

DEEMED LEAVE

A concrete plan to secure EU residents' rights post-Brexit

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This month the prime minister will trigger article 50. For the 3 million EU nationals who are resident in Britain, that will throw the uncertainty over their future status into sharper relief. There have been rallies, Lords amendments, and countless articles written on this issue, all imploring the government to take action. Yet despite the handwringing, very few people have put forward a concrete, practical plan for how to secure EU nationals' rights.

IPPR has been working on this issue since the referendum. In the immediate aftermath of the result, we called on the government to protect the rights of EU nationals and grant citizenship to all Europeans working in the NHS.¹ We have also outlined how the government is, to all intents and purposes, bound to guarantee their rights eventually, as the alternatives are all either impractical or impossible.²

Here, we set out a straightforward and practical way for the government to resolve this issue.

1. GRANT DEEMED LEAVE TO ALL EU NATIONALS

Broadly, there are three ways for a foreigner to be legally on British territory: she must either have passed through our (non-EU) immigration controls, be here under EU free movement rules, or have deemed leave. On the day she triggers article 50, the prime minister should grant deemed leave to all EU nationals lawfully resident in the UK. This means that any EU migrant who had been legally resident under free movement rules in Britain would be automatically deemed to be legally resident in Britain, without any obligation to fill in a form or register with the Home Office.

Deemed leave is already a part of the UK immigration system, albeit little used. It is typically granted to foreigners who are in Britain legally without being subject to immigration controls. For example, diplomats who come to the end of their posting are generally granted 90 days' deemed leave. Similarly, a child born to foreign parents who does not acquire British nationality at birth is also granted deemed leave. We recognise that these individuals have not broken the rules by being here, but they do not have an official status. Deemed leave is designed to deal with people who come to the UK without going through our immigration system, or whose original reason for coming to the UK no longer holds, or who we wish to recognise are not in breach of the immigration rules.

The home secretary can grant this *en bloc* to all EU residents as a one-off, without additional legislation, as she has the powers to make such a grant under section 8 of the Immigration Act 1971. When we leave the EU and free movement ends, the basis under which EU nationals are resident in the UK will

evaporate, and they will not have a status under UK law. Granting them deemed leave will give them such a status. Typically, deemed leave lasts for 90 days, but in this instance the home secretary should amend its validity to a much longer time period: it should at least be a number of years, and could extend to the lifetime of those who are granted it.³

A key advantage of deemed leave is that it is intrinsic to the individual, and is not contingent on any registration or documentation to be valid. All EU residents in Britain will automatically acquire this legal status. Given that there is no way of knowing precisely how many EU migrants there are in Britain, or where they are (as there has been no obligation on EU migrants to register with the Home Office), granting a mass offer like this is the most practicable step open to the government.

2. SIMPLIFY THE REGISTRATION PROCESS

When deemed leave is granted, it is inherent to the person; no special card or registration is necessary to make it valid. Nonetheless, it will be useful for these EU nationals to obtain proof that they have it, as it would be for any British-born person. A person born in Britain, or to a British parent, is British, and does not need to fill out a form to seal the deal. However, it very quickly becomes clear that holding a passport or other proof of citizenship is useful – for example, when signing a job contract.

1 Murray C (2016) Becoming one of us: Reforming the UK's citizenship system for a competitive, post-Brexit world, IPPR. <http://www.ippr.org/publications/becoming-one-of-us>

2 <http://www.newstatesman.com/politics/staggers/2017/03/theresa-may-must-reassure-eu-nationals-uk-how-she-can-do-it>

3 Granting special lifetime immigration statuses has been common practice in twentieth century British immigration law. As Britain decolonised and withdrew from former parts of the empire, it granted special immigration statuses to those who were not covered by the successor laws of the new independent countries. The pool of people to whom these statuses continue to apply shrinks every year, and only a few are still able to claim abode in Britain on these bases today.

Similarly, while deemed leave requires no documentation or form-filling in order to be valid, it will evidently become useful for those who hold deemed leave to be able to prove it. Anyone who wants to change jobs, for example, or rent a house, generally needs to prove their immigration status. Currently, EU migrants have been applying to the Home Office to register to prove their permanent residency, which is derived from EU law. Due to EU rules, the process is absurdly long and complex, and some 35 per cent of EU residents have their applications rejected on technicalities. Deemed leave, being part of UK law and not an EU creation, is an opportunity for the Home Office to streamline the system. Ironically, in this small way, Brexit will make one issue simpler for EU residents.

The Home Office should, at least in the initial years of such a policy, be generous in what it accepts as proof that a migrant was resident in Britain: a salary slip, bank statement, rental contract or university ID valid over the course of the past year should be sufficient. There can be strictly no *obligation* to register. Some EU migrants may wish to do so swiftly, either for their own security or because they frequently need to prove their right to work in the UK. Others, who change jobs and move house infrequently, may wait a while before they register. Either way, they will always have been legally resident in Britain.

3. DISTINGUISH BETWEEN THOSE WHO CAME HERE BEFORE ARTICLE 50, AND THOSE WHO CAME AFTERWARDS

Even if the system to register for proof becomes much simpler, it will take a long time for all 3 million people to sign up and obtain proof that they have deemed leave. EU migrants who are already here will have deemed leave for as long as the government says they do. Therefore, the government should be generous in how it allows EU migrants to register. It should announce that EU nationals have a long period – of at least five years – to register to prove they have deemed leave, and that they can do so at any point in that period. In addition, the Home Office should relax its usual rules that all forms must be completed in English; it should be available in any EU language.

But how to distinguish between those who have deemed leave, and those who arrive later and do not qualify? First, the former will be by far the vast majority; after all, some 3 million people – all the Europeans in Britain today – will qualify as the

former. This will change gradually over time, but once we leave the EU new migrants will have to pass through whatever new system is imposed.

Secondly, all new immigration systems take time to bed in. It could be up to several years post-Brexit before employers can reasonably be required to enforce the distinction between those who have deemed leave and those who have a post-Brexit immigration status. So any plan should include a long grace period, to allow deemed leave migrants time to register and for employers and landlords to get to grips with the system.

4. MAKE A GENEROUS GESTURE REGARDING UK CITIZENSHIP, IN EVERYONE'S BEST INTEREST

Beyond these three steps, there is a strong case for being more generous. The price of British citizenship has increased steadily in recent years and is now among the most expensive in the developed world, at over £1,200 per application. Now more than ever, we should encourage migrants to become British, not make it difficult for them.

Since the immediate aftermath of the referendum, IPPR has advocated two policies.⁴ The first is that all EU nationals who were educated in the British school system should be able to register as British citizens for free. Citizenship is a lifetime relationship. We should recognise that a child educated here will always have an enduring relationship with our country, even if they go abroad for a while and even if they have a foreign parent.

The second is that all EU nationals working in the NHS should be offered free British citizenship. One in eight doctors is European, and we would face a public health emergency if they left. The government should make them a particularly generous offer to encourage them to stay post-Brexit.



The EU referendum result cast doubt on many things, not least the future status of EU nationals who are currently resident here. Despite the fact that almost nobody is calling for them to leave, and the government continually restates that it wants to give them guarantees to stay here, very few concrete plans to do so have been put forward. Granting them deemed leave and streamlining the registration process is a practicable, effective way to do so.

⁴ Murray 2016.