



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate D: Equality and Union Citizenship
Unit D.3: Union citizenship rights and free movement
Deputy Head of Unit

Brussels,
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Ms Monique Hawkins
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uk

Dear Ms Hawkins,

I refer to your e-mails of 9 and 10 December 2019, addressed to Mr Lutz, concerning the rules that will apply to non-EU national family members of EU citizens residing in the United Kingdom when they will want to travel to the EU27 after the United Kingdom has withdrawn from the European Union. You would also like to know what the situation will be for UK national family members of EU citizens. You ask the question against the background of biometric residence cards currently issued by the United Kingdom under its EU settlement scheme not exempting from the visa requirement for travels to the EU27.

Your e-mails were registered under the reference number Ares(2019)7759563 (*please quote this reference in any further correspondence*).

As my Unit is responsible for Union citizenship, I was asked to reply to you.

1. Travelling as long as the United Kingdom is still an EU Member State and during the transition period in the deal scenario

a) Travelling with a residence card issued in accordance with the EU Free Movement Directive

As long as the United Kingdom is still an EU Member State, EU free movement law applies to EU citizens and their non-EU national family members residing in the United Kingdom. The same would be true during the so-called 'transition period' provided for in the Withdrawal Agreement, which will apply if the United Kingdom withdraws from the EU with the Withdrawal Agreement having been approved. The transition period is set to end on 31 December 2020.

Article 3(1) of the Free Movement Directive provides that the Directive applies to all EU citizens who move to or reside in a Member State other than that of which they are a

national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

Article 7(1) of the Free Movement Directive grants EU citizens a right of residence if they:

- (a) are workers or self-employed persons in the host Member State; or
- (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State.

If the EU citizen fulfils the above conditions, s/he has a right of residence in the United Kingdom under EU free movement law. If the EU citizen has already lived in the United Kingdom for a continuous period of five years, during which s/he fulfilled the above conditions, s/he has acquired the right of permanent residence there (Article 16 of the Free Movement Directive). In both cases, the non-EU national family members derive, under EU law, a right of residence in the United Kingdom from the mobile EU citizen.

According to Article 10 of the Free Movement Directive, the right of residence of non-EU national family members of EU citizens shall be evidenced by the issuing of a document called 'Residence card for a family member of a Union citizen'.

As provided for in Article 5(2) of the Free Movement Directive, Member States may, where the EU citizen exercises the right to move and reside freely in its territory, require the family member who is a non-EU national to have an entry visa.

Article 5(2) of the Free Movement Directive also provides that possession of a residence card issued in accordance with Article 10 of the Directive shall exempt non-EU national family members from the visa requirement.

As confirmed by the Court of Justice of the European Union¹, non-EU national family members of mobile EU citizens who hold a valid residence card issued by a Member State in accordance with Article 10 of the Free Movement Directive are exempt from the visa requirement also when travelling with the EU citizen to his/her Member State of nationality.

The non-EU national family member of a mobile EU citizen residing in the United Kingdom is thus entitled to obtain a UK issued residence card according to Article 10 of the Free Movement Directive. The United Kingdom issues such cards under the Immigration (European Economic Area) Regulations 2016, which enact the Free Movement Directive. If the non-EU national family member holds such a residence card in accordance with Article 10 of the Free Movement Directive, s/he can travel, together with the mobile EU citizen, to an EU27 Member State on the basis of his or her valid passport and the residence card without needing to obtain a visa.

The above rules apply as long as the United Kingdom is still an EU Member State as well as during the transition period, should the United Kingdom leave the European Union with the Withdrawal Agreement having been approved. During the transition

¹ Judgment of the Court of 18 December 2014 in case C-202/13, *McCarthy and Others*, EU:C:2014:2450.

period, UK nationals will – despite the fact that they will no longer be EU citizens as of the withdrawal date – continue to enjoy their current EU citizen free movement rights.

b) Travelling with a residence card issued in accordance with the United Kingdom's EU settlement scheme

The UK government has provided for the EU settlement scheme to enable EU citizens who arrived before the withdrawal to remain if they meet certain conditions. It was designed to prepare for the implementation of the scheme foreseen under the Withdrawal Agreement. However, it is currently applied in view of anticipating either the implementation of the Withdrawal Agreement *or* the no-deal scenario and is thus running in addition to UK law enacting the EU Free Movement Directive. The specific rights ultimately attaching to the (pre-)settled status will depend on whether the United Kingdom withdraws with or without the Withdrawal Agreement having been approved. Given the outcome of the UK general elections of 12 December 2019, it seems likely that the Withdrawal Agreement will be approved.

This being said, the (pre-)settled status currently issued to EU27 citizens and their non-EU national family members is issued under UK national law. Thus also the biometric residence cards currently issued to non-EU national family members who were granted (pre-)settled status under the United Kingdom's EU settlement scheme are issued under UK national law. Contrary to residence cards issued in accordance with Article 10 of the Free Movement Directive, residence cards issued under the UK's EU settlement scheme do not exempt the holder from the requirement of having to obtain an entry visa when travelling to an EU Member State.

Regulation (EU) 2018/1806 listing the countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement determines which non-EU nationals need a visa when travelling to EU27 Member States, except for Ireland. In the case of Ireland, to which the Regulation does not apply, it is national law that determines whether a non-EU national family member needs an entry visa.

The text of the Regulation and its Annexes are available at the following website: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571825109562&uri=CELEX:32018R1806>

Annex I to the Regulation lists those non-EU nationals who are required to be in possession of a visa when crossing the external border of the Member States. Those non-EU national family members whose country of nationality figures on the list in Annex I will need an entry visa when travelling to the EU27 (with the exception of Ireland, see above) with their mobile EU citizen if they hold only a residence card issued under the United Kingdom's EU settlement scheme.

Please be informed that – as long as the United Kingdom is still an EU Member State as well as during the 'transition period' in the deal scenario – it remains open to non-EU national family members of mobile EU citizens to apply for a residence card in accordance with Article 10 of the Free Movement Directive, even if they already hold a residence card issued under the EU settlement scheme. The Commission insisted in its contacts with the United Kingdom that the UK authorities provide the necessary information to EU citizens to enable them to continue exercising their free movement rights as long as EU free movement law applies in the United Kingdom.

2. Travelling after the end of the transition period in the deal scenario

After the end of the transition period, EU free movement law will cease to apply with regard to the United Kingdom and its nationals. This means that a residence card issued by the United Kingdom in accordance with Article 10 of the Free Movement Directive will no longer exempt non-EU national family members of EU citizens residing in the United Kingdom from the visa requirement when travelling together to an EU Member State.

According to Article 18(1) of the Withdrawal Agreement, the host State may require Union citizens and their family members who are beneficiaries of the Withdrawal Agreement to apply for a new residence status which confers the rights set out in the citizens' rights part of the Withdrawal Agreement and a document evidencing such status. As the Withdrawal Agreement does not govern its beneficiaries' travels between the host State and the (other) EU Member States, documents issued under the Withdrawal Agreement will also not exempt non-EU national family members from the requirement of having to obtain an entry visa when travelling to an EU Member State.

Whether non-EU national family members will need an entry visa for trips to EU Member States, which take place after the transition period, will be determined by Regulation (EU) 2018/1806 for all Member States except for Ireland and by national law in the case of Ireland.

Annex II to the Regulation lists those non-EU nationals who are exempt from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period.

Regulation (EU) 2018/1806 has been amended to exempt UK nationals intending to visit the EU27 from the visa requirement for stays of no more than 90 days in any 180-day period (subject to reciprocity by the United Kingdom in relation with the EU27). This amendment will enter into force on the day EU free movement law ceases to apply to UK nationals (that is, either after the end of the transition period or at the date of withdrawal in the no-deal scenario).

This means that UK nationals and other non-EU nationals whose country of nationality figures on the list of Annex II to Regulation (EU) 2018/1806 will be able to travel visa free on their own for a maximum of 90 days in any 180-day period in the EU27. When they travel to an EU Member State accompanying or joining the mobile EU citizen, the Free Movement Directive will apply and they will, subject to the conditions of the Directive, have a derived residence right which is not limited to 90 days in any 180-day period.

Regarding UK nationals we understand that they will also be exempt, under the Common Travel Area arrangements, from any visa requirement when travelling to Ireland.

Where the visa requirement applies, the non-EU national family member of an EU citizen residing in the United Kingdom will, however, benefit from the visa facilitations provided for in Article 5(2) of the Free Movement Directive for trips to EU Member States of which the EU citizen is not a national and provided the non-EU national family member accompanies or joins the EU citizen. This means that the non-EU national family member will be entitled to be issued with the visa free of charge and as soon as possible on the basis of an accelerated procedure.

The visa facilitations will not apply for trips to the EU Member State of which the EU citizen is a national.

I hope that you will find this information useful.

Yours sincerely,

(e-signed)

Monika MOSSHAMMER
Deputy Head of Unit

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