merger between the British-American Chamber of Commerce in the US and the American Chamber of Commerce in the UK.

We are committed to strengthening the economic corridor between the United States and the United Kingdom by supporting policies and actions that protect and enhance the environment for transatlantic trade and investment on behalf of our members.

We convene and serve a growing network of companies and business leaders through networking opportunities, bespoke programming and marketing platforms.

We actively promote trade and investment and support those who make the transatlantic corridor part of their business growth ambition.

FRAGOMEN

Fragomen is the world's leading single-focus provider of immigration guidance and support. We have more than 4,200 people worldwide and provide immigration services in over 170 countries.

In the UK, we provide tailored immigration support, including assisting with visa applications for your employees and their families, specialist compliance advice, Brexit and government strategies, and frequent client alerts. We support small and medium enterprises through to large multinational corporations and currently act for over half of FTSE 100 companies. We are also the only law firm in the UK approved by the Home Office to sponsor interns on behalf of businesses.

Fragomen is structured to support all aspects of immigration, including strategic planning, efficiency, quality management, compliance, government relations, reporting, and case management and processing. These capabilities allow the firm to represent a broad range of companies, organisations and individuals, working in partnership with clients to facilitate the transfer of employees worldwide. For detailed information about Fragomen, please visit www.fragomen.com.

A new immigration landscape for the UK

The United Kingdom (UK) formally left the European Union (EU) on 31 January 2020, and with this will come fundamental changes to the UK's immigration system. These changes will require any company doing business in, or with the UK to check and act on potential implications for current workers, future employees and business operations.

A transition period will run until 31 December 2020, during which the free movement of people and goods between the UK and EU will remain. This guide sets out what you can and should do during the transition period and to prepare for what comes next. We answer important questions on how you and your business may be affected, give context to current and upcoming changes, and offer tangible tools so you are prepared and see as little disruption as possible.

To note: We refer to Europeans throughout the guide. For these purposes we are talking about nationals of EU Member States, the EEA Member States and Switzerland.

Despite all the changes that Brexit will bring, the mobility requirements for third country nationals such as US nationals travelling to the UK or the EU will continue as at present. The proposals for the new UK immigration system due to come into effect on 1 January 2021 could provide greater benefit and flexibility to third country nationals as a result of lesser restrictions placed on eligibility requirements for UK work visas.

This guide should not be treated as legal advice and we would urge anyone intending to plan for the changes in UK immigration policy to speak with an expert.

What this guide will cover:



▶ **Objective:** To help businesses manage risks and issues in the least disruptive way possible.



▶ **What the current deal means.** Europeans coming to and living in the UK before 1 January 2021 will be able to stay permanently, once they have been here for five years but they will need to make an application for settled or pre-settled status. We set out their entitlement to status and the key points they need to understand.



▶ **The settled status process.** We set out broadly what to expect from the Settled Status Scheme and the key steps that applicants will follow.



▶ **The timeline.** Dates matter, so we have provided a timeline setting out what is likely to happen and when.



▶ **Your other key messages.** Broadly speaking there are three groups of people you will need to consider. We set out what you can say to senior leadership, your employees and to business travellers.



▶ The Government is planning a **new immigration system** from 1 January 2021. We have summarised the high level plans released by government, setting out how things will work for Europeans and non-Europeans alike.



▶ **Ireland will be different.** Common Travel Area rules mean that Irish nationals will still be able to live and work in the UK after Brexit, as will UK nationals in Ireland. That said, these things are never simple and we have outlined the key UK-Ireland considerations.

The current state of play



The UK and EU have agreed that EU nationals who are residing in the UK before 1 January 2021 can continue their residence, despite Brexit and an end to free movement at the end of 2020. This is only if they apply under the EU settlement scheme by 30 June 2021.



The UK and governments of EEA countries and Switzerland have formally agreed this will apply to British nationals. The UK and governments of EEA countries and Switzerland have formally agreed that British nationals living in those countries will also be able to continue their residence.



EU nationals resident in the UK are expected to make an application for settled status where they have lived in the UK for five years or more, have not spent over six months overseas in any 12 month period and do not have a serious criminal record.



Those with under five years residence are able to apply for pre-settled status before switching to settled status when they reach the five year mark. The Home Office conducts criminality checks for both of these applications.



EU nationals and their family members resident in the UK by 31 December 2020 must apply via the Scheme prior to the deadline of 30 June 2021.



The Home Office will decide on the seriousness of a criminal record on a case-by-case basis, but broadly speaking it means extended or repeated prison sentences.



EU nationals who already hold permanent residence need to apply for the new settled status.



Applications are typically decided in two to three weeks and applicants do not necessarily need to submit their passports, if they have confirmed their identity using the Home Office Settled Status app (available on iPhone and Android devices).



Non-EU family members also need to apply for pre-settled or settled status, although the process can take longer.



Those who work in the UK but live outside of the UK may still be able to make an application under the Scheme, depending on their specific circumstances.



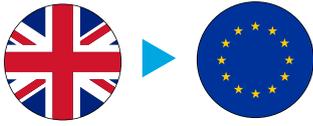
Business travel to the EU is expected to be visa-free, but travellers must restrict activities to what is permitted under the business visitor rules in their destination country and meet the Schengen Area time limits of 90 days in any 180 day period.



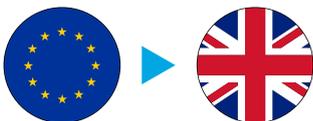
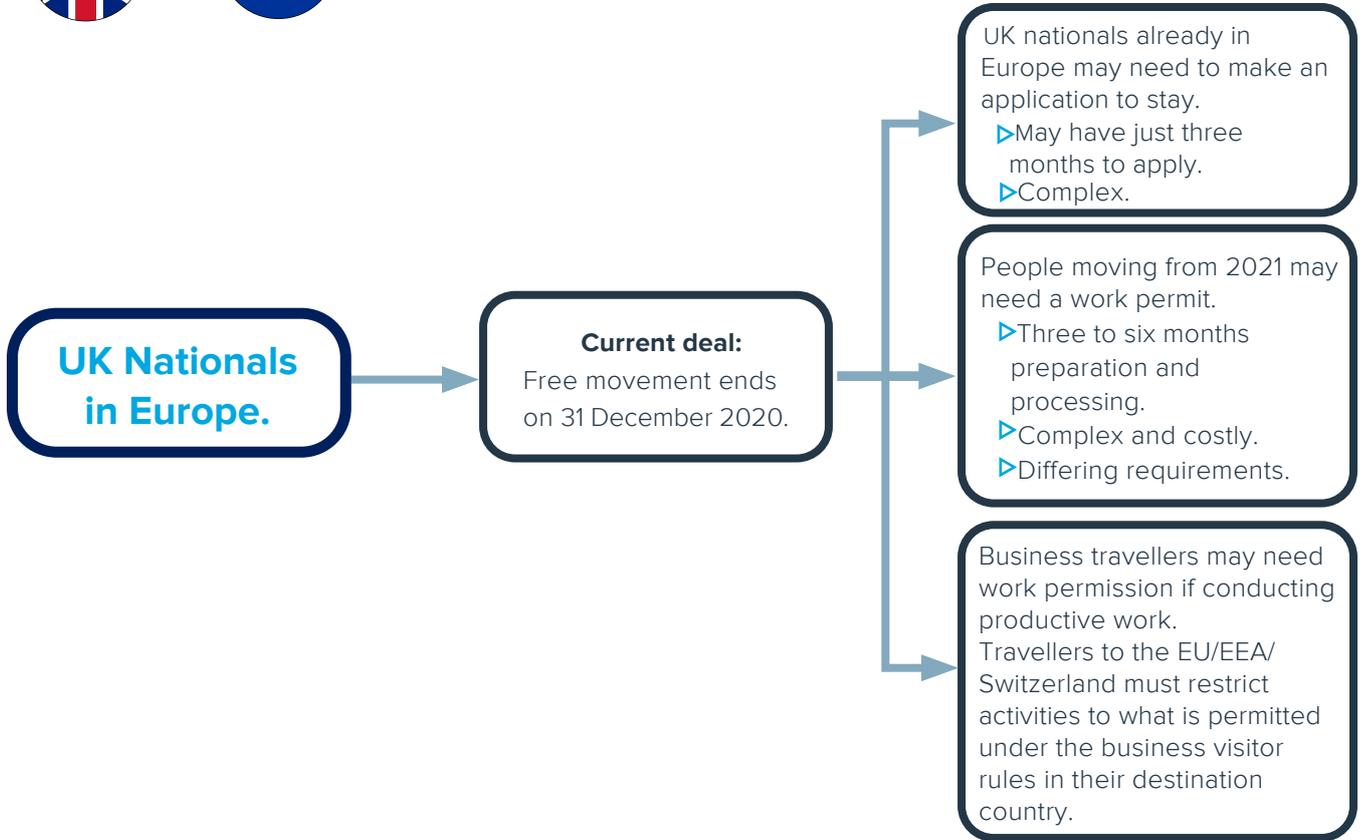
UK nationals travelling to the EU for business from 2021 should expect to seek travel authorisation under the ETIAS electronic visa waiver system.

What do I need to know?

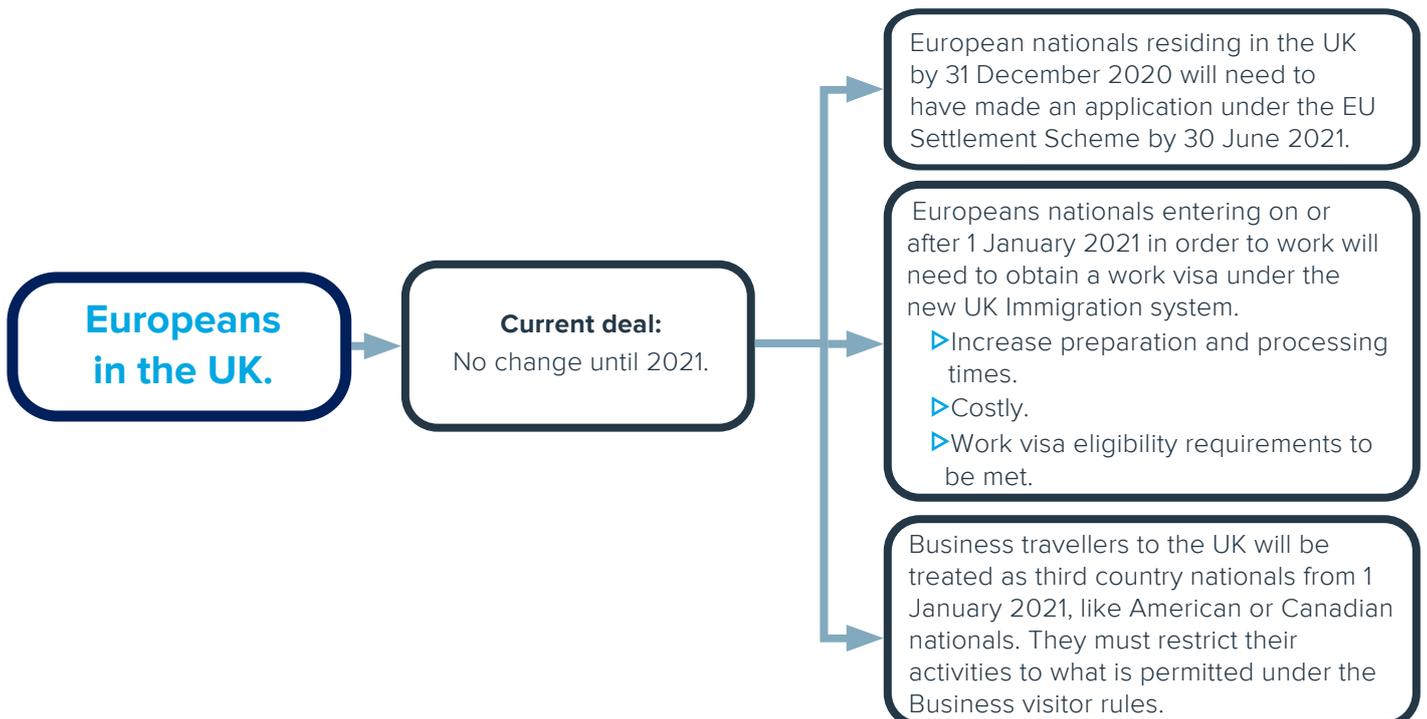
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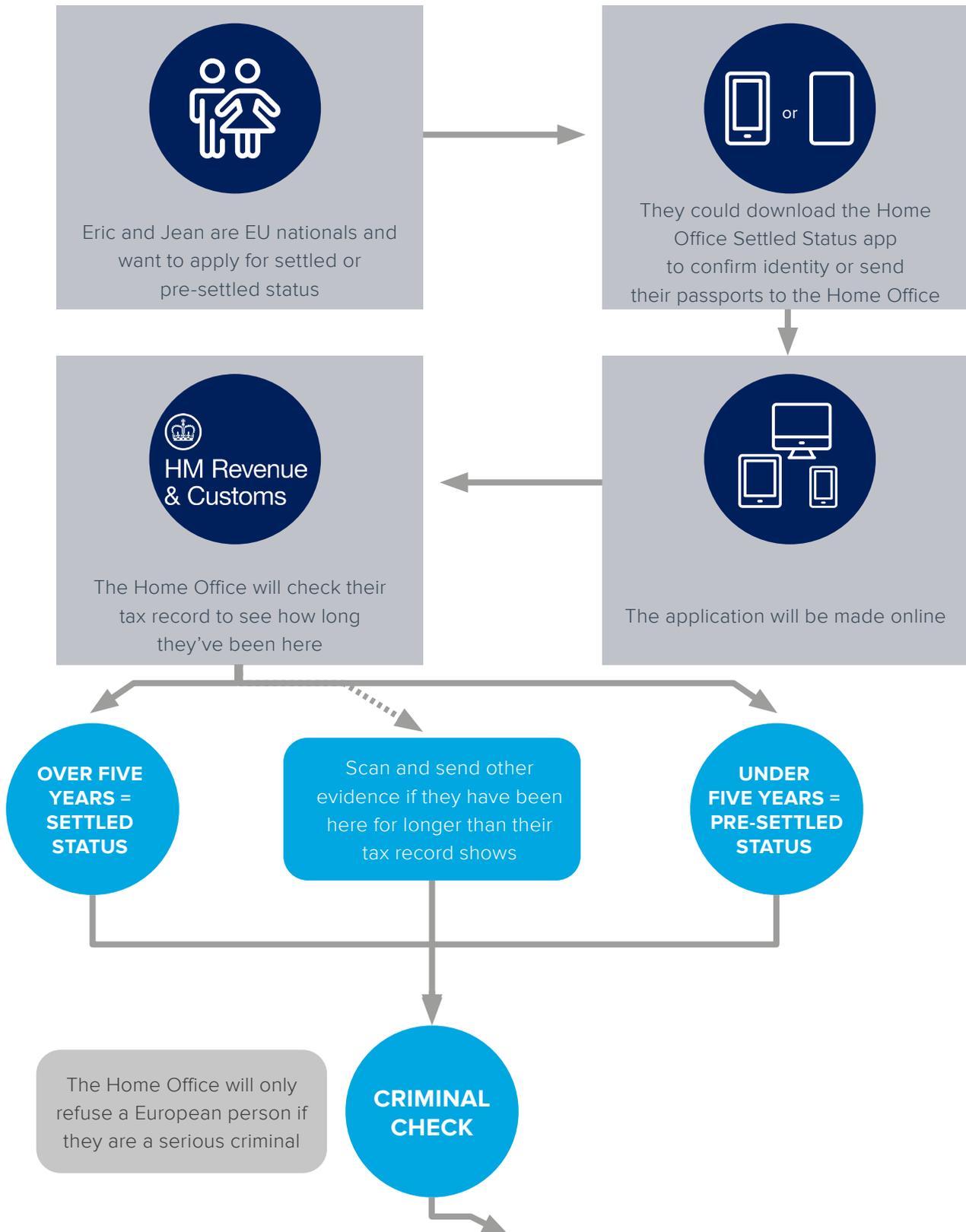
For UK nationals in Europe, the issues come when free movement ends on 31 December 2020.



In the UK, 1 January 2021 is arguably a bigger milestone than Brexit.



How to apply under the UK's Settlement Scheme



Settled or pre-settled status granted with appeal rights if an application is refused

Key messages for key audiences:

SENIOR LEADERSHIP



Brexit has brought with it many uncertainties, but a lot is known about citizens' rights and what it means for our people, our job candidates and our business operations.



Under the current agreed deal, European nationals living in the UK before 1 January 2021 are able to stay permanently once they have five years residence, but need to make an application.



This is known as the Settled Status Scheme and the law says that European nationals and their family members will be granted status so long as they are in the UK by 31 December 2020, they do not have a serious criminal record and a small number of other conditions are met.



We can now plan for how the new UK immigration system will impact our operations, including cost & recruitment along with bringing forward any moves to 2020 before free movement ends.

EUROPEANS WORKING IN THE UK



If you are in the UK before 1 January 2021 you will be able to stay.



If you've lived here for five years you can apply for settled status, if not you would apply for pre-settled status and then move to settlement after five years. You will need to apply under the scheme before 30 June 2021.



Europeans coming to work in the UK from 1 January 2021 are expected to require work authorisation under the UK's new immigration system.

BUSINESS TRAVELLERS



Business travellers may need a work visa if they will be conducting productive work in their destination EU country. Although there is no change for non-EU travellers, UK nationals travelling to the EU will need to be mindful of their activities whilst in the EU country.



In order to avoid obtaining work permission, travellers to the EU/EEA/Switzerland must restrict activities to what is permitted under the business visitor rules in their destination country. Visas will not be required in order to travel to the Schengen Area, which covers most of the EU. Time in the Schengen Area must be limited to 90 days in any 180 day period.

Planning for what comes next

The UK's departure from the EU at the end of January 2020 is just the start of many changes to come for the movement of people. Take note of these key dates and what action you can take now to keep your business on the front foot.

	Impact	Audience	Message	Action
31 January 2020: Brexit Day – the UK left the EU		Employees, Leadership	Things will continue as they are under the transition period until 31 December 2020	Start planning now for the end of the transition period
Early 2020: New UK immigration system announced		Leadership	We understand how immigration will be managed after Brexit, the impact on our business and what needs to be done	Map policy against staffing needs. Ensure gaps and consequences are fully understood with contingency plans in place
Throughout 2020: Preparation for a new UK immigration system and for UK nationals to enter EU countries as third country nationals		Leadership	We understand how immigration will be managed after Brexit, the impact on our business and what needs to be done	Fully understand the proposed policies and have a plan in place to make them work for your business Consider whether to speed up moves into the UK or EU
31 December 2020: Last day of free movement in the UK		Leadership/HR	Free movement ending will make things more difficult but we have a grip on it	Communicate the issues and your plans to the business
1 January 2021: A whole new UK immigration system and UK nationals subject to EU immigration control		Leadership	Prepare for the complexity that the new UK immigration system and the end of freedom of movement will bring - including increased costs and lead times	Put your plans into practice
30 June 2021: Deadline for applications for pre-settled or settled status in the UK		Employees	Ahead of the deadline: the deadline is approaching, you must apply	Explain importance of applying, tracking the expiry of pre-settled/temporary status and making a follow up application, if needed

A new UK immigration system

The new UK Immigration system proposed for 2021 could see more benefits for third country nationals, including US nationals, who could benefit from a faster and simpler system as a result of no resident labour market testing, no cap on numbers and a lower skill threshold.

The UK Government released plans for the new system on 19 February 2020, providing initial guidance.

The Government confirmed the following:

- 1.** There will be a single system for EU and non-EU nationals, although there could be particular carve outs or flexibilities for some countries.
- 2.** The new system will be simpler and faster than our current system – there will be no resident labour market test, the cap suspended, permanent work visas will be available for RQF3 Level (A-Level) roles and above for those with a UK job offer.
- 3.** A new Australian style points based system will be introduced and will run in parallel for highly skilled people without a job offer following consultation with stakeholders. It is unlikely to be rolled out in January 2021.
- 4.** There will be no visa category for lower skilled workers (lower skilled now referring to those below RQF level 3 standard - equivalent to below A level / or secondary education only).
- 5.** The UK Government is increasingly leaning towards digital systems to manage the entire immigration process for individuals and employers, with an emphasis on data sharing between government departments such as DWP and HMRC.

EU nationals will be able to visit the UK without applying for a visa in advance, although in time an electronic travel authorisation will be introduced for EU and third country nationals (including US nationals).

WHAT YOUR BUSINESS NEEDS TO KNOW



The UK immigration system will change on 1 January 2021 and EU nationals intending to live and work in the UK will need work permission.



The Government will explore a highly skilled work visa for people without a job offer, albeit the category will not take effect on 1 January 2021.



It will be harder, more time consuming and more expensive to bring in skilled EU nationals and will most likely take at least three to four weeks.



Businesses could need to pay at least £25,600 to workers sponsored from 2021 (unless an exception applies, ie. Shortage occupation role or relevant PhD in a STEM subject) – we need to understand what that would mean and factor into financial forecasting/recruitment.



Skilled workers will continue to be able to enter the UK and stay permanently if they secure a Tier 2 General Visa, although the name may change.



Move European citizens to the UK and UK citizens to Europe before the end of 2020, wherever possible in order to benefit from free movement.



We should not need to worry about business visits – Europeans will be able to enter the UK without a visa, just as US nationals do now.



A new immigration system should make it quicker and easier for non-EU migration to the UK. However it could be most costly with government fees expected to increase.

Brexit: UK and Ireland

All eyes are on European and UK citizens who need to register their status, but we must not forget that Ireland is different. Under the current legislative framework and proposed arrangements, Brexit will not have any effect on the residency rights of Irish citizens living in the UK or UK nationals living in Ireland. It might have implications for their family members. This is what you need to know:

IRISH CITIZENS IN THE UK



Irish citizens: No change. Irish citizens will be able to reside and work in the UK and will not need to undergo any immigration process.



European family members of Irish citizens: Any European family members will need to apply for status. That will be settled status if they have been here for five years or pre-settled status if they have been here for less time and entered before 31 December 2020.



Non-European family members of Irish citizens: They will also need to apply for status. Unlike Europeans, they will need evidence of their relationship with the Irish citizen. Family members can also apply under the immigration rules. On balance, we think this will often be less helpful than the settled status scheme but we can advise on a case-by-case basis.

UK CITIZENS IN IRELAND



UK citizens: No change. UK citizens will be able to reside and work in Ireland and will not need to undergo any immigration process.



European family members of UK citizens: No change. All European family members will continue to be able to reside and work in Ireland and will not need to undergo any immigration process.



Non-European family members of UK citizens: Any such family members already in Ireland enjoy residence rights under the current EU free movement rules until 1 January 2021 (the end of the transition period). Until then, these family members can come to Ireland without restrictions and apply for status under EU free movement rules upon arrival. They can build their rights towards permanent residency (which is usually acquired after five years of legal residence) in Ireland. From 1 January 2021 a new immigration regime will be in place between the EU and the UK. The admission criteria and other conditions will have to be agreed upon between the EU and the UK.



A child born in the island of Ireland (including Northern Ireland) before 1 January 2005 is an Irish citizen, independent of the nationality of the parents.



A child born in the island of Ireland (including Northern Ireland) on or after 1 January 2005 is an Irish citizen if he/she has a UK citizen parent.



Due to the UK and Ireland's shared history many UK citizens might also have an entitlement to Irish citizenship due to ancestry, by way of Foreign Birth Registration.



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MORE ABOUT FRAGOMEN

To learn more about how we can help you with your immigration needs and challenges, please visit: www.fragomen.com.

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